

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 10,184  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals the determination of the Department of Social Welfare not to replace Food Stamp coupons which she alleges were never received by her in the mail.

SUMMARY OF THE EVIDENCE AND  
FINDINGS OF FACT

The petitioner has been a Food Stamp recipient for about four and a half years. Her current Food Stamp allotment is \$127.00 per month which she receives in the form of four coupon books in the amounts of \$65.00, \$50.00, \$10.00, and \$2.00. She receives her Food Stamp books by mail each month, and generally by certified mail which requires her to sign a receipt for the envelope containing the books.

On Saturday, December 1, 1990, the petitioner signed for her Food Stamp books when they were delivered by the mailperson. The petitioner alleges that the mailperson, who was a woman and not her usual letter carrier, remarked that the envelope seemed "awful light". The petitioner alleges that when she opened the envelope only the \$50.00 book was in there. The other three, she alleges, were missing and never came to her.

The petitioner called the Department to speak with her Food Stamp worker the following Monday, December 3rd and was asked to call back on Tuesday when her worker would be in. She reported the alleged non-receipt to the worker who told her pursuant to Departmental policy to wait until the 5th of the month to come to the office to make her claim to insure time for the delivery of all mail. On the fifth, the petitioner came to the office and signed an affidavit certifying that \$77.00 of her coupons failed to arrive in the mail. Her request was processed by her worker who sent the original envelope to accounting and who initially felt that the coupons would be replaced as a matter of course. However, after a few days and many requests for an answer, the petitioner learned orally that the Department did not intend to replace the stamps because it was believed she had really received them. The petitioner never received a written notice of denial but appealed the oral refusal to replace.<sup>1</sup>

At hearing, the petitioner testified that the request filed in December of 1990, was the first she had ever made to replace lost stamps and that she was unsure of the procedures to follow. She claimed it was the first time she had signed an affidavit of loss. She also testified that her Food Stamps had been replaced for her in 1989 at the Department's initiation because the Department had made an error. She added that she had never been prosecuted for Food Stamp fraud and had never had any problems with the

Department.

The Food Stamp worker who handled the petitioner's request testified that the petitioner reported the loss to him as well as the comments of the mailperson and that he processed the request thinking that replacement coupons would be issued as a matter of course because they generally were handled that way. However, after the Central Welfare Office audited its accounts of Food Stamps paid out for December of 1990, and found no discrepancy in their list of stamps mailed out, the matter was referred to the District Director to review the petitioner's records. After the records were reviewed, a decision was made not to replace the stamps because the Department did not find her claim credible.

The Department's records indicate that the petitioner has, in fact, reported the non-receipt of Food Stamp coupons several times in the past all of which were replaced. Those requests were as follows:

1. In July of 1987, the petitioner filled out an affidavit reporting a failure to receive her entire allotment of \$85.00 in the mail. The stamps were replaced without question.
2. In December of 1987, the petitioner filled out an affidavit reporting a failure to receive her entire allotment of \$100.00 in the mail. The stamps were again replaced but pursuant to Department policy, the petitioner's allotments were sent to her through certified and insured mail only because two replacements were made in a six month period.
3. In January of 1989, the petitioner filled out an affidavit stating that she had received some of her books through insured mail, but that a \$50.00 book was missing. At that time the Department

initially declined to replace the coupons because they felt the claim was not credible, but after the petitioner filed a Fair Hearing request, the Department reversed its decision because they did not feel the time involved in opposing the claim outweighed just paying the \$50.00.

4. In December of 1989, due to the Department's error, Food Stamp coupons were sent through regular rather than certified mail. The petitioner reported that she did not receive her coupons and she received \$119.00 in replacement stamps that month without question.

After the Department put on this evidence, the petitioner agreed that she had made those claims and received those replacements. She had no difficulty recalling those claims and even corrected errors in the details. She disputed the fact that the Department required her to go on registered mail delivery and stated that she was put on such a system at her request. Although she had a legal representative, she made no attempt to explain why she had denied receiving prior replacements in her prior testimony.<sup>2</sup>

The District Director testified that the Department had no direct evidence that the petitioner was not telling the truth about her non-receipt of part of her Food Stamps allotment in December of 1990, but had come to the conclusion that she was not being truthful based on the surrounding circumstances, to wit:

1. The frequency of her claims--four times in three and a half years--which she characterized as much higher than the average for his District. She stated that the office received about twelve lost stamp claims per year out of over one thousand clients served and that it was extremely rare to receive more than two claims ever from any one

household.

