

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,791

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare terminating her ANFC benefits. The issue is whether the petitioner was given adequate notice prior to the termination of her benefits.

FINDINGS OF FACT

1. At the time in question, the petitioner was an ANFC recipient on behalf of her six children and was placed in recipient Group 3. In June of 1995, the Department learned that the father of the petitioner's youngest child had or was about to move in with the petitioner. In fact, he did move in about the 15th of July.
2. Based on that information, the Department determined that the father's gross monthly income of \$2,150.00 had to be included for purposes of calculating the family's eligibility. That income made the entire family ineligible for ANFC benefits.
3. The petitioner does not dispute the calculation finding the family ineligible. She believed, however, based on conversations with her worker, that her eligibility would continue for that month and would cease on August 1, 1995. On July 1, 1995, the petitioner did receive a check representing sixty per cent of her monthly benefits. If she had been eligible for benefits on July 15, 1995, she would have received the remaining 40% of her monthly allotment in a check on that day.
4. The Department's computer prepared a written notice dated July 4, 1995, (a Wednesday and a state holiday) informing the petitioner that her ANFC entitlement of \$786 per month would be terminated effective July 15, 1995. That notice was signed by the petitioner's worker and a handwritten notation was made that it was mailed on July 5, 1995.
5. The envelope in which the notice was mailed was produced at the hearing by the petitioner. That

envelope was postmarked by a postage meter, presumably the one used by the Department, at St. Albans on July 6, and again at Burlington on July 6, at 5:19 p.m.

6. The petitioner testified that she received the notification on July 7, 1995, (a Friday) which is consistent with the postmarks and is found to be factually true. She did not receive the remainder of her monthly ANFC check on July 15, 1995.

7. No testimony was offered by the Department to explain the discrepancy between the handwritten date on the notice stating it was mailed on July 5 and the actual postmark of July 6. As the postmark is the more reliable of the two forms of evidence, it must be found that the letter was actually mailed on July 6, 1995, and delivered on July 7, 1995.

8. The petitioner asks that the check she would have received on July 15, 1995, be restored to her because the notice she received on July 7, 1995, did not give her ten days advance notice of the termination of her ANFC benefits.

### ORDER

The Department's decision to terminate the petitioner's benefits is modified to show an effective date of July 16, 1995, and the petitioner is to be paid benefits which would normally have been payable to her on July 15, 1995.

### REASONS

The Department's own regulations require that

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.

W.A.M. § 2228

The effective date of the termination of the petitioner's ANFC benefits was July 15, 1995. Under the Department's regulation cited above, notice to the petitioner had to be mailed at least ten days before that date or July 5, 1995, at the very latest. The postmark on the envelope showed that the notice to the petitioner was not actually mailed until July 6, 1995. Therefore, the earliest date on which the Department could take any action altering the grant was July 16, 1995.

The Board has reiterated on several occasions the importance of honoring the advance notice period which is required by federal law and has frowned upon attempts to shave off the ten day advance period in any way. See 45 C.F.R. § 205.10(a)(4)(i)(A), Fair Hearings No. 11,459, 12,699, 12,712. Failure to meet the period, even by one day, has never been considered *de minimis* by the Board because of the important rights that attach during that ten day period, such as the right to request benefits pending appeal, and because of the need to allow recipients time to adjust to the loss of income. (For a lengthy discussion of these policy issues see Fair Hearing No. 11,012.)

As a remedy for too-short notice periods, the Board has both nullified notices and modified them depending on the harm to the petitioners. A nullification of the notice in this matter would essentially mean that the petitioner would be owed benefits retroactive from the date of this decision to July 15, 1995, since no legal notice has yet been offered. That remedy is not justified in this matter because the petitioner admits that she is no longer eligible for benefits after July of 1995. A modification which would change the effective date of her notice to July 16, 1995, makes more sense.

When the notice is modified to take effect July 16, 1995, the petitioner must be found to be eligible on July 15, 1995. Whatever benefits she would have been eligible to receive on that date must be paid to her, including the second half of her monthly ANFC payment.

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