

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,999

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare that she was overpaid \$375.00 in food stamps for the month of December, 1993, due to her "inadvertent error" in not reporting to the Department her husband's receipt of earned income during this period. The petitioner maintains that she reported her husband's income to the Department in a timely manner, and that it was the Department's "administrative error" in not reducing her benefits after she reported this income.

FINDINGS OF FACT

Throughout the period in question the petitioner was a recipient of food stamps (as well as medicaid and fuel assistance). In October, 1993, the petitioner's husband began working at a seasonal job at UPS. The petitioner maintains that she called her worker immediately to report this fact and was told to report back when he received his first check. The petitioner further maintains that as soon as her husband received his first check she called her worker at that time to report the amount.

The Department admits that during this time the petitioner's case was in the process of being transferred to another worker, and that as many as three different workers may have been involved in the petitioner's case during this period. The petitioner recalls that the person she spoke to on the day she called to report her husband's wages took down the information and told the petitioner she would pass it along to the petitioner's assigned worker at that time. Even this worker, however, did not end up being the petitioner's permanent caseworker.

In December, 1993, the woman who had recently taken over the petitioner's casefile on a more-or-less "permanent" basis met with the petitioner for a routine scheduled review of the petitioner's case. The petitioner reported that her husband had recently been laid off from his UPS job. Since this was the first that this worker had heard of this job, she verified the husband's pay through records from the Department of Employment and Training. The Department subsequently determined that the petitioner had "inadvertently" failed to report her husband's earnings in a timely manner and, as a result, that the petitioner had been overpaid \$375.00 in food stamps for the month of December, 1993.

The petitioner initially took no action regarding this decision, and the Department recouped a percentage amount from her next months food stamps. Following this initial recoupment the petitioner requested a

fair hearing. At or about the same time, however, the petitioner's husband obtained full-time employment, and the family has been off food stamps ever since.

Both the petitioner and her caseworker were forthright and candid in their testimony at the hearing in this matter (held on October 26, 1994). The caseworker admitted that the petitioner has always been prompt and forthcoming in reporting changes in her family's circumstances. The worker also admitted that although the Department's general policy is to place notes of all telephone contacts with a recipient in that recipient's casefile, as a practical matter it is entirely possible that the notes of the petitioner's telephone contacts could have been misplaced during the changeovers in workers that occurred at that time. ⁽¹⁾

Based on the above, and on the petitioner's demeanor at the hearing, the hearing officer finds the petitioner's testimony to be fully credible. It is found that the petitioner promptly called the Department to report her husband's earnings, but that the employee at the Department who spoke to the petitioner failed to note this in the petitioner's casefile. As a result, the worker who took over the petitioner's case in November, 1993, was not aware that the petitioner's household had earnings that would affect their food stamps.

ORDER

The Department's decision is modified. The overpayment of \$375.00 is found to be attributable to the Department's "administrative error". The matter is remanded to the Department to determine whether, and in what amount, the petitioner agrees to recoupment. If the petitioner does not agree to recoupment the Department shall restore to the petitioner any and all amounts it has already recouped from the petitioner's benefits.

REASONS

Food Stamp Manual (F.S.M.) § 273.18(a) includes the following provisions:

1. Inadvertent Household Error Claims

A claim shall be handled as an inadvertent household error claim if the overissuance was caused by:

- i a misunderstanding or unintended error on the part of the household;
- ii A misunderstanding or unintended error on the part of a categorically eligible household provided a claim can be calculated based on a change in net income and/or household size amount;
- iii SSA action of (sic) failure to take action which resulted in the household's categorical eligibility provided a claim can be calculated based on a change in net income and/or household size.

2. Administrative Error Claims

A claim shall be handled as an administrative error claim if the overissuance was caused by State agency action or failure to take action or in the case of categorical eligibility, an action by an agency of the State or local government which resulted in the household's improper eligibility for public assistance provided a claim can be calculated based on a change in net income and/or household size.

As found above, the overpayment in this case occurred because the Department failed to take action following the petitioner's timely report of her husband's earnings.

Under the regulations the Department may recoup "administrative error" claims through a reduction in the household's ongoing food stamps only if the household "agrees" to this method. F.S.M. § 273.18(g)(3)(ii).⁽²⁾ Because the partial recoupment that has already occurred in this case was done on an involuntary basis, the matter is remanded to the Department to see if the petitioner agrees to this and/or any further recoupment. If she does not, the Department shall refund to the petitioner the full amount that was improperly recouped involuntarily based on the Department's incorrect decision that the overpayment was caused by "inadvertent household error".

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1. The worker stated that her initial decision in the case was that an "administrative error" had occurred, but that on review the decision was made to treat the overpayment as an "inadvertent household error".
2. The regulations provide that the Department must "establish a claim" against all households who have been overpaid benefits, regardless of fault. See F.S.M. § 273.18(a). As a practical matter, however, the Department does not pursue any involuntary action against households who have been overpaid due to "administrative error".