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Food Stamps and Income-Eligibility for Low-Income Energy Programs

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UTILITIES MAY NOT "COUNT" FOOD STAMPS AS INCOME IN DETERMINING ELIGIBILITY FOR LOW-INCOME ENERGY PROGRAMS

In determining income eligibility for low-income energy assistance programs, including rate affordability and rate discount programs, public utilities may not count the value of Food Stamps received by a low-income household as "income." This, according to an analysis by Fisher, Sheehan & Colton, Public Finance and General Economics (FSC).

According to the analysis by FSC, the federal statutory language in 7 U.S.C. Section 2017(b) controls. That statute provides:

"The value of benefits that may be provided under this chapter, whether through coupons, access devices, or otherwise, shall not be considered income or resources for any purpose under any Federal, State or local laws, including but not limited to, laws relating to taxation, welfare, and public assistance programs, and no participating State or political subdivision thereof shall decrease any assistance otherwise provided an individual or individuals because of the receipt of benefits under this Chapter."

FSC notes that there are two different aspects to this statutory limit on how food stamps may be considered:

1. "The value of benefits. . .shall not be considered income or resources. . .for any purpose under any. . .State. . .laws. . ." and

2. ". . .no participating State. . .shall decrease any assistance otherwise provided an individual. . .because of the receipt of benefits under this Chapter."

The decision by some utilities --and just as importantly, the approval of such a decision by a state public utility commission-- would represent a violation of both of these proscriptions.

The two different duties should be considered together, according to FSC. The significance of the dual nature of the duties is that the statute proscribes taking the receipt of food stamps into consideration even if discounts provided under utility rate affordability programs are not deemed to be "assistance" provided "by the state." Even outside this assistance language, in other words, utility rate affordability programs would fall under the "for any purpose under any. . .State laws" language of the Food Stamp statute.

THE GENERAL PROHIBITION

The proscription on taking the value of food stamps into account as "income or resources" is quite broad under the federal statute. Consider, for example, that in the one federal court case, the issue was not whether the City of San Francisco expressly labeled food stamps as "income or resources." Instead, according to the court, "the critical question is whether the board of supervisors acted correctly in taking food stamps into account in setting benefit levels." At another point in the decision, the court referred to whether the county "improperly considered the use of food stamps in setting welfare aid amounts." At another point, the court referred to whether the county "contemplated availability of food stamps." After answering yes to each of these questions, the court held that, as a matter of law, the County had violated the statute.

Hence, the first conclusion to reach is that if a utility, with sate regulatory approval (*i.e.*, "under State law"), either takes food stamps into account, considers the use of food stamps, or contemplates the availability of food stamps in determining eligibility for a low-income energy affordability program, or in setting benefit levels for that program, it has violated federal law.

THE CASE LAW

Four particular cases are on point in reaching this conclusion. First, the seminal case of *Dupler v. City of Portland* supports this conclusion. According to the court in that case, "using criteria established by the Guidelines, city workers calculate the shortfall between an applicant's income and necessary expenditures. For example, the Guidelines prescribe food expenses of $12 per week for a single person, plus $6 per week for each additional member of an applicant's household."

What happened in Portland was that as recipients of general assistance began to receive federal food stamps, the city's welfare officials determined that an applicant's receipt of federal stamps would be taken into account in calculating his or her food needs expenses. "This was effected by determining an applicant's budgeted food needs to be the cost to the applicant of federal Food Stamps rather than the amount set forth in the Guidelines." Thus, in the case of Marlene Dupler, the Portland Department of Health and Social Services allotted her the $18 previously allowed but paid only a sum (in her case $1) with which she could obtain $18 in federal food stamps. The net effect was that Mrs. Dupler continued to receive general assistance entitling her to purchase $18 worth of food, but that the City actually paid her only $1.

