

**BURLINGTON COUNTY
WELFARE BOARD,**
Petitioner,
v.
H.R.,
Respondent.

Decided October 9, 1980

Initial Decision

SYNOPSIS

The Burlington County Welfare Board sought to terminate respondent's assistance under the Aid to Families with Dependent Children (AFDC) and Food Stamp Programs. The AFDC assistance was terminated because the board claimed that the children eligible for assistance were not deprived of parental support and care. The Food Stamp Program participation was cancelled because the agency claimed that it was unable to verify the size of respondent's household due to inconsistent information provided by the household.

The administrative law judge found that although respondent's spouse did not live in the home, the spouse did visit the home every day and take the children out to eat and to buy toys and clothing. Accordingly, the administrative law judge concluded that the eligible children were not deprived of parental support as required for eligibility by *N.J.A.C. 10:81-2.7(d)* and affirmed the termination of assistance. The judge did conclude that the household was eligible for Food Stamp assistance since information as to the size of respondent's household was readily available and since it is the responsibility of the local board to determine the size of the household.

GOLDBERG, ALJ:

The Burlington County Welfare Board seeks to terminate assistance under the Aid to Families with Dependent Children (AFDC), pursuant to *N.J.A.C. 10:81-2.7(d)* and Food Stamp Program participation, pursuant to *N.J.A.C. 10:87-2.27*. A hearing was requested on August 22, 1980 and the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to *N.J.S.A. 52:14F-1 et seq.*

At issue is the agency's termination of AFDC assistance because of its claim that the eligible children are not deprived of parental support or care. The agency relied upon *N.J.A.C. 10:81-2.7(d)* which defines deprivation of parental support or care to mean continued absence of

a parent from the home. Absence is considered continued when:

It interrupts or terminates the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and the known or indefinite duration of the absence precludes the parent's performance of his/her function in planning for the present support or care of the child.

Food Stamp Program participation was terminated because information provided by the household was inconsistent with information in the case record making verification of income and household size impossible, *see, N.J.A.C.* 10:87-2.27.

The agency testified that it could not determine whether the respondent's spouse, who is the father of two children, was living in the home. He was believed to have helped negotiate the lease at the new apartment and in fact stated to the agency that he was living with his wife and children. Much testimony was given concerning who negotiated the lease, whether it was an adult son, age 22, or respondent's spouse. Neither can read or write. In the final analysis, who rented the apartment is not controlling of the issue to be adjudicated which is: are the eligible children deprived of parental support or care because of the "continued absence" of their father from the home?

Respondent testified that she, two children by her spouse, and another minor child for whom she does not want assistance, live in the home and that her spouse does not. She admits, however, that he visits every day, takes the children out to eat, buys them clothes and toys, and takes respondent shopping on occasion. He was said to be very fond of his children. Respondent also offered that she receives SSI for herself and son, John (a child by her husband), totaling \$502 per month. In addition, her spouse is reported to be paying \$10 per week support. Testimony also revealed that the apartment was rented by her son, Samuel, age 22, and his wife for respondent and the children because the landlord was reported unwilling to rent to a welfare family. Respondent stated that she would not reapply for AFDC even if eligible because she feared another court appearance for support of her out-of-wedlock child would result in her going to jail.

The household's Food Stamp Program eligibility was terminated by the agency because of questionable information relating to household size. That is whether respondent's spouse was or was not living in the home. There is no dispute that the household is income eligible for the Food Stamp Program.

Based upon the foregoing, **I FIND:**

1. Respondent's spouse is not living in the home.

Burlington County Welfare Board v. H.R.
Cite as 3 *N.J.A.R.* 363

2. Respondent's spouse visits the home every day, takes the children out to eat, buys them clothes and toys, and takes petitioner shopping on occasion.
3. Respondent's spouse is very fond of the children.
4. Respondent's spouse is not the father of one child, age 7.
5. Respondent does not wish assistance for her out-of-wedlock child.
6. Respondent's income eligibility for the Food Stamp Program is not contested.
7. FSP termination was based upon questionable information relating to household size.
8. Information regarding the household's income was available.
9. Respondent receives SSI of \$502 per month for herself and son, John, and \$10 per week support from her spouse.

Based upon the facts adduced at the hearing and pursuant to the agency regulations previously cited, **I CONCLUDE** that although respondent's spouse is not living in the home, his children are not deprived of his parental support or care, and the family is therefore ineligible for AFDC. I also **CONCLUDE** that the household retains FSP eligibility because income information was readily available and the determination of household size is the responsibility of the agency to be established from information provided by respondent. *See, N.J.A.C. 10:87-2.21.*

Therefore, the action of the Burlington County Welfare Board terminating AFDC is **AFFIRMED**, and its action terminating FSP participation is **REVERSED**.

After reviewing this Initial Decision, the Division of Public Welfare on October 30, 1980, issued the following Final Decision:

Having reviewed the Initial Decision and any exceptions or replies submitted, I hereby adopt the decision of the administrative law judge in the above-captioned case as the Final Decision.

The action terminating assistance under the AFDC program is affirmed.

Termination of participation in the Food Stamp Program is reversed. Food stamp benefits shall be reinstated retroactive to the effective date of termination with reimbursement of lost benefits.