

BRIAN O'LEARY

v.

DEPARTMENT OF HUMAN SERVICES

Submitted on Briefs September 26, 2002

Decided October 2, 2002

Panel: SAUFLEY, C.J., and CLIFFORD, RUDMAN, DANA, CALKINS,
and LEVY, JJ.

MEMORANDUM OF DECISION

Brian O'Leary appeals from the judgment of the Superior Court (Cumberland County, *Warren, J.*) affirming the denial of food stamp benefits by the Department of Human Services pursuant to CODE ME. R. 10-144 ch. 301, § FS-444-4 and 21 U.S.C. § 862a(a)(2) (1997). Contrary to O'Leary's contentions, he failed to preserve his ex post facto claim by not presenting it to the Superior Court. *Mitchell v. Maine Harness Racing Comm'n*, 662 A.2d 924, 925 n.1 (Me. 1995). Even if O'Leary preserved the issue, he failed to sustain his burden to establish the unconstitutionality of the applicable statute. *See State v. Haskell*, 2001 ME 154, ¶ 3, 784 A.2d 4, 7.

The entry is:

Judgment affirmed.

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