

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 8829
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her as a deduction from income for food stamp purposes the full amount of day care expenses she incurred during a period of illness while she was a student. The issue is whether the petitioner's "temporary disability" rendered her eligible for a deduction of all the day care costs she actually paid during this period or whether she is subject to the regulatory student-status maximum deduction regardless of her illness.

FINDINGS OF FACT

The facts are not in dispute. In July, 1988, the petitioner started a graduate studies internship at a local college. Shortly thereafter, on August 16, 1988, she was hospitalized with an illness of sudden onset. She remained hospitalized through September 9, 1988. For the next month, until October 6, 1988, the petitioner recuperated at home. Although she did some course work during her recuperation she didn't resume actual studies until October 6, 1988.

As of her enrollment in the graduate studies program, the Department allowed the petitioner (who had been

regularly receiving food stamps for some months prior to July) a deduction from her income (for purposes of computing her monthly food stamp benefits) of \$140.00 per month, which represented the maximum deduction available to students under the regulations (see infra). The petitioner maintains that for the period of her illness (roughly August and September, 1988) she should be allowed as a deduction from income the total amount she actually paid in child care expenses, which exceeded the student maximum.¹

Inasmuch as the petitioner concedes that the maximum deduction was and is applicable to her during the periods she was not ill, this case concerns only the "closed period" of August through September, 1988.

ORDER

The Department's decision is affirmed.

REASONS

The petitioner maintains that as result of her "temporary disability" in August and September, 1988, she should be allowed an income deduction equal to her actual day care expenses--not subject to the student maximum. "Income deductions" are exclusively listed in Food Stamp Manual (FSM) § 273.9(d). The only provision remotely applicable to the facts herein is section (3)--the "Excess Medical Deduction". This provision, however, stipulates that only the following expense is subject to a deduction:

That portion of medical expenses in excess of \$35.00 per month, excluding special diets, incurred by any household member who is elderly or disabled as

defined in 271.2. (Emphasis added.)

FSM 271.2, referred to above, defines "elderly and disabled" as being 60 years of age or older or a recipient of disability benefits under various provisions of the social security act.² The petitioner does not claim to meet either of these criteria. Unfortunately, there is simply no other provision in the regulations allowing an additional child care or medical deduction based on temporary disability.

By state law and its own regulations the board is bound to affirm decisions by the Department that are in accord with applicable law and regulations. 3 V.S.A. 271.3091(d) and Food Stamp Fair Hearing Rule No. 17. Inasmuch as the Department's decision in this matter is consistent with the regulations (see supra) it must be affirmed.

FOOTNOTES

¹The petitioner spent \$230.00 in August and \$200.00 in September, 1988, for child care. The Department appears to concede that despite her illness the petitioner was eligible for the student maximum deduction she received during this period. The Department did, in fact, allow this deduction in August and September, 1988, and has indicated it does not consider the petitioner to have been overpaid food stamps for those months.

²There are also provisions in this section that include disabled veterans and surviving spouses and children of deceased veterans. These do not apply to the petitioner's situation.

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