

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,022

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Appeal of)

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INTRODUCTION

The petitioner appeals the decisions by the Department of Social Welfare denying his applications for ANFC, food stamps, and general assistance (GA), and determining that he had been overpaid ANFC that he had previously received. The issue is whether the Department's decisions are in accord with the pertinent regulations.

FINDINGS OF FACT

The facts, insofar as they were determined, are not in dispute. The petitioner lives with his wife and their four children. Two of the children are disabled and receive SSI benefits that total \$1,034 a month. For several months prior to September, 1995, the petitioner was employed full time, and the family did not receive any benefits except for the two children's SSI.

In September the petitioner, based on the limited earning potential and insecurity he perceived at his job, quit the job and enrolled in college full time. Shortly after doing this he applied for ANFC, food stamps, and GA. The Department denied his ANFC application because of the petitioner's status as a full time college student. Food stamps were denied for 90 days because the petitioner had voluntarily quit his job without "good cause". GA was denied because the family's income (the two children's SSI) exceeded the ANFC payment standard for a family of six.

The ANFC overpayment decision results from a period of time before the petitioner became employed and during which the petitioner was receiving ANFC. While he was receiving ANFC benefits the petitioner moved from Chittenden to Franklin County. Although the Department was aware of the petitioner's move, it mistakenly continued to pay the petitioner ANFC based on the higher housing allowance given to residents of Chittenden County (see W.A.M. § 2245.3). The petitioner does not dispute that the amount of the overpayment assessed by the Department is the difference in ANFC payable to Chittenden County residents during the months the petitioner was no longer a resident of Chittenden County.

ORDER

The Department's decisions regarding the denial of the petitioner's applications for ANFC and GA and the determination of the ANFC overpayment is affirmed. The decision regarding the petitioner's application for food stamps is remanded to the Department to determine whether the petitioner meets that program's criteria for eligibility as a student.

REASONS

W.A.M. § 2333.1 includes the provision that to qualify for ANFC as an unemployed parent the parent must:

If a full-time student, as defined by the school, meets the following criteria:

- a. Does not have a high school diploma or its equivalent; and
- b. Is not in postsecondary education; and
- c. Is scheduled to attend classroom training at least (20) hours per week and actually attends an average of at least (16) hours per week each month.

NOTE: Applicants or recipients who are full-time students, as described above, and are 25 years or older are eligible as principal earners in ANFC-Up assistance groups only so long as granting eligibility to full-time students who are 25 years or older does not put the Reach Up program at risk of losing enhanced federal funding per 45 CFR 250.74.

As noted above, the petitioner has a high school diploma and is in postsecondary education. Thus, it is clear that he does not meet the criteria of eligibility for ANFC as set forth in the above regulation. (The hearing officer agrees with the Department that the "NOTE" in the above provision applies only to students who meet the criteria under subparagraphs a, b, and c.)

The GA regulations, at W.A.M. § 2600C, provide that applicants with minor children are eligible for GA only if their income in the last 30 days is "below the applicable ANFC payment level for that size household in similar living arrangements" unless the applicant is facing a "catastrophic situation" as defined by W.A.M. § 2602--i.e., is facing a court-ordered or constructive eviction, a natural disaster, a death in the family, or an emergency medical need. As noted above, the petitioner's children receive SSI benefits of \$1034 a month. This income is well in excess of the ANFC payment standard for a family of six (about \$885 a month--see W.A.M. § 2245) and the petitioner does not allege that he is facing a catastrophic situation as defined in the regulations.

At the hearing in this matter, the hearing officer and the Department explained to the petitioner that he can reapply for benefits if the family income decreases or if it is faced with a household emergency such as loss of housing or heat. As it now stands, however, the petitioner is not eligible for ANFC or GA, and the Department's decisions regarding those programs must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

As for the overpayment of ANFC assessed against the petitioner because he moved out of Chittenden County and was no longer eligible for the higher housing allowance payable to Chittenden County residents, W.A.M. § 2234.2 includes the following provision:

Overpayments of assistance, whether resulting from administrative error (or) client error...shall be subject to recoupment.

Under this provision, it does not matter who was responsible for the overpayment. Inasmuch as the basis of the overpayment is not in dispute (see W.A.M. § 2245.3), the Department's decision should be affirmed. Id.

As noted above, the Department denied the petitioner's application for food stamps because it determined that the petitioner was ineligible for 90 days due to his voluntarily quitting a job without good cause. While a 90 day disqualification is the sanction period specified in the regulations for such an occurrence (see Food Stamp Manual [F.S.M.] § 273.7[n][1][v]) the "good cause" provisions of § 273 (n)(3) include the following provisions:

Good cause for leaving employment includes the good cause provisions found in 273.7(m), and resigning from a job that does not meet the suitability criteria specified in 273.7(i). Good cause for leaving employment shall also include:

...

iii Acceptance by the primary wage earner of employment, or enrollment of at least full-time in any recognized school, training program or institution of higher education, that requires the primary wage earner to leave employment. . . .

At the hearing (because the issue was not brought to the hearing officer's attention) no evidence or argument was taken whether the petitioner's enrollment in college full time "required" him to leave his job within the meaning of the above provision. However, based on another provision in the food stamp regulations that may well disqualify students like the petitioner from eligibility in the first place (regardless of whether they quit a job), the Board determines that the question of the petitioner's eligibility for food stamps is remanded to the Department on this basis.

The regulation in question is F.S.M. § 273.5. Like the ANFC regulations (see supra) this regulation appears to disqualify college students from receiving food stamps except under a few specific circumstances. However, as of the time of the hearing it did not appear that the Department had yet considered the petitioner's eligibility for food stamps on this basis. Until it can be shown that this case can only be decided on the basis of whether the petitioner's quit was for good cause under § 273.7(n) (3) (iii), the Department--and the Board--need not consider this issue. However, until the Department decides the petitioner's eligibility for food stamps as a student under § 273.5, the Board need not consider this issue either. ⁽¹⁾

1. By the time the hearing was held in this matter (December 27, 1995) it appeared that the petitioner's 90-day disqualification for voluntarily quitting his job had elapsed, and the petitioner was advised to immediately reapply for food stamps. The hearing officer is not aware of the result of that reapplication. Thus, it appears that the Department may have already ruled on the petitioner's eligibility under § 273.5. If the petitioner is found eligible for food stamps under this provision, it will be necessary for the Board to consider whether the petitioner should have been found eligible in September, 1995 (and not been subjected to a 90-day disqualification period) as having quit his job with "good cause" under § 273.7(n) (3)(iii), and the taking of further evidence will be required for this purpose. However, if the petitioner is

found to be ineligible under § 273.5, the circumstances of his quitting work are a moot point. The petitioner can, of course, appeal any adverse decision by the Department regarding his eligibility under § 273.5, and he should promptly notify the Department or the Board if he wishes to do so.