

ESSEX COUNTY WELFARE BOARD,

Petitioner,

v.

“W.C.”,

Respondent.

Decided September 24, 1979

Initial Decision**SYNOPSIS**

A local county welfare board denied respondent continued Food Stamp assistance on the ground that his income exceeded the eligibility limits set forth in *N.J.A.C. 10:87-5 et seq.* The respondent claimed that the agency acted improperly when it included the gross rental income received by respondent from the two rental units in his three-apartment house without allowing a deduction for the cost of producing that income.

The administrative law judge found that whether income from these rental units was found to be earned income or unearned income within the regulations, it was clear that the *N.J.A.C. 10:87-5.5* and *N.J.A.C. 10:87-7.8* provide for the deduction of the costs of producing that income in determining the petitioner's eligibility for participation in the Food Stamp program.

Accordingly, the local county welfare board was directed to exclude such income producing costs in redetermining the respondent's eligibility for Food Stamp benefits.

SHUFFMAN, ALJ:

The Essex County Welfare Board denied respondent continued Food Stamp assistance from and after July 1, 1979, on the ground that his income exceeded the eligibility limits for a three-person family unit under *N.J.A.C. 10:87-5.5*.

Respondent asserts that the agency's determination is improper since it calculated his net Food Stamp income improperly. The agency determined that the matter was a contested case within the meaning of the Administrative Procedures Act, *N.J.S.A. 52:14B-1 et seq.* and *N.J.S.A. 52:14F1 et seq.* and certified it to the Office of Administrative Law for a fair hearing and decision.

Discussion of the Testimony and Documentary Evidence:

The following facts have been agreed upon by stipulation at the hearing:

1. Respondent, head of a three-family unit, owned a three-apartment house, occupies one of the apartments with his wife and daughter, and rents out the other two apartments to non-family.

2. Respondent, formerly a bus driver with Public Service of New Jersey, was seriously injured in a bus accident some years back, can no longer work, and receives disability payments of \$332 a month from Social Security system.

3. While respondent, in his testimony at the hearing raised some question as to the actual amount of the rental income he received and/or will be receiving for the other two apartments, it is stipulated that said other apartments are normally and usually rented out and that respondent receives rental income from his tenants for said apartments.

4. The parties also stipulated that respondent's costs and/or expenses for operating the *entire house* averaged \$844.02 and that this total was made up by:

Rent Mortgage	\$481.00
Tax & Insurance	32.75
Telephone	7.96
Gas or Oil (for heat)	266.47
Electric & Gas	36.18
Water & Sewage	19.66
Total	<u>\$844.02</u>

5. The agency calculated these entire average monthly costs and/or expenses as respondent's "shelter costs" and did not deduct any of them or any portion of them as "the cost of doing business" as permitted under *N.J.A.C. 10:87-7.8*.

6. Respondent had previously been found entitled to and had received Food Stamp coupon benefits in the amount of \$119 a month for the six month period from January 1, 1979 through June 30, 1979, with the benefits to terminate on that date unless eligibility was recertified as provided in *N.J.A.C. 10:87-6.3*. While no earlier applications or computation sheets were produced to explain why and how the entitlements of \$119 a month for earlier months in prior certification periods had been arrived at, it was conceded that respondent had received the \$119 a month Food Stamp allotment in all of the months from the date of the previous application to and through June 30, 1979.

7. Respondent visited the Welfare Board Food Stamp Office on May 31, 1978, had a lengthy recertification interview with agency representative Frances Thomas, turned over his "mortgage bill and all paid receipts" in

verification of items listed by the agency representative in the section for "Shelter Costs"; and signed said application.

8. Under date of May 30, 1979 the agency notified respondent that it was terminating his food stamp eligibility, effective July 1, 1979 "due to excess income."

At issue in this hearing, therefore, is whether the agency acted properly under the facts and regulations in *including* the gross rental received by respondent each month from the two other apartments in his three apartment house, one of which he occupied with his family, *without* deducting anything at all for "cost of doing business" (a proper deduction under *N.J.A.C.* 10:87-5.5 if the income is held to be "Unearned Income", or for "the cost of producing self-employment income" if said income is held to be "self-employment" income) ("Earned Income" under *N.J.A.C.* 10:87-5.4).

Since both the regulations dealing with income from rental property, whether classifiable as "earned income" because respondent "is actively engaged in the management of the property for an average of 20 hours per week" (*N.J.A.C.* 10:87-5.4) or as "unearned income" because "a household member is not actively engaged in management of the property at least 20 hours a week . . ." (*N.J.A.C.* 10:87-5.5), provide for the exclusion of the "cost of producing self-employment income" as to the former and the deduction of the "cost of generating such income" from rental property *must be deducted from the gross income received by respondent* for said apartments. The regulations so provide. In failing to accept and apply these provisions of the above-cited regulations, the agency erred.

Moreover, the regulations set out in detail the major items which should be considered "allowable costs of Producing Self-Employment Income" in *N.J.A.C.* 10:87-7.8. They include the purchase of income producing property, insurance premiums and taxes paid on income-producing property and depreciation. It seems obvious that these *same items* are required to be deducted from gross income under *N.J.A.C.* 10:87-5.5 dealing with unearned income from rental property.

