STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. A-03/08-131
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families reducing the amount of her Food Stamps. The issue is whether the Department has correctly calculated the amount of her Food Stamps. The facts are not in dispute.

FINDINGS OF FACT

1. The petitioner is a single mother of four children. The petitioner's children are aged seventeen years, fifteen years, thirteen years, and eleven years. The thirteen and fifteen year old children are on the autism spectrum. Petitioner's family comprises a five person Food Stamp household.

2. Petitioner has historically had a great deal of difficulty receiving child support from her ex-husband who is a manager with a major corporation. Child support payments recently started up. Child support payments of $880 are remitted twice per month for a total of $1,760 per month. But, the petitioner receives one child support payment one

month then three child support payments the next month. The petitioner receives her second monthly child support payment in the next month. The problem stems from the mailing times for the monies to reach the Office of Child Support and for the Office of Child Support to then remit the funds to petitioner. The turn around time for the Office of Child Support is one to three days.[1]

3. Petitioner received $2,373.63 in child support from the Office of Child Support during December 2007 in addition to her earned income of $350 as a substitute teacher. The Department recalculated petitioner's Food Stamps and sent petitioner a notice dated January 8, 2008 reducing petitioner's Food Stamps from $643 per month to zero starting February 1, 2008. The petitioner appealed this decision.

4. A fair hearing was held on May 14, 2008 in which petitioner explained the monthly fluctuations to her income from the receipt of child support. Petitioner's eligibility for Food Stamps changes monthly due to these fluctuations in income. Because the Department uses retrospective budgeting (looking at the month before), petitioner would not

[1] For example, the second child support payment may be deposited with the Office of Child Support on May 30, 2008 but they would be unable to remit the payment to petitioner until June 2008.

ordinarily qualify for Food Stamps during the month she actually receives only one child support payment.

5. The Department was requested to consider whether they could use income averaging. The Board received a response on June 3, 2008 from the Department that the regulations do not allow income averaging in petitioner's case.

ORDER

The Department's decision is reversed and the case is remanded to determine petitioner's eligibility and amount of food stamps using her anticipated income pursuant to Food Stamp Manual § 273.10(c)(2)(iii).

REASONS

The Food Stamp program was created to combat hunger and malnutrition among low income households. Food Stamp Manual (FSM) § 271.1. The amount of Food Stamps that a household receives is based upon a complex formula set out in FSM § 273.9. Part of the calculation is a determination of a household's income.

Petitioner presents a difficult situation. Based on her child support order, petitioner is due two monthly payments of child support. However, petitioner finds herself

receiving one child support payment in one month and three child support payments in the next month. She receives her second child support payment in the next month due to the turn around time her second child support payment is in the mail.

Ordinarily, income is counted in the month it is received. FSM § 273.10(c)(2)(i). The Food Stamp program allows for income averaging in certain situations. FSM § 273.10(c)(10)(3). The Department is correct that the income averaging regulations do not apply. However, the Food Stamp program addresses anticipated income at FSM § 273.10(c)(2), as follows:

> (2) Income only in month received.
>
> . . .
>
> (iii) Households receiving income on a recurring monthly or semimonthly basis shall not have their monthly income varied merely because of changes in mailing cycles or pay dates or because weekends or holidays cause additional payments to be received in a month.

Petitioner falls within the category of households receiving recurring semimonthly income and falls within those households who find themselves receiving an additional payment in a month due to the mailing cycles. Her child support payments should be treated as anticipated income.

Based on the above, the Department's decision is reversed and remanded for the Department to recalculate petitioner's benefits using petitioner's anticipated child support as income. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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