

M.D.,
Petitioner,
v.
PASSAIC COUNTY BOARD OF
SOCIAL SERVICES,
Respondent.

Decided April 22, 1981

Initial Decision

SYNOPSIS

Petitioner contested the Passaic County Welfare Agency's calculation of his food stamp benefits. In reaching its determination, the agency had denied petitioner any deduction from his income for shelter costs since he was a resident in a rehabilitation facility. The petitioner argued that the \$100 charged him by the facility for room and other services should be deducted from his income.

The administrative law judge determined that *N.J.A.C. 5.10(a) 5*; provides that only three items are to be considered in determining a shelter cost deduction. These are: (1) continuing payment, (2) property taxes and insurance and (3) utilities. The judge found that here petitioner was attempting to use the general, approximate, operating expenses of a residential facility as his specific shelter cost. Concluding that this was an excessively generalized interpretation of the regulation in question, the judge determined that the welfare agency's calculations had been correct and ordered that the matter be dismissed.

SAMUELS, ALJ:

Petitioner, M. D., appealed from the administrative determination of the Passaic County Welfare Agency's calculation of his food stamp coupon allotment in the amount of \$34 for the six-month certification period from August 1, 1980 through January 31, 1981. The petitioner requested a hearing on January 28, 1981 and the matter was then transmitted to the Office of Administrative Law for determination as a contested case pursuant to *N.J.S.A. 52:14F-1 et seq.* The transmittal advice summarily stated the issue to be "correctness of food stamp bonus of \$34 for 2/1/81." At the hearing it was revealed that there had been no allotment for the period beginning February 1, 1981, and the prior six-month period must have been intended to be the certification appealed from.

After notice to all parties a hearing was commenced on February 23, 1981 in the Passaic County Administration Building in Paterson, New Jersey. The first hearing day was attended by Janet Donato, Income Maintenance Specialist, Passaic County Board of Social Services, William Buie, Social Service Coordinator at Damon House, Inc. and petitioner M.D. At that time Ms. Donato submitted the food stamp program computation sheet that had been used to arrive at the \$34 food stamp coupon allotment. She indicated that petitioner, M.D., was a resident in the Damon House rehabilitation facility and that his gross income from a \$171 Division of Youth and Family Services (DYFS) grant was not reduced by any shelter cost allowance. According to Ms. Donato, this total denial of any shelter cost allowance emanated from the verbal advice of a field representative in Trenton, who took the position that the separate cost of shelter at Damon House was not capable of calculation because the expenses included services as well as room cost. This lack of deduction from the gross income resulted in a lower food stamp allotment than would have been the case if some shelter cost had been deducted.

However, no one present at the February 23, 1981 hearing was able to supply any authority for his position. The agency had only the oral advice of a field representative; Mr. D. and the representative from Damon House could not supply any reasons to substantiate their point of view that there should have been some allocation of shelter cost out of the total Damon House expense involved in Mr. D.'s residence there.

The matter was adjourned pending the availability of better information from the parties, and on April 14, 1981, the hearing resumed with Gerald J. Kelly, Esq. representing Mr. D. Jay Ryerson, Assistant Administrative Supervisor of the food stamp department in the Passaic County Welfare Agency, who appeared with additional information on behalf of the agency. That hearing day was also adjourned, however, due to Mr. Kelly's need for further preparation time and witnesses who would testify for the petitioner.

On the last hearing day, April 20, 1981, Mr. Ryerson presented two exhibits on behalf of the respondent showing that the lack of a specific shelter cost allocation by Damon House was responsible for the denial of the deduction. A letter from the program director of Damon House to Mr. Ryerson dated February 29, 1980 indicates that, for residents who receive municipal assistance or payments from the Division of Youth and Family Services (DYFS), \$100 is charged specifically for room and services provided by Damon House. The Division of Public Welfare replied to this by letter dated March 11,

1981 indicating that, since the \$100 payment is partially intended for a cost which is nondeductible for food stamp purposes (services), no portion of the \$100 payment may be utilized in determining the shelter deduction. The advice indicated that *N.J.A.C.* 10:872.21 states that, in the absence of verification of deductible expense within 30 days of the date of application, the county welfare agency should determine eligibility and benefit level without providing a deduction for the unverified expense. Therefore, since the lump sum \$100 charge was totally unverified and not itemized as to the allowable component parts of shelter costs, no deduction was permitted.

