

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2006-291

FEBRUARY TERM, 2007

In re William Lyons

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APPEALED FROM:

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Human Services Board

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DOCKET NO. FH #19, 192

In the above-entitled cause, the Clerk will enter:

Petitioner appeals the decision of the Human Services Board upholding the Department for Children and Families= (DCF) termination of his granddaughter=s Reach Up Financial Assistance (RUFA) benefits. We affirm.

Petitioner and his wife are caretakers for their granddaughter. Because they have no legal obligation to support the girl, their income was not considered in determining whether she was eligible for state RUFA

benefits. Consequently, while petitioner was working, the State paid her \$465 per month based on her need, irrespective of petitioner and his wife=s financial situation. When petitioner retired, however, he began receiving monthly Social Security benefits, including a \$789 payment in his name for the benefit of his granddaughter. Because the granddaughter was now obtaining federal benefits earmarked for her, DCF determined that she was no longer eligible for the RUFA benefits. Petitioner appealed DCF=s decision to terminate the RUFA benefits, and the Human Resources Board upheld the decision.

On appeal to this Court, grandfather argues that the \$789 monthly check, which had risen to \$820 by the time of the hearing before the Board, was payable to him and should not be considered income to his granddaughter. We disagree. As the Board found, the \$789 monthly payments were made on behalf of the granddaughter, and the pertinent regulations plainly count Social Security payments as income. Although the checks may have been payable to petitioner, they were attributable to the granddaughter. Indeed, the checks indicate that they are payable to petitioner Afor@ his granddaughter. As petitioner acknowledges, he would not receive those payments if his granddaughter were not living with him. Accordingly, we find no basis to disturb the Board=s decision. See Jacobus v. Dep=t of PATH, 2004 VT 70, & 7, 177 Vt. 496 (mem.) (Board=s findings will be upheld unless they are clearly erroneous).

We acknowledge petitioner=s argument that it is unfair to exempt his earnings from consideration while he is working and then to consider his retirement income, which is based on his wages, once he retired. The applicable law clearly requires this result, and we can not substitute our judgment of what would be the better policy.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice