

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,674 &

) 12,955

Appeal of)

)

INTRODUCTION

The petitioner appeals a determination by the Department terminating his Food Stamps for a closed period beginning December 1, 1993, the Department's refusal to replace Food Stamp checks from September to November 1993, which were either stolen or returned to the Department, and a decision by the Department refusing to reissue a Fuel Assistance check returned to the Department in October of 1993 and denying the petitioner's application for Fuel Assistance in February of 1994. The Department has moved to dismiss both Food Stamp appeals as being untimely.

FINDINGS OF FACT

1. The facts in this appeal are complicated and almost completely contested. The petitioner, who did not attend the hearing and was represented in this matter by his wife, is a young disabled man who receives SSI. Both the petitioner and his wife were Food Stamp recipients and eligible for Fuel payments in the summer of 1993.
2. The petitioner owns a house in Vermont where he had lived for some time prior to August of 1993. Although the petitioner's wife claims that she has not always lived with him in this house, credible testimony of a neighbor and tenant in the house support a finding that the petitioner's wife has lived there when he has lived there.
3. In February of 1993, the petitioner rented the downstairs of his house to a young woman acquaintance and her children. In March or April of 1993, the petitioner's wife mailed the tenant a letter from Massachusetts which gave her various instructions about paying for water and electric in the house and further instructed her, "Don't tell anyone we are anywhere but 2nd floor of that house. We have no phone and we're out."
4. The petitioner and his wife came frequently to the house in Vermont up until the end of August 1993. They repeatedly told the tenant not to tell anyone important, including welfare where they were. Toward

the end of August 1993, the petitioner's wife asked the tenant to watch the house while they went travelling. In the early Fall, the tenant received a letter from the petitioner's wife giving her instructions for winterizing the house and leaving a contact address in Massachusetts. The letter concluded by saying:

I told you we needed to walk away and not worry. You had a rough start but I believe it has worked out. Please don't let us down. And don't be alarmed if a For Sale sign goes up.

If anyone asks questions about us, please don't say anything except---I don't know when they're home or not, but you can leave a message, and give messages to [a neighbor], unless you want to write yourselves.

5. The tenant did not see the petitioner or his wife again until February of 1994. As the petitioner's portion of the house is right over hers, she can hear if anyone is upstairs in his room. She did not hear anyone in that part of the house from August of 1993 through the beginning of February 1994.

6. In August of 1993, the petitioner's wife called a long-time Vermont neighbor from her parents' home in Massachusetts and told her there was a possibility for a job for the petitioner (he is a musician) in New York and that they might go to visit her grandmother in the mid-west at the same time. The petitioner's wife asked the neighbor to take care of their part of the house, to secure it and to collect their mail and forward anything important, particularly checks. By September of 1993, the petitioner's wife was calling from California asking that checks be sent from the mail. One of the pieces of mail was from the postmistress who wanted his post office box rent. When the rent was not paid, the box was closed. At the request of the petitioner's wife, the neighbor tried to rent the box again but was told that she could not, that it had to be paid for by the petitioner in person. It was the neighbor's impression that the petitioner was planning to stay in California at least for the winter and possibly permanently. 7. On November 4, 1993, the post office received a change of address for the petitioner and his wife listing a post office box in Los Angeles, California. The post office thereupon forwarded all mail to them there.

8. On September 1, 1993, the Department of Social Welfare issued a Food Stamp check to the petitioner for \$28.00 which was cashed. On October 1, 1993, the Department issued a \$32.00 Food Stamp check which was also cashed. A third Food Stamp check for \$32.00 issued on November 1, 1994, was returned by the post office as undeliverable because the petitioner had a forwarding address in California. (Benefit checks are marked "do not forward".) A fuel assistance check dated October 26, 1994 for \$75.00 issued to the petitioner was also returned by the post office for the same reason.

9. On November 8, 1993, a worker in the Department mailed a notice to the petitioner at his closed Vermont post office box notifying him that his Food Stamps, Medicaid and Fuel would be closed as of December 1, 1993 because he did not live in Vermont. That letter was marked as unforwardable even though the worker knew that the petitioner had left a forwarding address and it was returned to the Department. The letter of closure, however, unlike the checks should have been forwarded to the new address according to the office supervisor.