2. The type of claims made--namely the twice reported claim of the loss of several coupon books--which she characterized as so rare as to be non-existent. Almost all reports of coupons concern stolen envelopes in certain neighborhoods. The loss of coupon books is almost unheard of, especially since the Department began to use computerized machine stuffing systems. She also felt that it was highly unlikely that a machine would fail to stuff three books.
3. The auditing Department's failure to find a \$77.00 discrepancy in the books it sent out for December.
4. The timing of her claims--all the petitioner's claims for lost coupons were around Christmas time. Claims made to replace benefits around Christmas time are most frequently found to be of poor quality due to recipient's desire for extra benefits at this time of year. Also, the fact that one of her claims coincided with the one instance in which the Department failed to send the Food Stamps through certified mail.
5. The fact that upon inquiry the Post Master told her that the records showed no substitute postman that day but rather delivery of the stamps by a regular male letter carrier. The Post Master spoke with the letter carrier who confirmed delivery of the stamps, but denied having a discussion with the petitioner about her envelope that day.<sup>3</sup>

The petitioner did not refute or challenge any of the above testimony of the District Director except to continue to assert that the mail had been delivered that day by a substitute letter carrier who usually comes on Saturdays. Although the petitioner was asked, she did not offer an explanation as to why the substitute letter carrier would have remarked that her envelope was "awful light" if she had never delivered her stamps before.

In general, the sworn testimony of all witnesses at hearings are presumed to be credible unless and until there exists a good reason not to believe the testimony. The glaring inconsistencies and contradictions in the petitioner's testimony regarding her various claims for replacement coupons have, unfortunately, created a considerable and painful obstacle to believing the petitioner's testimony. In fact, the testimony of this petitioner who had a legal representative assisting her and who gave every indication that she understood the questions, appears to have been contrived to completely mislead the hearing officer as to the history of her Food Stamp replacement requests with the Department. It must, therefore, be concluded that the petitioner's allegations with regard to the non-receipt of her Food Stamp coupons in December of 1990 cannot be credited as truthful.

ORDER

The Department's decision not to replace the coupons is affirmed.

REASONS

The Department has no regulations which cover the replacement of lost or missing Food Stamp coupons. Prior to October 16, 1989, the Department had such regulations but they were eliminated by Department of Social Welfare Bulletin 89-56. Those former regulations, however, did not address the replacement of Food Stamps stolen or lost before receipt in the mail. See F.S.M. § 273.11(i), June 1, 1988.

All that survives to guide workers as to the handling of these claims is a Procedures Manual section which details steps to be taken when claims are presented. P-2540 A. However, that procedures section does not set forth any standards for issuing or denying replacement coupons.

Federal regulations at 7 C.F.R. § 274.6 adopted by February 15, 1989 and amended December 15, 1989, by the Food and Nutrition Service of the U.S. Department of Agriculture, do set out some very specific guidelines for payment of lost Food Stamp coupons. These regulations are lengthy but can be summarized, for purposes of this hearing as follows:

States are generally required to promptly replace (within 15 days) either entire or partial allotments of Food Stamp coupons (up to the maximum monthly allotment) which a household reports were not received in the mail, provided a timely report and signed statement are filed with the Department. 7 C.F.R. § 274.6(a)(1). However, states are not required to issue more than two "countable" replacements of coupons reported not received in the mail in a six month period. 7 C.F.R. § 274.6(b)(2)(1). Countable replacements are ones which result in a loss to the program, i.e., the original lost coupons are never recovered.<sup>4</sup> 7 C.F.R. § 274.6

The regulations neither require nor prohibit the replacement of more than two claims in a six month period but do require a delay in payment pending an investigation

into the matter and seem to indicate that a failure to discover the original coupons may justify a failure to replace 7 C.F.R. § 274.6(d)(1)(ii) and 274.6(c)(3)(iii).

The regulations attempt to head-off a third claim by requiring households which have made two claims already in a six month period to receive their coupons through an alternative delivery system, such as certified mail. 7 C.F.R. § 274.6(c)(3)(ii).

The regulations prohibit the replacement of coupons which were reported not received in the mail for three reasons only: (1) the household fails to timely report the loss and to sign the required affidavit, 7 C.F.R. § 274.6(b)(1) and (c)(2); (2) the stamps were sent by registered or certified mail and signed for by anyone residing with or visiting the household, 7 C.F.R. § 274.6(a)(2); and (3) available documentation indicates that the household's request for replacement appears to be fraudulent, 7 C.F.R. § 274.6(d)(1)(iii).

