

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,161

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her food stamps for the period August 1 through September 21, 1994. The issue is whether during all or some of this period the petitioner was entitled to a deduction from her income of medical expenses she incurred during the period.

FINDINGS OF FACT

The facts are not in dispute. The petitioner submitted an application for food stamps and medicaid on July 30, 1994. On that application and in oral discussions with her worker that day the petitioner indicated that she had applied for SSI but had not yet heard if she was eligible.

One question on the application asked if the petitioner had any medical expenses that weren't covered by insurance. The petitioner indicated that she paid \$15.60 per week for counseling. However, because out-of-pocket medical expenses are only deductible if a food stamp recipient is also a recipient of SSI (see infra), the worker did not discuss this question with the petitioner, and this expense was not counted as a deduction from the petitioner's income. Based on the petitioner's reported income the Department, by a notice dated August 4, 1994, denied the petitioner's application for food stamps. The worker advised the petitioner, however, to report any future receipt of SSI for medicaid purposes.

On or about September 14, 1994, the petitioner called her caseworker to report that she had just learned that she had been found eligible for SSI. The petitioner did not mention that she wanted to reapply for food stamps, and her worker did not advise her that her SSI status would allow her to deduct medical expenses from her income in determining her eligibility for food stamps, and he did not advise her to file a new written application. He did ask her, however, to provide written verification of her eligibility for SSI for medicaid.

On September 22, 1994, the worker received a note from the petitioner with a copy of her SSI determination, which indicated that the petitioner had been found eligible for SSI retroactive to March 28, 1994. In the note the petitioner asked her worker to let her know if this information would affect her

food stamps. On September 23, 1994, the Department sent the petitioner a notice (even though she had not filed a formal application) that her application for food stamps for September had been denied because she was over-income.

A few days later the petitioner was informed by a community advocate that medical expenses, including transportation, were deductible from income for food stamp purposes. On September 29, 1994, the petitioner filed a new application for food stamps, at which time she provided her worker with written verification of her out-of-pocket medical expenses. The Department determined that considering these expenses the petitioner was eligible for food stamps, and it sent the petitioner a notice finding her eligible as of September 21, 1994--the date the petitioner first asked if her eligibility for SSI would affect her food stamps.

There is no dispute in this matter regarding the existence or the amount of the petitioner's medical expenses going back to August 1, 1994. The issue is whether the Department should have backdated her eligibility for food stamps to then, or to some other date prior to September 21, 1994. The Department maintains that the petitioner cannot be found eligible prior to the date--September 21, 1994--that she indicated to the Department that she wanted her food stamp eligibility redetermined.

ORDER

The Department's decision is modified. The petitioner is found eligible for food stamps as of September 14, 1994, the date she notified the Department of her eligibility for SSI.

REASONS

The food stamp regulations are clear that out-of-pocket medical expenses are only deductible only if a recipient of food stamps is age 60 or over or "receives" SSI. Food Stamp Manual (F.S.M.) §§ 273.9(d) (3) and 271.2. Although the Social Security Administration found the petitioner retroactively eligible for SSI prior to August 1, 1994, she did not receive any SSI, including her retroactive benefits, until her notification on or around September 14, 1994. Therefore, the earliest date under the regulations that the petitioner would be entitled to deduct out-of-pocket medical expenses from her income for food stamp purposes is September 14, 1994. The Department's decision that the petitioner is not eligible for food stamps retroactive to her July 30, 1994, application is affirmed.

However, in light of the fact that the petitioner informed the Department of her SSI eligibility on September 14, 1994, and based on the information the Department had at that time, it must be concluded that the petitioner was entitled to food stamps as of that date. Under these circumstances, it is not necessary under the regulations for the petitioner to have filed an application for benefits on that date.

F.S.M. § 273.2(c)(2)(i) provides, in part:

State agencies shall encourage households to file an application form the same day the household or its representative contacts the Food Stamp Office in person or by telephone and expresses interest in obtaining Food Stamp assistance. . .

The Department admits that although it knew that the petitioner was in the process of applying for SSI it never informed the petitioner that her out-of-pocket medical expenses could be deducted from her income once she became eligible for SSI. Moreover, the Department had been informed in advance that

the petitioner had such expenses--she had listed some of them on her July 30 application. Given these circumstances, under the above regulation the Department was obligated to advise (i.e., "encourage") the petitioner to file a new application when she called on September 14, 1994, to report her receipt of SSI. (1)

F.S.M. § 273.17(a)(1) includes the following provision:

The State agency shall restore to the household benefits which were lost whenever the loss was caused by an error by the State agency, or by an administrative disqualification for intentional program violation which was subsequently reversed as specified in paragraph (e) of this section, or if there is a statement elsewhere in the regulations specifically stating that the household is entitled to restoration of lost benefits. Furthermore, unless there is a statement elsewhere in the regulations that a household is entitled to lost benefits for a longer period, benefits shall be restored for not more than 12 months prior to whichever of the following occurred first:

- i The date the State agency receives a request for restoration from a household; or
- ii The date the State agency is notified or otherwise discovers that a loss to a household has occurred.

In light of what the Department knew about the petitioner's situation when she contacted her worker on September 14, 1994, and considering the Department's obligations under § 273.2(c)(2)(i), supra, it must be considered the Department's "error" that it did not advise the petitioner on that date to file a new application for food stamps. There is no dispute that the petitioner was in fact financially eligible for food stamps as of September 14, 1994. Therefore, it must be concluded that the petitioner is "entitled" under § 273.17(a)(1), supra, to the benefits she "lost" due to the Department's error in not advising her to file an application as of that date.

The Department's decision is modified accordingly.

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1. Although the worker in this case tried to be helpful, and although he cannot be expected to have specifically remembered all the information the petitioner had provided in her July 30 application, in light of the provision in the regulations that receipt of SSI triggers deductions from income that are not otherwise allowable, it would appear that the Department has a duty to specifically advise all individuals who it knows are in the process of applying for SSI of this provision, and to encourage all individuals who report their receipt of SSI, who were previously determined to be over income, to promptly file a new application for food stamps.