The Court found this to be a violation of the Food Stamp statute, holding:

"The legislative history of the Act makes clear that the intent of Congress was not to provide a substitute for other forms of aid to low-income persons but to supplement that aid in order to improve their level of nutrition. It is evident that if welfare assistance is reduced to take into account the value of food stamps received under the Act, the ultimate effect of the Act will not be to raise, but merely to maintain pre-existing levels of nutrition and the purpose of the Act will be frustrated. Such, however, is the effect of the actions of the defendants in these cases."

The Court rejected the argument that the benefits provided to Mrs. Dupler were not "decreased" within the meaning of the statute. In language important to a review of the treatment of Food Stamps within the context of utility rate affordability programs, the Court said in assessing this argument:

". . .the Court can discern nothing but semantics. Fairly read, Section 2019(d) means that a state or municipality may not give a person receiving federal food stamps less aid than it would grant a person who is otherwise similarly situated but who is not receiving federal food stamps. . .[T]he plain import of Section 2019(d) is to prohibit welfare agencies from taking an applicant's receipt of federal food stamps into account in computing the level of benefits to which applicant is entitled. There is no question but that, by so doing, defendants violated Section 2019(d)."

The Court ultimately stated that it "holds that defendants violated Section 2019(d) of the Federal Food Stamp Act of 1964, as amended, by taking an applicant's receipt of federal food stamps into account in determining the benefits to which she/he is entitled. . ."

The second case which leads to the conclusion that Food Stamps may not be used to reduce benefits under a utility rate affordability program is Gooderham v. Adult and Family Services, State of Oregon. The Dupler rationale served as the basis for the invalidation of state actions in Gooderham. In Gooderham, the state was seeking to establish the "actual cost" of special diets to be supported by state nutrition programs. "Actual cost" was determined by the state to be only the costs that exceeded the average Food Stamp allotment. As the court noted, "thus, the public assistance recipients with special dietary needs can only receive special diet allowances to the extent that the special diet would cost more than the average amount for food already provided those who also receive food stamps."

In invalidating this practice, the Court cited the House Committee Report from when the Food Stamp statute was adopted. That report stated:

"The bill makes crystal clear current law preventing state or local governments from reducing benefits provided food stamp recipients under other laws (Federal, state or local, but especially general assistance) because of their receipt of food stamps."

In sum, therefore, Gooderham stands for the proposition that, as the court itself states, "the statute does not merely make illegal state statutes and rules lowering benefits because of receipt of food stamps, but rather says that the state cannot decrease assistance otherwise provided because of the food stamp allotment."

The third case that supports the conclusion that taking Food Stamps into consideration in determining eligibility for utility rate affordability programs, or in setting benefits under such programs, is Foster v. Center Township of LaPorte County. Foster stands for the unremarkable proposition that a person or party may not do indirectly under the Food Stamp statute that which he or she may not do directly under that statute.

In Foster, a county lowered the income level at which it would provide benefits to clients. While the county indicated that its action was in response to fiscal difficulties, low-income advocates argued that it was, in reality, in response to a successful argument that the county had inappropriately taken Food Stamps into consideration in setting general assistance benefit levels.

Without deciding the factual issue of what the intent of the county really was, the Court nonetheless noted that "it seems clear that the Congressional policy reflected in the adoption of 7 U.S.C. 2017(b) was to guarantee that food stamps would be available not in substitution for, but in addition to, any welfare payments already provided by the states. . .This Court only finds that this policy would be thwarted if the defendants were allowed to lower their guaranteed income level in order to indirectly take into account the

receipt of food stamps. 7 U.S.C. 2017(b) prohibits the defendant from lowering their guaranteed income level in order to indirectly take into account the receipt of food stamps."

The significance of Foster is two-fold for purposes of our evaluation of utility rate affordability programs. First and foremost, Foster stands for the proposition that one may not do indirectly what one may not do directly. Hence, for example, if Food Stamps cannot be counted as "income or resources" directly, the prohibition is not avoided by indirectly reaching the same end by counting them as an offset to expenses. Second, Foster stands for the proposition that the prohibition of the Food Stamp statute goes to eligibility guidelines as well as to the determination of the actual level of benefits.