10. In November of 1993, the petitioner's wife wrote

to her caretaker neighbor asking her to check up on the tenant and making a new request:

I never got any mail or my new checks. I really have to know if my checks are there. I've had to change my address with [the postmistress]...

[Petitioner] is still covered by Vermont Medicaid. I hope you can get his meds for him and send them. Tell [the tenant] if anyone official asks if he's living there, she has to say that she doesn't keep track of him, but sometimes he's home, and sometimes he isn't! Please charge at the drugstore, and use his check the 1st to pay it. Keep the balance for your trouble. If anything isn't refillable, tell them to call [doctor's name]. Did [petitioner] get a fuel check in October/November?

SSI says I can't be his representative payee because I live in California and he lives in Vermont. Are you willing to be it? All you'd have to do would be to receive the check and deposit it to our account. If so, here's what you have to do:

Call [telephone number]. Say I'm living in California, Mark's residing in Vermont, and you're willing to be his rep. payee. His s.s.# is [social security number].

I've enclosed the yellow paper which they gave me here, to be filled out and sent. ([Petitioner] can't reside here because he owns the house there. He is afraid to turn it over to my parents because he doesn't trust them, since the fiasco with the apartment.)...

California is burning all around us. We're about 8 miles from Malibu, and can see the fires from the roof. [Petitioner's] been playing 2-3 nights a week with H., and the guy he came out to record with came by yesterday, and he's found the people to record with, so that will be happening soon.

We can't have the equipment shipped yet because we're so broke. Keep that on hold. I'll let you know....

11. After that letter, the petitioner's wife telephoned the neighbor in December, 1993, close to Christmas Day, and persuaded her to become the representative payee for her husband's S.S.I. checks which occurred in January of 1994. During that same telephone call, the petitioner's wife claimed that he was at his home across the street. The neighbor did not believe this because she had not seen him. She also asked the neighbor to contact the Department to see where his checks were but when she contacted the Department, the neighbor was told that they could not deal with her and that the petitioner or his wife would have to call themselves.

12. As the representative payee, the neighbor learned that the petitioner's January check had been forwarded to the petitioner in California and cashed by his wife. She did receive a February check for him which she held until she actually saw the petitioner which was in February of 1994. At that time they went together to a convenience store and cashed the check. The neighbor gave the money to the petitioner. The neighbor did not see the petitioner or the petitioner's wife from August 1993 until February 1994. 13. When the petitioner and his wife returned from California in February of 1994, the neighbor, as the petitioner's payee, went with them to the welfare office to reapply for benefits. She refused, however, to say that the petitioner had been living in Vermont, as she believed he had been living in California. The petitioner and his wife reported that they were receiving two S.S.I. checks, he for \$500.87, she for \$671.40. They also reported \$100.00 as rental income from the downstairs tenant.

14. The petitioner's Food Stamps and Medicaid were reinstated, but he was found ineligible for Fuel Assistance due to excess income and was notified of that fact. The petitioner's fuel eligibility was calculated by taking the \$100.00 rent from the tenant, deducting \$20.22 for business expenses, and

further deducting 20% of that figure (\$15.95) as an earned income deduction and adding the remainder to the sum of the two SSI payments after a \$75.00 deduction had been taken from each, for a grand total of \$1,086.00. The Department determined that amount to be over income because the maximum for a household of two is \$990.00.

15. The petitioner appealed that decision on February 24, 1994, and on March 2, 1994 also appealed the Department's refusal to reissue Food Stamp checks for September, October, and November of 1993 and the denial of Food Stamp benefits effective December 1, 1993.

16. On June 7, 1994, the Social Security Administration notified the petitioner that he was not eligible for S.S.I. from September of 1993 to February of 1994 because he lived outside of Vermont during that period making his home in Vermont a countable resource which put him over the resource eligibility amount. He was asked to repay \$2,969.58. On that same date, SSA notified the petitioner's wife that as a dependent she should not have received any money either. She was asked to repay \$3,071.41.

17. The petitioner's wife claims that she did not receive Food Stamp coupons for September and October of 1993 which were mailed to her and picked up by and cashed by someone else. She also claims that she did not receive the notice dated November 8, 1993 that her husband's Food Stamps were closed. It is found that those allegations are true.

