

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 19,837  
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Appeal of )  
 )

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Economic Services Division terminating her RUFA, Food Stamp, and Medicaid benefits. The issue is whether the household has resources that are in excess of the maximums for those programs.

FINDINGS OF FACT

1. The petitioner lives with her husband and their two children. Prior to July 2005 they received RUFA, Food Stamps, and Medicaid benefits.

2. The petitioner's husband has not worked since May 2003. He claims that he is still employed by his last employer and out of work on "medical leave".

3. In July 2005 the Department received information that the petitioner's husband has access to a 401K savings account through his last employer. There is no dispute in the matter that as of March 2005 that account totaled more than \$14,000.

4. By notice dated July 21, 2005 the Department notified the petitioner that as of July 31, 2005 her household would no longer be eligible for RUFA and Food Stamps, and that effective August 31, 2005 she and her husband would no longer be eligible for Medicaid.<sup>1</sup> The reason for the terminations was excess resources.

5. At a hearing held on November 17, 2005<sup>2</sup> the Department submitted a statement from the petitioner's husband's former employer stating that his employment there "was terminated effective May 30, 2003" and that he has "an existing 401(k) account currently available for final distribution."

6. The Department also submitted a copy of the husband's "401(k) Savings and Investment Plan". The plan specifically states: "Withdrawals are allowed in the event of. . .termination of employment. . .", subject to a 10 percent penalty and a fee of \$10 per withdrawal.

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<sup>1</sup> The petitioner and her husband were determined eligible for VHAP benefits effective September 1, 2005. Her children remain eligible for Medicaid.

<sup>2</sup> The petitioner was allowed several continuances prior to this date to try to obtain an attorney and to obtain evidence regarding the account in question.

7. Based on the above it is found that the petitioner has assets immediately available to her household of at least \$12,000.<sup>3</sup>

ORDER

The decision of the Department is affirmed.

REASONS

The combined resource maximum for RUFA eligibility is \$1,000 (W.A.M. § 2261). For Food Stamps it is \$2,000 (§ 273.8[b]), and for Medicaid, \$3,300 (§ M340). None of these programs exempts any type of account, including a retirement account, that is currently available to be drawn upon to meet basic living expenses. In this case the Department has clearly shown that the petitioner has an available resource in the form of a 401K account from which her husband could currently withdraw at least \$12,000. Therefore, inasmuch as the Department's decision to terminate benefits in this case

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<sup>3</sup> The petitioner was allowed a final continuance until November 28, 2005 to obtain any evidence contradicting the employer's statement and the express terms of the account itself.

was consistent with its regulations, it must be affirmed by the Board.<sup>4</sup> 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

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<sup>4</sup> The petitioner may be eligible for any program when and if she spends down her resources below the above maximums.