

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,747

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare that he must repay an overpayment of \$400.00 in food stamps. The issue is whether the overpayment was the result of "administrative error" on the part of the Department or "inadvertent household error" on the part of the petitioner.

FINDINGS OF FACT

The petitioner is the father of three children. In September, 1993, the Department notified the petitioner that his ANFC grant would be reduced because the petitioner's oldest child was eighteen and no longer a high school student.

In October, 1993, the petitioner underwent a routine periodic review by the Department of his food stamps. On his reapplication form the petitioner indicated that only his two youngest children were living with him. The petitioner explained that even though his oldest child was also still living in the home, the petitioner thought he had the option of excluding this child from the food stamp

household--especially in light of that child having been found ineligible for ANFC.

At the petitioner's food stamp review meeting the petitioner's food stamp caseworker explained to the petitioner that his oldest child was required to be included in the family's food stamp grant, and she added the name of that child to the petitioner's application. In a notice dated October 21, 1993, the Department found the petitioner eligible for \$310.00 a month in food stamps based on a household of four persons.

The petitioner testified that despite his meeting with the worker and his receipt of the above notice he did not understand that his food stamp grant was for four, rather than three, persons. Therefore, when his oldest child moved out of the petitioner's home shortly thereafter, the petitioner did not notify the Department of this change in "household composition". When, in late March, 1994, the Department discovered that the oldest child had left the home that previous autumn it notified the petitioner that he

was overpaid \$400.00 in food stamps from December 1, 1993 (the earliest date the Department could have effected the change in the petitioner's benefits if it had been provided with timely information) through April 30, 1994 (the earliest date it could reduce the petitioner's food stamps based on the information it had just learned).

The petitioner does not take issue with the decision to reduce his food stamps as of May 1, 1994; and he does not dispute that he received food stamps for a household of four persons for five months, even though only three persons were residing in his household during this time. He also does not dispute the amount (\$400.00) the Department says he was overpaid.

The petitioner maintains, however, that any overpayment is the Department's fault because on the application that he signed in October, 1993, he did not list his son as a household member. The petitioner argues that he should not be held responsible for any overpayment that resulted from the Department unilaterally adding his oldest son to the household at that time--without his consent and, purportedly at least, without his understanding.

Even if it is found, however, that the petitioner did not understand the household composition rules for food stamps (see *infra*), it cannot be concluded that it was the Department's fault or "error" for not discovering that the petitioner's oldest child had left the petitioner's home. The petitioner admits he had signed an agreement, and was otherwise aware of his duty under the food stamp regulations, to promptly report changes in income and household status to the Department. It is found that the petitioner's caseworker orally explained the food stamp household composition rules to the petitioner, and also that the Department subsequently notified him in writing that his food stamps were based on a four person household. The petitioner may not have clearly understood this (in light of his oldest child having recently been disqualified from inclusion in the family's ANFC "household", this is not surprising), but the "error" was clearly his--not the Department's.

ORDER

The Department's decision is affirmed.

REASONS

The food stamp regulations require that all parents and children who live together must be included in a single food stamp "household". Food Stamp Manual (F.S.M.) § 273.1(a). Therefore, regardless of whether he understood and/or agreed to this, the petitioner had no choice but to include his oldest child in his reapplication for food stamps in October, 1993. When the petitioner did not inform the Department that his oldest son had moved out, this created an overpayment of food stamps for those months in which the

household's food stamps continued to be calculated on the basis of four persons in the household.

It is important to note that the Department does not allege, and this decision does not find, that the petitioner intentionally mislead the Department. It must be concluded, however, that the "error" that led to the overpayment was due to the petitioner's "inadvertence"--i.e., his lack of understanding as to how his benefits had been calculated. The Department did not misinform the petitioner, and it did not fail to

provide him with timely and accurate information regarding its decision. Therefore, it cannot be concluded that the Department was in any way "at fault" in causing the petitioner to have been overpaid.

Under the regulations, overpayments resulting from "inadvertent household error" are subject to involuntary recoupment from the household at a rate of 10 percent of the households ongoing monthly benefits until the overpayment is repaid in full. F.S.M. § 273.18(g).⁽¹⁾ Inasmuch as the Department's decision in this matter is supported by the above findings, and is in accord with the pertinent regulations, it must be affirmed. 3 V.S.A. § 3091(d) and Food Stamp Fair Hearing Rule No. 17.

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1. The same regulation specifies that recoupment must be voluntary on the part of the household if the overpayment resulted from the agency's "administrative error".