

the Department's attention that part of the \$294.00 VA benefit might have been specifically allocated for the support of the petitioner and her children as dependents of the petitioner's husband. The Veterans Administration verified that of the \$294.00, \$220.00 was being paid to the petitioner's husband, \$27.00 was for the petitioner, \$19.00 was for the petitioner's oldest child and \$14.00 each was allocated for the two youngest children.

5. Based on that information, the Department recalculated the petitioner's benefits by including \$74.00 as unearned income (\$27.00 + \$19.00 + \$14.00 + \$14.00). She was notified on June 8, 1990 that as of July 1, 1990 her ANFC benefit would be decreased from \$608.00 to \$534.00 due to the increase in unearned income. Subsequently, the Department realized that the petitioner's husband's oldest child, who had been allocated \$19.00, was not in the ANFC household (he lives with his mother, the petitioner's husband's first wife), and so a corrected notice was sent June 25, 1990, decreasing the unearned income attributed to the family from \$74.00 to \$55.00 and increasing the ANFC grant back up to \$553.00 per month.

6. On June 25, 1990, the Department notified the petitioner that due to its failure to include the VA allowance for dependents as unearned income to her for the months of October 1989 through June of 1990, she was overpaid \$486.00.

7. The petitioner disputes neither the inclusion of

the VA allowance in the computations nor the accuracy of the computations but rather the fairness of recovering an overpayment which was the result of the Department's error.

ORDER

The Department's decision is affirmed.

REASONS

State regulations governing the Aid to Needy Families (ANFC) program require the consideration of income, including both earned (i.e., wages from employment) and unearned (i.e., benefits from other agencies) income, in computing eligibility for benefits, except when that income is specifically excluded by regulation. W.A.M. § 2250-2259

"Any income received by a recipient of SSI/AABD living in the ANFC household" is specifically excluded. W.A.M. § 2255.1(3) "Income from pension and benefit programs, such as Social Security, Railroad Retirement, Veteran's pension or compensation, Unemployment Compensation, employer or individual private pension plans and/or annuities, etc." are specifically included as "unearned" income. W.A.M. § 2252(A).

The Department's decision that portions of the VA award which represented compensation to the ANFC household should have been included as unearned income is in compliance with the applicable regulations. As a matter of law, therefore, the Board may not reverse or modify the Department's decision that the petitioner has been overpaid by \$486.00

for the period at issue. 3 V.S.A. § 3091(d). The remaining issue is whether the Department can attempt to recover the \$486.00 overpayment when it occurred solely as a result of its error.

The state ANFC regulations make no distinction between reasons for overpayment for purposes of recovery:

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. . .

W. A. M. § 2234.2

The language of the regulation makes it clear that the overpayment must be recovered, even if it was the Department's error. The Board has held previously that this regulation is required by and consistent with federal law. See 45 C.F.R. § 233.20 (a)(13), and Fair Hearing Nos. 6422, 6448 and 6529. Therefore, the Department's decision must be upheld.

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