

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,022  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare finding that she was overpaid ANFC benefits from February through May of 1993. The issue is whether the Department correctly included income from her sixteen-year-old son's employment in its benefit recalculations, and, if so, whether the overpayment occurred due to a reporting error by the petitioner or an administrative error by the Department.

FINDINGS OF FACT

1. The petitioner receives ANFC for herself and her sixteen-year-old son. In the Fall of 1992, the petitioner's son enrolled in a public high school although he disliked going to school and had been in therapy for this aversion, and for other problems for over a year. In spite of his mother's hope that the boy would attend school, he rarely went, and stayed at home on all but four or five days of the entire semester. The boy's mother was in regular contact with the school regarding the situation and there appears to have been little or no effort made to compel his attendance on the part of the school administration. The boy never officially

withdrew as a student but received no credit for any of his courses in the Fall. On his sixteenth birthday, January 17, 1993, the petitioner's son was formally withdrawn as a student on the school's own initiative.

2. On November 11, 1992, the petitioner had a review meeting with her DSW eligibility worker. During the course of that meeting, the worker ran through a series of routine questions including the student status of her son. The petitioner reported that her son was still in high school, which information was recorded on her review form. She made that report because her son was still officially enrolled in the school, although the fact of his truancy was not shared with the worker. The petitioner also informed her worker that her son might obtain part-time employment and asked how it might affect their ANFC benefits. The petitioner was told that the income would not be counted if her son were a full-time student. The petitioner did not ask for any further explanation of that policy nor make any statement which might have alerted the worker that her son was not actually attending school.

3. On December 17, 1992, the petitioner's son began working for a janitorial service as a twenty-hour per week cleaner. He worked primarily in the evenings but also worked the early shift on occasion from about 8:00 A.M. to 1:00 P.M., hours during which he should have been attending school.

4. On or about December 21, 1992, the central office of

DSW mailed the petitioner a computer generated letter routinely sent to all families with children who are about to turn sixteen years of age. That letter informed her:

. . . To continue to be eligible for ANFC, a child who is 16 or older must be attending school full-time or must be participating in the Reach Up program.

If your child is not attending school, you must get in touch with me [her welfare worker's name and phone number were on the notice] right away so that we can take the proper steps to get him or her into the Reach Up program.

If your child is attending school, or if this is a school vacation and your child intends to return to school at the end of the vacation, you don't need to do anything at this time. You must, however, be sure to let me know if your child stops going to school in the future.

Please let me know if you have questions about this ANFC requirement.

5. The petitioner did not report her child's earnings during December of 1993 because she believed he was still technically a student and because he was not yet sixteen. Even after he turned sixteen in mid-January and was officially removed from the student list by his high school, the petitioner did not immediately report the earnings due to some confusion on her part about the situation. However, at the urging of her son's therapist, who had some knowledge of ANFC regulations, the petitioner called her worker in mid-February to discuss the change. Her conversation with the worker (who was on her way out of the office) was brief and resulted in the worker asking the petitioner to fill out a "change report" form. The petitioner claims that, on the specific advice of her therapist, she told the worker during that phone

conversation both that her son was working and that he was no longer a student. The worker has no memory of what she was actually told that day and took no notes of the conversation.

The worker candidly offered that she was going through a family medical crisis at this time and was often hurrying in and out of the office. The worker allowed that the petitioner might have made that statement to her. In light of both the petitioner's credibility and clear memory of the phone call--the details of which are uncontradicted by any evidence--and the existence of circumstances which temporarily created an increased probability of an error on the part of the worker, it is found that the petitioner did orally notify the Department both that her son was working and that he was no longer a student in the month following his sixteenth birthday, as she had been advised by her therapist to do.

6. In spite of the petitioner's reporting her son's new student status, no change was made in the computer system by the worker noting that the petitioner's son was no longer a full-time student.

7. The written "change report" form subsequently submitted by the petitioner consisted of a series of blanks to fill in and boxes to check if changes had occurred. The legend above the blanks and boxes stated that "changes in the following items must be reported." Although "income" changes were included on the form, student status was not listed anywhere on the form. The petitioner filled in the "income

change" section, informing the Department that her son began work in December and worked between fifteen and twenty-four hours per week at a rate of \$4.75 per hour. The form was signed by the petitioner and dated January 21, 1993. Attached to the form was her son's employer's handwritten income verification statement dated February 21, 1993. The change form was received in the district welfare office on March 9, 1993.

8. On March 1, 1993, shortly before the change form was received by the Department, the petitioner was assigned a new caseworker. When the caseworker received the information on her son's income, he compared it with information in the computer and saw that her son was still listed as a full-time student. Therefore, he concluded that the income was exempt and would not affect the ANFC grant for the next month of February. He had no conversations with the petitioner about this matter in March.

9. In late April of 1993, the petitioner's case came up for a routine "six-month" review, although her last review had been only five months prior. At that review, she was again asked a series of routine questions, this time by her new worker, including whether her son was still a full-time student. The petitioner replied that he had not been enrolled as a student since mid-January and had not attended school last fall, even though he had been enrolled. She also told the new worker that she had orally given that information to

her former caseworker in February by telephone. She stated that she was somewhat surprised that her benefits had not changed in March and imagined that the reason her "review" had been scheduled a little earlier than usual was to go over the issues raised by the information she had supplied in February and March. The worker informed her that the information about her son's non-student status was not in the computer and that his income should have been counted in calculations for payments already received in February, March, and April. He also advised her that her son's income would count for her May payment as well, unless he went back to school.

