

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,699

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Appeal of )

)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare terminating her ANFC benefits for the period March 1 through March 9, 1994. The issue is whether the Department provided the petitioner with sufficient notice of the termination of her benefits.

FINDINGS OF FACT

The facts are not in dispute. Prior to March, 1994, the petitioner received ANFC for herself and her child. Because the petitioner also worked part-time, her benefits were determined retrospectively each month based on the earnings the petitioner reported in the previous month on her "monthly report form".

The petitioner was due for a routine semiannual review of her benefits in February, 1994. On January 13, 1994, the petitioner's caseworker mailed her a notice that included the following:

...

Your situation must now be reviewed to determine if you are still eligible for benefits. Please complete and return the enclosed forms if you want your benefits to continue.

In addition, a personal interview may be necessary. You must:

...

Call me before 2/1/94 to arrange for an appointment.

...

If I do not hear from you by 2/1/94, your benefits will end on 2/28/94 for all programs...

Unfortunately, and inexplicably, the petitioner did not receive the above notice.<sup>(1)</sup> She did, however, file

her January monthly report form in a timely manner (on February 9, 1994), and she received her February ANFC benefits without any problem.

The petitioner again filed a timely monthly report form (for February) on March 4, 1994. However, on March 8, 1994, the Department notified her that her ANFC grant had been closed effective March 1, 1994, and that she would have to reapply if she still wanted those benefits.

Upon receiving the above notice the petitioner immediately (on March 10) filed a new application for benefits, which the Department granted effective that same day. However, this resulted in a loss of ANFC for the petitioner from March 1 through March 9, 1994.

Other than sending the petitioner her February ANFC check, the Department provided no notice to the petitioner after its notice (supra) of January 13, 1994, until March 8, 1994.

### ORDER

The Department's decision is reversed.

### REASONS

The Department's termination of the petitioner's ANFC after February 28, 1994, violated its own regulations regarding written notice to recipients of adverse actions by the Department regarding ANFC benefits.

W.A.M. § 2228 provides as follows:

Applicants for and recipients of ANFC shall be furnished, prior to implementation of any decision affecting their receipt of such aid or benefits, a written notice which:

1. Specifies the type of action to be taken, and explains the action with reference to dates, amounts, reasons, etc.
2. Includes clear explanation of individual rights to confer with Department staff to request reconsideration of a decision, to request continuation of benefits pending a fair hearing decision if requested within specified time limits.

Unless specifically exempt, a decision resulting in termination or reduction in the amount or scope of aid or benefits or changing a grant to a protective payment system 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.

In this case the notice the Department sent to the petitioner on January 13, 1994, "warned" the petitioner that unless she returned the enclosed forms and called her worker to set up an interview by February 1, 1994, her benefits would close as of February 28, 1994. However, the Department sent no notice of its distinct and separate "decision", made sometime between February 1 and February 28, 1994, that the petitioner had not, in fact, complied with the earlier "warning notice" of January 11, and that due to this noncompliance it had "decided" that the petitioner's ANFC should be terminated. Clearly, under W.A.M.

§ 2228, supra, the Department was required to provide the petitioner with advance written notice of this subsequent "decision".<sup>(2)</sup> Its failure to have done so requires the reversal of the termination of the petitioner's ANFC as of February 28, 1994.

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1. At the hearing the Department acknowledged that the petitioner had always promptly and accurately reported to the Department as directed, and that it had no reason to disbelieve that the petitioner had not received this notice.
2. The fact that the petitioner (through no fault of the Department) did not receive the January 11 warning has no bearing whatsoever on the Department's obligation to have provided this subsequent notice. It illustrates, however, one policy reason why such notice should be required.