18. The petitioner's wife agrees that as of September, 1993, she had moved to California and had planned to stay there, at least for the foreseeable future. She applied for and received S.S.I. dependent checks as a California resident. She denies, however, that her husband had moved to California. She maintains that he lived separately from her when he was in California and that he returned to Vermont occasionally to check on his affairs. She says that she came back to Vermont in February following the Los Angeles earthquake because it was too chaotic there. Although it can be found that the petitioner's wife moved to California in September and returned in February, substantial evidence exists from her own letters and the testimony of her neighbor and tenant who spoke with her regularly on the phone, that her husband went with her to California, lived with her there, and only returned to Vermont with his wife in February of 1994. Therefore, it is found that the petitioner and his wife lived in California from early September of 1993 through February 5, 1994.

19. It is further found that the petitioner's wife received \$671.40 per month in Social Security payments in February, March and April of 1994, and that the petitioner continued to receive \$500.87 per month during those same months. The petitioner received no rent from his tenant after February 1994.

ORDER

The decision of the Department with regard to the petitioner's eligibility for Food Stamps and Fuel Assistance and for replacement checks or coupons prior to March of 1994 is affirmed. The petitioner's eligibility for Fuel Assistance after March 1, 1994, should be reversed and remanded to the Department for further eligibility calculations based on their non-receipt of rent income after that date.

REASONS

The Department has moved to dismiss the petitioner's appeal of his Food Stamp termination for lack of

timeliness. The Food Stamp notice was dated November 8, 1993, and, the Department contends, an appeal should have been filed under the Board's rules within ninety days of that date. The appeal filed March 2, 1994 would have been past the ninety day deadline.

It is true that the Board's rules provide for a ninety day filing deadline for Food Stamp appeals. See Fair Hearing Rule No. 1. However, that rule implies that some good faith effort has been made to notify the petitioner so as to start the running of the appeal period. The notice mailed by the Department on the 8th of November was not, however, a good faith effort to notify him of the decision because the worker, who knew that the petitioner's post office box had been closed down and that mail was being delivered to him in California, nevertheless instructed the post office not to forward his mail. The result was an empty process which was calculated to afford no notice to the petitioner.⁽¹⁾ The first real notice that the petitioner had of the Food Stamp termination action was when he returned to Vermont in February, making his March appeal of the action a timely one in that it occurred within ninety days of the date when he became aware that he had a grievance.

The merits of this appeal primarily are dependent upon the petitioner's claim of residency in the state of Vermont. The factual findings are that he was not living in the state from September 1993 until the beginning of February 1994.

The Food Stamp regulation prohibits payment to persons who are not "living in" the state:

A household must be living in the project area in which it files an application for participation. No individual may participate as a member of more than one household, or in more than one project area, in any month, unless an individual is a resident of a shelter for battered women and children as defined in 271.2

and was a member of a household containing the person who had abused him or her. Residents of shelters for battered women and children shall be handled in accordance with 273.11 (g). The State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. Nor shall residency require an intent to reside permanently in the State or project area. Persons in a project area solely for vacation purposes shall not be considered residents.

F.S.M. 273.3

The petitioner, despite his protests that he was "on vacation", was living in California for the five month period at issue. Under the federal Food Stamp regulations, he would have been eligible to receive Food Stamps in California, even if he had a house in Vermont or planned eventually to return to Vermont. He was not "living in" Vermont at any time from September 1993 through February of 1994. Therefore, the Department's decision to terminate his benefits was made mandatory by the regulations.⁽²⁾

The petitioner's ineligibility for Food Stamps during this period should put to rest the question of reissuing the coupons which the petitioner claims were stolen from his mail. Since the checks were cashed, the recoupment issue still remains since the receipt of those Food Stamps are attributed to the petitioner and the evidence shows he should not have gotten them. However, the Federal regulations are

very strict about time frames for reporting missing, lost or stolen food stamps. Reports which are not made within the period of intended use, which is defined in detail in the federal regulations, cannot result in the restoration of lost benefits. Those reports must be made, depending on the date of intended receipt, within the same month, or at the very latest, within 20 days of the end of the month. 7 C.F.R. § 274.6 The petitioner was last mailed Food Stamps near the beginning of November 1993. Under even the most generous interpretation of the regulations, he should have reported their loss by the twentieth of December, 1993. His report of lost stamps was not made until February, 1994. Therefore, he is not entitled to the replacement of those checks nor any ruling that he did not receive and cash them.