10. On May 10, 1993, the petitioner was notified that her son's income (which at that time was \$436 per month) was being used in both her ANFC and Food Stamp calculations and it was estimated that she would experience a decrease of about \$210 in ANFC and \$54 in Food Stamps for June. The petitioner appealed that determination and her benefits continued at the higher level for May and June. In July, the petitioner's son returned to student status and his income was exempted. On August 11 and 13, 1993, the petitioner was notified by DSW that from February 1 to May 31, 1993, she had received benefits to which she was not entitled in the ANFC program of \$947 and in the Food Stamp program of \$454 based upon the omission of her son's income for those months. She was subsequently put on notice at a prehearing conference that a loss of her appeal also meant that she would be found to have

been overpaid for June 1993 as well in the amount of \$453 for ANFC and \$149 for Food Stamps based on her son's income in that month. The petitioner was also notified that the overpayment occurred as a result of her failure to report timely information needed to calculate her benefits and that she was liable to repay the amounts.

11. The petitioner does not dispute the accuracy of any of the figures used by the Department in its calculations. Therefore, the Department's calculations of overpayment as stated above are correct, if the petitioner's son's income is required by regulation to be counted in the family's income for the months at issue.

ORDER

The Department's determination that the petitioner has been overpaid \$1400 in ANFC benefits and \$603 in Food Stamp benefits from February through June of 1993 is affirmed. The Department's determination that overpayment for the months of February and June of 1993 occurred as a result of household error is also affirmed. However, the Department's finding that the overpayments during the months of March, April and May of 1993 were the result of the petitioner's error is reversed and a finding is entered that the overpayments during those months are the result of administrative error.

REASONS

The ANFC program requires the inclusion of all household income in the computation of eligibility for benefits with certain specified exceptions. See W.A.M. § 2250. Among the many exceptions is one for the earned income of a dependent child:

Earned income of an eligible child if the child is a full-time student. Earned income of an eligible child if the child is a part-time student, but not employed full time. A student is a person who is enrolled in a school, college, university, or a course of vocational or technical training designed to fit him or her for gainful employment. The school or institution shall make the determination of the student's status as full-time or part-time (i.e. less than full-time). A full-time employee is one who is employed 100 or more hours per month.

W.A.M. § 2255.1(13)

The petitioner spent much time at the hearing arguing that her child was a full-time student because he was "enrolled" in a school. However, for all periods of time at issue here--February through June of 1993--the evidence clearly shows, and the petitioner concedes, that her son was not even "enrolled" in school. Under the regulation cited above, her son's income clearly must be included for those time periods as he was not even a part-time student during any of those months. Calculations made during the months of February through June of 1993, should have included her son's income. If his income had been used, the petitioner would have received \$1400 less in ANFC, an amount which was paid to the petitioner in error.

The Food Stamp program similarly requires the inclusion of all household income "from whatever source" except that which is specifically excluded. See F.S.M. § 273.9(b) Among income specifically excluded from use in Food Stamp benefit calculations is income earned by students:

The earned income (as defined in paragraph (b)(1) of this section) of children who are members of the household, who are students at least half time, and who have not attained their 18th birthday. The exclusion shall continue to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break . . .

F.S.M. § 273.9(c)(7)

Again, similar to the ANFC program requirements, the income of a minor can only be excluded for purposes of Food Stamp eligibility calculation if the minor is a student at least half-time. The petitioner's son was not a student at all for the months of February through May 1993, and should not have had his income exempted from use in the calculations for those months. Because his income was erroneously excluded, the family was overpaid \$603 in benefits.

Both the ANFC and Food Stamp programs require that overpayments be recovered whether they were the result of administrative error or inadvertent household error. See W.A.M. § 2234.2 and F.S.M. § 273.18(b). However, the ANFC regulations set different caps on the level at which recoupment may be made depending on who made the error. Under the regulations, 95% of the monthly household income is

protected from recoupment if the error is the Department's while only 90% is protected if the error lies with the household. W.A.M. § 2234.2. The Food Stamp regulations also grant an additional method of repayment--gradual recoupment from benefits--for overpayments resulting from administrative error. F.S.M. § 273.18(d)(3)(i)

In this matter, the payments made to the petitioner from March through May of 1993 were the result of the Department's failure to use information reported in a timely manner by the client to calculate her family's benefits. Those months are properly denoted as ones in which overpayments were made through administrative error. However, the month of February 1993 was overpaid solely due to the petitioner's failure to timely report facts known to her in mid-January which would have affected the family's benefits paid at the beginning of February. Similarly, the overpayment made during the month of June was a result of the petitioner's request for continuing benefits pending the outcome of a fair hearing. Such overpayments are by definition household error under the regulations in both programs. See W.A.M. § 2234.2 and F.S.M. § 273.18(b)(1)(iii). Payments made in both February and June of 1993 are, therefore, household error and are subject to recoupment rules under that category.

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