

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 10,780
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare terminating his ANFC benefits as of August 31, 1991. The issue is whether the Department's notice of its decision was mailed to the petitioner within the allowable time limits according to the pertinent regulations.

FINDINGS OF FACT

In lieu of an oral hearing the parties submitted the following Stipulation of Facts:

1. Petitioner and his family received Aid to Needy Families with Children (ANFC) benefits for the month of August, 1991.
2. Petitioner and his family became ineligible for ANFC benefits when his only minor child left his home.
3. On August 22, 1991 petitioner was mailed a notice that his benefits would be terminated as of August 31, 1991 (Exhibit 1, attached.)
4. Petitioner was not paid an ANFC check for the time period September 1 through September 15, 1991.

The petitioner does not dispute the factual basis of the termination of his ANFC benefits. At issue in this case is whether the Department's notice, mailed on August 22, 1991, was within the requisite 10-day minimum under the regulations.

If, as the petitioner argues, it was not, the petitioner

would be eligible for one more ANFC check--covering the period September 1 - 15, 1991.

ORDER

The Department's decision is modified, in that the Department's termination of the petitioner's ANFC benefits is held to be untimely. The matter is remanded to the Department to determine the amount of ANFC benefits payable to the petitioner for the period September 1 - 15, 1991.

REASONS

W.A.M. § 2228 provides in pertinent part:

. . . Unless specifically exempt, a decision resulting in termination or reduction in the amount or scope of aid or benefits . . . requires advance written notice of the proposed action. Advance notice must be mailed no less than 10 days prior to the effective date of the proposed action. (Emphasis added.)

The issue in this case involves the determination of "the effective date of the proposed action". If, as the Department maintains, the effective date of its action was September 1, 1991--the first date on which the petitioner was no longer eligible for ANFC--it appears that its notice dated August 22 was mailed within the 10-day minimum period.

If, however, the "effective date" of the Department's action is deemed to be August 31, 1991--the last day on which the petitioner was eligible for ANFC--the Department's notice did not meet the 10-day minimum under the regulation.

In the absence of any precedent or guidelines the hearing officer concludes that the language of the notice itself (see attachment) should be controlling. The ANFC part of the notice states: "Your ANFC benefit will be closed as of August 31, 1991 . . ." The notice, mailed on August 22nd--9 calendar days before August 31st--did not provide the petitioner with 10 days advance notice as required by W.A.M. § 2228 (supra).

The language in the Department's notice appears to be computer-programmed. Regardless of the Department's reasons for wording its notices in this manner, the fact remains that the notice communicates to the petitioner that August 31st--not September 1st--is considered to be the "effective date of her ANFC closure. Unless and until the Department changes the wording of its notices, it should be bound by that wording in determining the timeliness of its actions.

The Department's decision is, therefore, be modified accordingly.

#