

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 10,249
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Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare to recoup benefits from her ANFC and Food Stamp grants due to an overpayment. The issue is whether the petitioner was overpaid due to her own inadvertence or due to administrative error.

FINDINGS OF FACT

1. The petitioner has been an ANFC recipient on behalf of her two daughters and Food Stamp recipient for fifteen and a half years. She herself is disabled and receives Social Security benefits. On the first weekend of June of 1990, the petitioner moved from a house she had been renting to another house. She had been paying \$300.00 per month for rent but after the move was paying \$250.00.

2. On the Monday following her weekend move, the petitioner mailed a change of report form setting forth the decrease in rent to the Department from the Enosburg Post Office in a pre-addressed envelope supplied by the Department.

3. The petitioner did not know whether the change would affect her benefits but due to her many years as a Department client, the petitioner understood well the necessity of

reporting all changes. The Department agreed that during the past fourteen and a half years, the petitioner had timely reported all changes as required.

4. Unknown to the petitioner, her report form did not reach her worker and the change was not processed. She had no contact with the Department again until November 27, 1990, when she underwent a routine review. During the review, the petitioner learned that the Department was still using her old rental figure and she orally confirmed the change she had reported in writing earlier.

5. On December 31, 1990, the petitioner received a notice from the Department that her ANFC grant should have been less from June 1 to December 15 based on the decreased rent and that during that period she had been overpaid \$142.00. She was advised that she had to repay that amount and if she had not paid by January 10, 1991, it would be assumed that she wanted her monthly grant reduced until the amount was repaid.

6. On January 4, 1991, the petitioner was notified that for the same period it had been determined that she was overpaid \$210.00 in Food Stamps because "the Department did not receive correct, complete, or timely information from you". The petitioner was also advised that she could make payments on this amount or have her Food Stamps reduced. If she did not start making payments, it would be assumed that she wished to repay through Food Stamp reduction.

7. On January 10, 1991, the petitioner was notified that her ANFC grant of \$489.00 would be reduced by \$48.00 per month to recoup her \$142.00 overpayment.

8. On February 8, 1991, the petitioner was notified that begin in March her Food Stamp grant would be reduced by \$10.00 per month until November of 1992 to recoup the \$210.00 overpayment.

ORDER

The Department's decision that the petitioner was overpaid through her own inadvertence is reversed and it is found that she was overpaid through administrative error.

REASONS

There is every reason to believe that the petitioner, who has long been known to the Department as a conscientious reporter, took the appropriate actions with regard to reporting her change in shelter expense in June of 1990. Her testimony regarding the mailing of the change form from the post office in the Department's envelope was entirely credible. As the petitioner has shown that she mailed the change form in a properly addressed envelope, a presumption attaches that the form was received by the Department. See Estey v. Leveille, 119 Vt. 438 (1957), Mary Fletcher Hospital v. City of Barre, 117 Vt. 430 (1953). Although that presumption is rebuttable, the Department presented no evidence that the change form was not received by a receptionist or other Departmental worker. The only

evidence that exists is that the petitioner's particular worker did not receive the form. However, that is insufficient to rebut the presumption that the form came to someone in the Department. As such, it cannot be found that the petitioner made the error regarding her overpayment. As a "no fault" category does not exist under the regulations, it must be presumed that the error was the Department's.

This finding makes no difference with regard to the need for recoupment of the overpaid ANFC because all erroneously paid benefits, resulting from either household or Department error, is required by the regulations. W.A.M.

§ 2234.2, See also 45 C.F.R. § 233.20(a)(13), Fair Hearing No. 8568. However, it does make a difference for the rate of recoupment as recoupments resulting from "Department error or oversight" are limited to 5% of the assistance grant, rather than the 10% limitation on overpayments allowed when the overpayment is the result of client error.

W.A.M. § 2234.2. As the petitioner appears to have been paid by Department error or oversight, recoupment in her case should be limited to 5% of her grant amount per month or \$24.00.

With regard to her Food Stamp overpayment, the regulations also require that recovery be made of overpaid amounts whether through administrative error or household error. F.S.M. § 273.18(a) and (b). However, persons who were paid through administrative error cannot have their

Food Stamps involuntarily reduced to collect an overpayment.

Fair Hearing No. 8048. Since Food Stamp overpayments to the petitioner were paid through administrative error, she has a right to choose the way she will repay (lump sum, monthly installments, reduction of benefits) and to negotiate the amount of her monthly payment or Food Stamp benefit reduction. F.S.M. § 273.18(g)(3)(ii) The Department's notice automatically reducing her grant by \$10.00 per month was thus incorrect, and an agreement must be reached between the petitioner and the Department as to how the overpaid amounts will be paid back.

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