In response to the above, Wendy Spinner, business manager at the Paterson facility of Damon House, testified to an itemized breakdown of estimated costs involved in maintenance of the entire facility on a monthly basis, as follows: rent \$2,200, utilities \$2,000, renovations \$1,050, maintenance \$530, furniture and fixtures \$287. This totaled \$6,067. When divided by 40, which was the number of residents in occupancy during the applicable period, it equals \$151.60 per person. Ms. Spinner submitted an exhibit evidencing the above as evidence of shelter costs in the facility for the year June 30, 1981.

Ted DelGuercio, program director of Damon House, testified that he did not supply the agency with an itemized list separating shelter cost from other expenses at the facility because it was not requested of him.

All of the foregoing discussion of the evidence and testimony was uncontroverted and is accepted and found to be **FACT**.

Another issue was raised by the petitioner, who disputed the allocation of his \$171 public assistance DYFS grant to income. Petitioner alleged that it should be classified as a vendor payment, which would be totally excluded for purposes of determining net food stamp income. Although this issue was raised for the first time at the hearing, argument was heard for purposes of permitting the question to be decided. A review of the applicable regulations discloses the following: *N.J.A.C.* 10:87-5.5 indicates that, for purposes of determining net food stamp income, unearned income shall include, but not be limited to "*assistance payments*-assistance payments from federal or federally aided public assistance programs. . . ."

N.J.A.C. 10:87-5.9 relating to vendor payments defines that term as a payment made in money on behalf of a household, when a person or organization outside of the household uses its own funds to make a direct payment to either the household's creditors or a person or organization providing a service to the household. The examples given in the manual under the above section, most particularly

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N.J.A.C. 10:87-5.9(a) example B, reinforce the respondent's position that all or part of a public assistance grant which would normally be provided in a money payment to the household, but which was diverted to third parties or to a protective payee for purposes such as managing a household's expenses, shall be considered income to the household. Petitioner points to *N.J.A.C.* 10:87-5.9(a)(2)(ii) in support of its contrary position. This section provides that payments by a government agency to a child care institution to provide day care for a household member are excluded as vendor payments.

The foregoing clearly establishes the character of the petitioner's DYFS grant as income. This is reinforced by the specific language of *N.J.A.C.* 10:87-5.9 referred to above. Petitioner's attempt to have it considered as a vendor payment is a strained interpretation of the plain meaning of the regulations and is not accepted.

On the main issue of the respondent's elimination of shelter cost allowance from the computation of petitioner's coupon allotment, the applicable regulations must again be looked to: *N.J.A.C.* 10:87-5.10(a)(4) relating to allowable shelter cost provides that only three items shall be considered in determination of the shelter cost deduction:

- A. Continuing payments;
- B. Property taxes and insurance; and
- C. Utilities.

These sections are very specific in their descriptive content and the petitioner has the burden of showing that he has verified the actual shelter cost and its component parts as to himself in a manner that would fit specifically into the foregoing definition for purposes of permitting the deduction.

In this case petitioner is attempting to use the general, approximate, operating expenses of a residential facility divided by the number of residents for application to his specific shelter cost. This is an excessively generalized interpretation of the meaning of the regulation. It is axiomatic that when wording of a statute or regulation is clear and explicit, the court should not indulge in any interpretation other than that called for by the express words of the statute or regulation. *See, Duke Power Co. v. Patten*, 20 *N.J.* 42 (1955); *Zeitko v. N.J. Manufacturers Casualty Insurance Co.*, 132 *N.J.L.* 206, 211 (E. & A. 1944) 2 *Sutherland, Statutes and Statutory Construction* (3d Ed. 1943), section 4502. Furthermore, there was no attempt made to verify the expenses within 30 days of the date of application, as required by *N.J.A.C.* 10:87-2.2. The burden is on the petitioner to provide such

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verification, and he cannot shift that burden to the respondent, who may not have requested the requisite information.

For the foregoing reasons, it is **CONCLUDED** that the respondent's position in allowing no shelter cost as a deduction in the computation of petitioner's coupon allotment for the certification period from August 1, 1980 to January 31, 1981 was justified; and the coupon allotment of \$34 was therefore correct. In addition, it is **CONCLUDED** for the reasons stated above, the petitioner's DYFS grant was properly charged as income.

It is therefore **ORDERED** that the respondent's action in fixing petitioner's food stamp bonus at \$34 for the above period be affirmed and the petition **DISMISSED**.

**After reviewing this Initial Decision the
Division of Public Welfare on
May 11, 1981 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 computation of the food stamp coupon allotment is affirmed