The only real problem remaining is to determine how much of the costs and expenses may be excluded or deducted from the gross rental income received monthly by the respondent. There is no question that a portion of those costs and expenses may be allocated to respondent himself as his shelter costs. Since he is occupying one of the three apartments, his portion of those costs should be at least one third and since he owns the house and land and has other overall benefits which inure to him as a result of the ownership, perhaps as much as a half of such expenses should be allocated to respondent as "shelter costs". I make no ruling on the question of the

proper percentage of allocation since this is obviously an administrative responsibility.

The Welfare Board here involved attempted, sometime prior to June 4, 1979, to obtain from the headquarters of the Division of Public Welfare some guidance as to how to calculate or determine what can be considered "allowable costs of doing business" and was advised by them that these costs should be determined in the same manner as they ascertain such costs for households whose source of income is rental income from boarders. In its letter to the Essex County Welfare Board dated June 14, 1979, that policy was enunciated as follows:

The agency may use the maximum coupon allotment for a household size that is equal to the number of boarders, or it may utilize a figure which reflects the actual documented cost of furnishing room and meals, (if that figure is separate and identifiable) provided the actual cost exceeds the maximum allotment. The cost of doing business shall not exceed the payment the household receives from the boarder for lodging and meals.

And in the paragraphs intended to deal specifically with the three-family dwelling situation that letter stated:

As per *N.J.A.C. 10:87-7.12* [which deals strictly with determining the "cost of doing business" deductible from "earned income" received by a food stamp recipient *from a boarder*] *this can be considered an allowable cost of doing business only if it is separate and identifiable.* Therefore, if the household is receiving three separate heating bills for each apartment, each would be a readily identifiable expense and could be considered a cost of doing business. (Emphasis added).

The implication in the last quoted paragraph, with respect to a two- or three-family dwelling, is that no costs can be considered as costs of doing business unless they are separately metered, billed and documented; and that is exactly how the local board handled it.

Since none of the ordinary costs of producing rental income, such as interest on the mortgage, taxes, casualty insurance, depreciation, water and sewerage, oil or gas for a central heating system and the like, are or can be billed separately for each apartment, the local board *disregarded* all these costs of doing business and charged respondent with the gross amount paid to him for rent as "countable income" in arriving at respondent's "net income" for food stamp purposes. In so doing, the local board *erred*, notwithstanding that it based its action on the agency policy clarification letter of June 14, 1979.

The situation and treatment under the regulations of income from a boarder, including deductions therefrom, is not analogous to the situation and treatment of apartment rental income, including exclusions and/or deductions therefrom, in a multi-family dwelling. There are separate and

different regulations for each of them, and properly so. A house or home that has boarders is *one household* with a multiplicity of people living in that household. That situation requires separate special treatment and the regulations give it that separate and special treatment. (*N.J.A.C. 10:87-7.10 et seq.*)

The multi-apartment house (regardless of whether it is a two, three or more family) consists of more than one household and neither the number of people in each of them nor anything else about them bears any relationship to the entitlement of the single household seeking food stamp assistance. The agency has established, by regulations, methods and procedures for ascertaining the net countable income, particularly rental income, for food stamp entitlement purposes. Proper application of methods and procedures specified therein will result in a fair, equitable, businesslike and legally sound determination of this and other cases having a similar fact situation.

Some of the other "issues" raised by respondent can be disposed of quickly since they are of no real significance:

1. As to respondent's claim that he did not know what figures were included in "rental income" in his recertification application, and that he signed that eleven page document without reading it or knowing its contents, I must reject this claim. He testified that the interviewer spent a great deal of time with him, the document itself shows that they went over together an assortment of bills and receipts for costs and expenses, item-by-item, and came out with average monthly costs (improperly attributed totally to his "shelter costs").

2. So too, respondent's testimony that one of the apartments may have been unoccupied for a month or so is of little moment since respondent stated that he expected to rent that apartment anew very shortly.

Based on the facts adduced at the hearing herein, and the application of the proper regulations to those facts, I **CONCLUDE**, that the local welfare board *erred* in including the gross monthly rental received for the two separate apartments, unreduced by any costs, as "concluded income" in determining respondent's food stamp coupon allowance.

Therefore, the action of the Essex County Welfare Board in terminating respondent's food stamp allowance is **REVERSED**; and said welfare board is directed to recalculate his food stamp entitlement on the basis outlined in this decision.

After reviewing this Initial Decision, the Department of Human Services on October 12, 1979 issued the following Final Decision

The initial decision by the administrative law judge in the case of the above captioned, dated October 12, 1979, is incorporated herein with comment as follows:

1. Comment received from both parties to the appeal is recognized wherein exception is taken to certain aspects of the initial decision.
2. The initial decision correctly concludes it is incumbent upon the agency to recognize costs of producing income in determining the respondent's eligibility for participation in the Food Stamp Program.
3. Notice is taken of correspondence dated July 31, 1979 addressed to the agency director containing policy clarification apposite to the issue herein.

The agency is directed to recompute respondent's eligibility to participate in the Food Stamp Program pursuant to policy clarification provided by the State Food Stamp Office during the pendency of this appeal. If program eligibility is established, action shall be taken to restore lost benefits retroactive to the date of application.