

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 8607
)
Appeal of)

INTRODUCTION

The petitioner asks that her appeal of a Department of Social Welfare recoupment action, which was dismissed for her failure to attend the scheduled hearing, be reactivated.

FINDINGS OF FACT

1. In 1983, the petitioner was convicted of welfare fraud by two Vermont district courts based on overpayments she had received from the ANFC program in 1981 through both the Morrisville and the Newport offices of Department of Social Welfare. She was sentenced to and served four to five months in jail.

2. Sometime in 1983, while she was an ANFC recipient, the petitioner was notified by DSW that the amount overpaid to her in 1981 would be recouped from her payments. At that time she appealed the action but did not follow through with it because she moved to Massachusetts.

3. In May of 1988, the petitioner returned to Vermont and applied for ANFC. At that time she was advised that the Department would recoup monthly amounts from her current check until the overpaid amounts from 1981 were settled.

4. The petitioner appealed that decision on May 24,

1988 and no action was taken to recoup the overpayment pending the result of the fair hearing. On May 25, 1988, the clerk of the Human Services Board mailed the petitioner a notice stating that her hearing would be held June 22, 1988 at 9:30 a.m. at the Newport district office. On May 29, 1988, the petitioner was sent a second notice advising her that the hearing was rescheduled for July 7, 1988 at 11:00 a.m. at the Newport district office. Neither letter was returned as undeliverable to the Board.

5. The petitioner receive both letters scheduling the hearings and she was aware that a hearing was set for July 7, 1988. The petitioner knew she would be in New York for three weeks at that time and that she would not be in Newport on July 7, 1988, but she took no action to notify anyone concerned or get a new date.

6. On July 7, 1988, the petitioner failed to attend her hearing and on July 14, 1988 she was sent a letter advising her that the case would not be reset for hearing unless she contacted the Board and showed good cause why she did not keep the original appointment. She was advised that her appeal would be dismissed unless she responded within ten days.

7. The petitioner found the July 14, 1988 letter from the Board in her mailbox when she returned to Vermont in late July. She called the Human Services Board and was told to put her reasons for reopening the hearing in writing. The petitioner understood what was expected of her but did

not follow through because she thought she needed a lawyer.

8. The petitioner never sent in a written request for reopening to the Board. On September 15, 1988, the Board voted to dismiss her appeal and sent the petitioner a copy of its order. Although the petitioner claims she never received the dismissal order, there is no evidence of the order having been returned from the post office and, therefore, no reason to believe that it did not arrive at the petitioner's post office box as all other correspondence in this case had.

9. Sometime in October of 1988, the petitioner spoke with the Newport Department of Social Welfare District Director about her appeal. In a letter dated October 21, 1988, the petitioner was advised to submit a written request and was informed that the Department would take the position that her appeal had been correctly dismissed earlier. She was also advised that proceedings were underway to recoup the overpayment.

10. On February 22, 1989, the petitioner filed a written request to reopen her hearing. On February 23, 1989, the petitioner was notified she would be heard on April 19, 1989.

11. At the hearing, the petitioner offered her absence from the state during July 1986 as reason for not attending the hearing although she admitted that she understood in advance that her hearing was scheduled for July 7 and that her case would probably "go down the tubes" if she didn't

attend the hearing. The petitioner also offered as defense to the Department's action that she had served time for her crime and was not ordered by the court to pay restitution. She claims that she could produce evidence that the District Court had specifically relieved her from the obligation of repaying the overpaid amount. However, the court disposition sheets she presented at the hearing were silent on restitution issues and the petitioner was unable to produce any other documents tending to support her claim although she was given almost one month to do so.

ORDER

The Board's prior decision dismissing the petitioner's appeal shall stand.

REASONS

Rule 16 of the Human Services Board's Fair Hearing Rules states:

Failure to appear. If neither the appellant nor his representative appears at the time and place noticed for the hearing, the hearing officer shall inquire by mail whether the appeal has been withdrawn, and as to what caused the failure to appear. If no response to this inquiry is received by the agency or the hearing officer within 10 days of the mailing thereof, or if no good cause is shown for the failure to appear, the board may dismiss the appeal at its next regular meeting.

The petitioner did not inform the Board within 10 days of the mailed inquiry letter what good cause she had for failing to attend her hearing. Even if she had, the petitioner could put forth no "good cause" for failing to attend her hearing. If it had been necessary for her to be out of state on that date, she should have called and

requested another date as the rules she received so advised her. She admits she was aware that her failure to attend the hearing would prejudice her case but she did nothing to avoid that penalty.

Furthermore, even if the petitioner's default were removed, she has made no showing that she might have a case on the merits. The regulations on overpayments state:

Overpayments of assistance, whether resulting from administrative error, client error or payments made pending a fair hearing which is subsequently determined in favor of the Department, shall be subject to recoupment. Recovery of an overpayment can be made through repayment by the recipient of the overpayment, or by reducing the amount of payment being received by the ANFC group of which he is a member.

Except for a case involving fraud, no recoupment need be carried out for individuals no longer eligible for ANFC if the amount of the overpayment is less than \$35.00. . .

. . . If a fraud referral is made, recoupment must be delayed pending the outcome of the fraud investigation. . . W.A.M. § 2234.2

Nothing in the regulations shows an indication that overpayments which are the result of fraud should not be recouped. Quite the opposite holds true. The petitioner had no evidence that the Court specifically prohibited DSW from collecting the overpayment through its regular procedures in her case. If the petitioner comes up with such evidence in the future, she can always appeal any future recoupment action since monthly recoupment is an ongoing action of the Department subject to appeal at any time.

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