STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 10,143
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals the decision of the Department of Social Welfare denying her application for Food Stamp benefits based on family income.

FINDINGS OF FACT

1. The petitioner contacted the Department by telephone in September of 1990, regarding her family's potential eligibility for Food Stamps because her husband was anticipating a reduction in his work hours from 40 hours per week to four weeks of 32 hours and a fifth week of 40 hours. The petitioner, for reasons she could not make clear, did not follow through with an application at that time. She suggested, however, that the Department might have discouraged her from applying at that time.

2. The petitioner called back in October, and was given an appointment for an eligibility review on November 6, 1990. At the time of her interview, the petitioner reported that her husband's 40-hour work week was cut to 32 hours for several weeks in October. His specific income was reported as follows:

Date Paid	Period Ending Date	Hours Worked	Gross Before Taxes
10/04/90	09/30/90	32	$329.04
10/11/90	10/07/90	32	$329.04
10/18/90	10/14/90	40	$329.04 sick $82.26
10/25/90	10/21/90	32	$329.04
11/01/90	10/28/90	32	$329.04

3. Based on that income, the intake worker calculated the petitioner's monthly gross income at $1,398.42. (The sum of the last four weeks.) Because that amount was above the maximum gross income in the regulations for four people, $1,376.00, the petitioner was notified on November 12, 1990, that her application had been denied for November.

4. The petitioner subsequently reported that for the month of November 1990, her husband resumed a 40 hour work week and has continued at that level ever since.

ORDER

The Department's decision is affirmed.

REASONS

The Food Stamp regulations require that "all income from whatever source" including earned income from "all wages and salaries of an employee" be used in determining Food Stamp eligibility. F.S.M. ə 273.9(b)

The state regulations provide several methods for monthly income calculations depending on the circumstances:

> A household's eligibility shall be determined for the month of application by considering the household's circumstances for the entire month of application. Most households will have the eligibility determination based on circumstances

> for the entire calendar month in which the household filed its application. . .[1]
>
> F.S.M. ə 273.10(a)(1)(i)

The regulations further provide that:

> Income received during the past 30 days shall be used as an indicator of the income that is and will be available to the household during the certification period. However, the State agency shall not use past income as an indicator of income anticipated for the certification period if changes in income have occurred or can be anticipated. If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the State agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income. Similarly, if the household's income fluctuates seasonally, it may be appropriate to use the most recent season comparable to the certification period, rather than the last 30 days, as one indicator of anticipated income. The State agency shall exercise particular caution in using income from a past season as an indicator of income for the certification period. In many cases of seasonally fluctuating income, the income also fluctuates from one season in one year to the same season in the next year. However, in no event shall the State agency automatically attribute to the household the amounts of any past income. The State agency shall not use past income as an indicator of anticipated income when changes in income have occurred or can be anticipated during the certification period.
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> F.S.M. ə 273.10(c)(1)(ii)

The petitioner reported that during the 30 days immediately preceding her application on November 6, that her household's total income (based on her husband's wages) was $1398.42. (Paychecks dated October 11, 18, 25, and November 1) That amount was used by the Department to project her November income. The income maximum adopted by

the Department provides that a four person household may not be eligible for Food Stamps if its gross monthly income exceeds $1,376.00. Procedures Manual ə 2590(c). Because the past 30-day income exceeded that amount, the Department correctly found the petitioner ineligible for the month of November.

The petitioner contends that had she received Food Stamp appointment earlier or later in the month, she might have had a different outcome for eligibility because a different 30 day figure based on the four weeks at 32 hours might have been obtained when projecting income. For example, if her interview had occurred before October 18, 1990, just before her husband worked his once every five week 40 hour work week, her past 30-day figure would have been only $1,316.16, ($329.04 x 4) which is below the maximum. If the Department were bound by the past 30-day rule, the petitioner would be correct. However, the Department is required to get as accurate a picture of real monthly income as it can and is required to factor in other information it has about real or anticipated income. In this case, the Department knew that every fifth week the petitioner would receive $82.26 more than in the other four weeks. Given that situation, on any given application date the Department could have averaged the petitioner's income to receive a true picture of the family's actual monthly income. See F.S.M. ə 273.10(c)(3)(i)[2] Had her income been

averaged, it would have been $1,485.60 per month ($345.49 per week x 4.3) which figure is still $111.00 over the maximum.

Finally, in retrospect, the facts show that for both the calendar months of October and November, the petitioner's household actually had gross income in excess of $1,376.00. It must be concluded, then, that the petitioner's eligibility could not (and should not) have been improved by the date of her actual interview and that under any scenario of analysis her family would be over income, although, unfortunately, just slightly so. The Department's decision is affirmed as correct. 3 V.S.A. ə 3091(d)

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The petitioner did not allege eligibility for September or October or present facts showing that she might have been eligible. The evidence was far from conclusive that she had been dissuaded from applying for those months. However, it is important to point out that phone ineligibility determinations if they indeed occurred, are illegal and violate the applicant's rights.

FOOTNOTES

[1]The regulation goes on to authorize an optional fiscal accounting method which the state has chosen not to use.

[2]C. Determining Income

3. Income Averaging

i Household except destitute households, and PA households subject to a monthly reporting requirement, may elect to have income averaged. Income shall not be averaged for a destitute household since averaging would result in assigning to the month of application income from future periods which is not available to the destitute household for its current food needs. To average income, the State agency shall use the household's anticipation of income fluctuations over the certification period. The number of months used to arrive at the average income need not be the same as the number of months in the certification period. For example, if fluctuating income for the past 30 days and the month of application are known and, with reasonable certainty, are representative of the income fluctuations anticipated for the coming months, the income from the tow known months may be averaged and projected over a certification period of longer than two months.

F.S.M. ə 273.10(c)

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