

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,075

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare that he should repay to the Department an overpayment of ANFC due to the Department's error. The issue is whether the Department should be estopped from recouping this overpayment.⁽¹⁾

FINDINGS OF FACT

The petitioner does not dispute that he was overpaid \$11,425 in ANFC benefits during the period October 1, 1992, through October 31, 1993, due to the Department's failure to act on information regarding the petitioner's earnings from self employment during that time. He maintains, however, that the Department "encouraged" him to apply for ANFC during this period, and that if he had not received the ANFC for which he was not eligible, he would not have been overpaid. Thus, the petitioner argues, the Department should be "estopped" from recouping any overpayment to him.

The petitioner presented no offer of proof, however, that the Department knew or should have known that he was ineligible for ANFC when he applied, or, more importantly, that he is any worse off for having received the ANFC that he is now liable to repay than he would be if he had never received ANFC during the period in question.

ORDER

The Department's decision is affirmed.

REASONS

Welfare Assistance Manual (W.A.M.) § 2234.2 provides that the Department is required to recoup any ANFC erroneously paid to a household regardless of whether the household was at fault in causing the overpayment. The petitioner's only argument in this matter is that the Department should not have "encouraged" him to apply for ANFC in the first place. As noted above, however, the petitioner made no showing that he suffered any financial detriment due to the fact that he received ANFC during the period

in question.⁽²⁾ Absent this showing, there can be no claim of estoppel against the Department. See Stevens v. DSW, 159 Vt. 408 (1992).

Inasmuch as the Department's decision is in accord with the regulations, it must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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1. The petitioner was also overpaid food stamps during the period in question, but because overpayments of food stamps (unlike ANFC) that were due to Department error cannot be involuntarily recouped from recipients, there is no issue regarding the repayment of overpaid food stamps.

2. The Department is recouping the overpayment, without interest, at a rate of only five percent of the petitioner's ongoing ANFC benefits. Therefore, if anything, the petitioner should derive a considerable ultimate benefit from the fact that he received ANFC during this time.