For each lost-in-the-mail replacement claimed, the Department is required to confirm the actual insurance and mailing of the stamps, and to consult information known to the Accounting Division (including possible return of the stamps) in order to determine "to the extent possible the validity of the request." 7 C.F.R. § 274.6(e)(1) and (2) With regard to a report of partial delivery of the coupon books, the Department is specifically required to see if the

claim is corroborated by a discrepancy in the issuing unit's inventory. 7 C.F.R. § 274.6(e)(1) There is nothing in the regulations, however, which requires the Department to draw any conclusion as to validity of a claim from a lack of corroboration by the Accounting Department, at least, insofar as the first two reports in a six-month period are concerned.

The evidence in this matter shows that during the six months preceding and including her December 1990, report of non-receipt of Food Stamps, the petitioner made no claim, either countable or uncountable, to replace any Food Stamps.

That being the case, the Department is absolutely required to replace the coupons unless it can show that the petitioner did not make a timely or completed claim, that she or someone in her household accepted the stamps via certified mail or that available documentation makes it appear that the request is fraudulent.

The petitioner's timely request and filing of the required forms is not in dispute. Neither has the Department specifically raised the delivery of the stamps through certified mail as a bar to payment. However, in order to raise that bar, the Department had to put forth credible and persuasive evidence that all of the books were in the envelope when it was sent by certified mail. Other than to assure the trier of fact that the envelopes were stuffed by a computer programmed machine which was not likely to make errors and that the inventory control showed

no returned or unaccounted for books, the Department put forth no evidence on that issue. There was no witness who could testify or a document presented which could show what actually went into the envelope. Although the stuffing machine may be extremely reliable, the mere fact that the regulations provide for replacement for partial allotments indicate that errors can and have been made in putting coupons in envelopes. Additionally, the lack of a discrepancy in the final accounting does not prove that all of the books were in her envelope because it is possible that the coupons got into someone else's envelope. Therefore, it cannot be found solely from these facts and the fact that the petitioner signed for the envelope sent to her by certified mail that she actually got the proper amount of stamps delivered to her.<sup>5</sup>

What this case comes down to, then, is whether the petitioner can be barred from receiving replacement coupons because "available documentation indicates that the household's request for replacement appears to be fraudulent." 7 C.F.R. § 274.6(d)(1)(iii). The petitioner argues that this bar exists only if she has been convicted of fraud with regard to the replacement. That contention does not appear to be supported by the language of the regulation which uses only the word "fraudulent" without condition or qualifier. It would be gratuitously restrictive to read the regulation as existing only in the criminal context, as the petitioner suggests, and to ignore

the plain and usual meaning which that word carries: "given to or using fraud, as a person; cheating; dishonest." The Random House Dictionary of the English Language, Unabridged Edition, 1966. In addition, it would make no sense to require the Department to replace all claims for lost coupons, even when the evidence clearly showed that the coupons were not lost, unless and until it criminally prosecuted the claimants.

The Department asserts that the pattern of the petitioner's claims, together with its statistical evidence, constitutes the documentation needed to bar the claim for fraudulence. Because of events which occurred during the hearing, however, it is not necessary to analyze whether that is so in this case. It does seem, however, that the Department could avoid being placed in the position of relying solely, and perhaps unsuccessfully, on this kind of circumstantial evidence to bar claims by having a real person hand check the coupons of those clients whom they feel have made "suspicious" claims in the past. In that way, the Department could develop more direct evidence that the coupons were mailed and avoid the potential injustice of barring someone from coupon replacement on totally circumstantial grounds.

In this matter, the "documentation" of the appearance of a fraudulent claim came at the hearing when the petitioner failed to tell the truth in her sworn testimony. Her statement that this was her first claim ever for

replacement coupons was shown to be totally false by the Department's record. There was no indication that the petitioner's memory had failed or that she had made an honest mistake. Her further testimony showed that she remembered those claims in detail after she was confronted with them and in spite of every opportunity to do so, she never made an attempt to correct or explain her former testimony. It must be concluded, unfortunately, that the petitioner's testimony was designed to mislead the trier of fact as to the events which occurred. As the petitioner's entire sworn testimony was tainted by a lack of credibility, it must be found that her own sworn statements documented the apparent fraudulent nature of her claim. The Department's decision not to replace her coupons is, therefore, affirmed.

FOOTNOTES

<sup>1</sup>The petitioner's representative did not raise this procedural problem on appeal.

<sup>2</sup>There is absolutely nothing to indicate that the petitioner's legal representative knew that her testimony was inaccurate. The representative appeared to have been quite surprised when the Department presented evidence of her former applications for Food Stamp replacement.

<sup>3</sup>This hearsay evidence was not objected to by the petitioner's representative.

<sup>4</sup>There appears to be no limit on "uncountable" claims.

<sup>5</sup>This regulation appears to have as its main objective the barring of claims of total non receipt of stamps where there exists a receipt signed by a member of the household.

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