The Fuel Assistance program has a similar eligibility requirement with regard to residency:

Applicants for assistance must be physically present in a domicile in Vermont in order to receive benefits under the Vermont Fuel Assistance Program. Legal residence is not a factor, thus a Vermont "resident" is not eligible for this program while living in another state, nor is a "non-resident" ineligible, by virtue of this factor, if living in Vermont. Eligible migrants will be granted under the same conditions as any other applicant. Moving, either permanently or temporarily (3 weeks or more), to another state is considered a change of household circumstances and must be reported.

W.A.M. § 2902.1

The petitioner was not physically present in his Vermont home (and, thus, presumably did not need heating fuel for his home in Vermont) from September of 1993, through January of 1994. Therefore, he is not eligible for fuel assistance even if he could be shown to have a Vermont residence in the legal sense. The petitioner's October fuel assistance check was returned uncashed to the Department. That check cannot be reissued to him, as he requests, because he was not eligible to receive it.

The petitioner reapplied for fuel assistance in February, 1994, and was denied because he was over income. The petitioner and his wife say that the decision was wrong for three reasons: first, that they did not receive Social Security checks in March; second, that they did receive Social Security checks but they were later found to have been ineligible for them and may have to pay them back; and third, that they received no rent checks in February, 1994 or for any month thereafter.

The evidence indicates that they did receive Social Security checks and rental income in February. They also received Social Security checks during March and April but no rent checks. They were subsequently told that they were overpaid Social Security benefits for all those months. The Fuel Assistance regulations require that Social Security income be counted if received as income in those months. W.A.M. 2904.2. There is no exclusion of income if it was subsequently found to have been overpaid. [\(3\)](#)

The Department in considering the petitioner's fuel eligibility for months subsequent to February 1994 appear to have been under the impression that the petitioners continued to receive rent on their downstairs unit on a continuing basis. However, as the evidence shows that no payments were received after February, 1994, their eligibility for benefits should be recalculated beginning with the March 1994 assistance month.

The petitioner was advised prior to the hearing to contact an attorney to discuss whether it was in his interests to proceed with this hearing given representations made by the Department that these same matters were being investigated by the fraud unit. Although the matter was postponed for one month for that purpose, the petitioner reappeared without an attorney and insisted upon going forward. The petitioner's rights were explained to his wife prior to the hearing and the possibility that statements made at the hearing could be used in a subsequent fraud investigation. After reviewing the evidence, the Board is convinced that the petitioner and his wife participated in a deliberate attempt to deceive their caseworker regarding their true situation.

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1. This action probably took place based on the policy of not forwarding benefit payments to out of state addresses. However, there is a different consideration at work when notices are sent to individuals affecting their legal rights. In those cases, a reasonable effort should be made to make sure the notice is going to some place where it is likely to be received by the recipient. The worker's supervisor agreed that the usual and better course in this matter would have been to forward the notice to California.

2. The petitioner's reluctance to apply for Food Stamps in California was undoubtedly due to the difficulty it would cause him with regard to his SSI benefits. The petitioner owns a home in Vermont which would be counted as a resource to him if it appeared that he were not living in it. Receipt of Food Stamp benefits outside of Vermont would have alerted the Social Security Administration that he was no longer residing in his home and its inclusion in his resources would have most likely made him ineligible for benefits. Despite his efforts to conceal his residence in California, this fact did become known to the Social Security Administration which took the actions described above in paragraph 16.

3. The regulations do provide for the exclusion of "loans". W.A.M. 2904.3. The Social Security payments were not loans at the time the petitioner received the funds and because of SSA provisions which allow application for waiver of overpaid amounts, cannot even be classified as loans at this point. The Social Security payments were money which the petitioner and his wife should not have gotten but did get and which monies were available to pay their heating expenses.