

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-03/12-137
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Economic Services Division, denying her application for 3SquaresVT (food stamps). The petitioner is a full-time college student. The issue is whether the petitioner falls within the exemption for college students who are not "physically or mentally fit".

The Department denied petitioner's application in a Notice of Decision issued on January 3, 2012. The Department received a request for fair hearing on February 6, 2012. The request for fair hearing was filed by the Department with the Board on March 1, 2012.

The decision is based on the evidence adduced at fair hearing on March 15, 2012 and subsequent telephone status conference of April 2, 2012. The record was closed April 20, 2012.

FINDINGS OF FACT

1. The petitioner comprises a household of one for the Food Stamp program. She is a full-time college student seeking a Ph.D. through Pacifica Graduate Institute.

2. The petitioner recently moved back to Vermont from Oregon. While petitioner resided in Oregon, she received Food Stamps from the Oregon Department of Human Services for approximately two years prior to her relocation. She met the student exemption allowing eligibility for full-time students who are not "physically or mentally fit". The Oregon Department of Human Services sent petitioner a closure notice on December 5, 2011 informing petitioner that her case would close effective December 31, 2011 due to her move.

3. The petitioner applied for Food Stamps and for medical coverage. The Department issued a decision on January 3, 2012 denying petitioner's application for Food Stamps and finding petitioner eligible for CHAP. Petitioner was denied VHAP due to her student status. At hearing, the Department indicated that petitioner's status for VHAP was resolved in her favor.

4. The petitioner filed for fair hearing on or about March 1, 2012.

5. The petitioner was injured on May 5, 2005 and injured three vertebrae in her lower back. As a result, petitioner has neck and back issues including back pain. Petitioner finds that attempting to work exacerbates her pain. Petitioner's condition has been constant over time.

6. Dr. A.W., petitioner's treating doctor, submitted a Form 210A dated December 22, 2011. Dr. A.W. found that petitioner's condition justifies a work exemption. She noted petitioner's diagnoses as sciatica and severe back pain with a guarded prognosis. Dr. A.W. added that:

(1) sitting is extremely painful for patient due to sciatica

(2) standing can also be very painful, and she must walk around frequently to minimize pain

7. D.L. is a supervisor with the Department who testified at hearing. He did not do the interview with petitioner but relied on the case file. D.L. testified that full-time students are generally not eligible for food stamps unless they meet an exception such as disability. He said there was nothing on the medical form about the number of hours that petitioner would be limited from working. He said there was a notation from the interviewer that petitioner said she can work.

8. Petitioner testified about her back injury as set out above. Petitioner testified that she did not recall telling a Department employee that she could work. Petitioner has been consistent and credible as to her health condition and limitations.

9. Petitioner is not physically fit due to her sciatica and back pain.

ORDER

The Department's decision is reversed.

REASONS

The Food Stamp program was created to combat hunger and malnutrition among low income households. Food Stamp Manual (FSM) § 271.1.

Food Stamps are payable to households who meet the eligibility criteria. During the 1970s, Congress adopted special provisions for college students to prevent college students from middle income families from utilizing a program meant for low income households. "Low-Income College Students' Eligibility for the Supplemental Nutrition Assistance Program", by David Super, Clearinghouse REVIEW Journal of Poverty Law and Policy, March-April 2011.

The general rule is that college students are excluded from the Food Stamp program unless they meet specified exemptions. 7 U.S.C.A. § 2015(e). Students who are not physically or mentally fit fall within an exemption making them eligible for Food Stamps provided they meet the income and resource requirements. 7 U.S.C.A. § 2015(e)(2), 7 C.F.R. § 273.5(b)(2), and F.S.M. § 273.5(b)(2). The exemption is not based on disability.

The Board addressed the meaning of this exemption in Fair Hearing No. 20,521, at page 10 finding:

The exemption is not based upon "disability" but on whether the individual is "physically or mentally fit". If the Food Stamp program meant to exempt only those who met the criteria for disability, the program would explicitly use the term. The Food Stamp program is replete with references to "disability" because there are special considerations given to those who meet the criteria for disability. F.S.M. § 271.2 defining "elderly or disabled member" of a household.

The regulations do not define "physically or mentally fit". In the absence of a definition, the proper course is to look at the plain meaning of the words. Fit normally means physically healthy or sound.

The Department looked at petitioner's case in terms of disability. The word "disability" in Food Stamps regulations incorporates the Social Security definition. There is no indication that the Food Stamp regulations were incorporating

the definition of "disability" into the student exemption for those who are physically or mentally unfit.

The petitioner suffers from a chronic condition dating from an accident seven years ago; her condition includes debilitating pain impacting on her ability to sit and stand. Her condition was sufficient for Oregon to grant food stamps based on her physical unfitness for the two year period prior to her relocation to Vermont. Petitioner's treating doctor supports the exemption from work requirements that is a requirement for able-bodied adults who are not elderly. That opinion is sufficient documentation to support an exemption based on being physically unfit.

Accordingly, the Department's decision is reversed. 3
V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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