The fourth case leading to the conclusion that utility rate affordability programs may not take Food Stamps into consideration is Clifford v. Janklow. Clifford stands for the proposition that using the receipt of Food Stamps to disallow an expense is the same as counting the receipt of Food Stamps as the receipt of "income." While Clifford considered a statute involving fuel assistance rather than food stamps, the language of the two statutes is identical. In holding the disallowance of an expense is a violation of the statute, the Court said:

"The Secretary of Agriculture argued in Schmiege that it was permissible to disallow fuel expenses in calculating food stamp benefits for families receiving (low-income fuel assistance) funds because those funds were not being considered a resource; rather, an expense was being disallowed. . .We see no logical reason why it should be permissible for a state to achieve a net effect contrary to Congress' intent merely by subtracting from one side of an equation instead of the other."

The case reference in Clifford was to Schmiege v. Secretary of U.S. Department of Agriculture. In holding that USDA's attempt to disallow an expense rather to the fuel assistance as income was a violation of the statute, the court referenced the legislative history of the statute:

"The Conference Agreement requires that fuel assistance payments or allowances provided under this Title will not be considered income or resources of an eligible household for any purpose under a federal or state law. . .Thus, under any law, such as the Food Stamp Act of 1977, which provides that benefits may depend on the expenditures of the household for fuel, any portion of these expenditures which may be paid by the fuel assistance program authorized in this Conference Agreement will not be considered a resource available to this household even if the payment is made directly to the energy supplier. Thus, under such a law, benefits will be computed as if the total cost of the fuel, including the amount of assistance provided, had been paid by the household."

Applying this reasoning to the situation posed by utility rate affordability programs, the identical sentence could be formulated: "Thus, under such a law, utility rate affordability benefits will be computed as if the total cost of the food, including the amount of food stamps provided, had been paid by the household."

The Schmiege decision considered language in the fuel assistance statute that is identical to the food stamp language. Within this context, the Court directly addressed the argument that the benefits were not being considered "income or resources," but rather simply an offset to an expense:

"Based upon the appearance of the words "income or resources" in that provision, the Secretary constructs a plausible parallel to income tax law distinguishing that phrase from "deductions." The Secretary contends that since energy expenses are not counted as income but merely disallowed as deductions, he is not contravening the policy established by Congress. But the bottom line controlling the amount of benefits is the same whether income is increased or deductions decreased. In either case, the recipient's grant is diminished contrary to the intent of Congress."

The Court continued: "Hence, while the Secretary's method of calculation might be regarded as technical compliance with the wording of the statute because the energy assistance payment is not treated as "income," nevertheless the Secretary effectively succeeds in diminishing the food stamp recipient's benefits by eliminating the "deduction" of energy expenses as a part of shelter costs. . .in determining eligibility for and amount of food stamp benefits."

It concluded: "This method of calculation clearly contradicts the intention of the framers of the energy assistance legislation as set forth above in the quotation from the Conference Report."

In sum, therefore, the proposition that Clifford and Schmiege stand for within the context of utility rate affordability programs is that counting food stamps is unlawful irrespective of the side of the equation on which it appears. Taking the receipt of food stamps into account is equally unlawful whether it is viewed as an offset to expenses or viewed as an addition to income.

CONCLUSION

State regulators, and courts if necessary, should enforce the federal statutory mandates that the receipt of food stamps shall not be considered income or resources "for any purpose under any. . .State laws," including state laws creating, regulating and approving utility rate affordability programs.

FSC's complete analysis, including case citations, can be obtained by sending a request to:

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Fisher, Sheehan and Colton, Public Finance and General Economics (FSC) is a research and consulting firm with offices in Belmont (MA), Scappoose (OR), and Iowa City (IA).

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