

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,180

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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 \$245 in ANFC benefits for the months of November and December, 1995. The issue is whether the petitioner's late reporting of earned income disqualifies her from earnings "disregards" that would have applied if she had reported the income in a timely manner.

FINDINGS OF FACT

The facts are not in dispute. The petitioner receives ANFC and has earned income from part-time work. Sometime prior to December 1, 1995, the Department calculated the petitioner's ANFC benefits based on the monthly income the petitioner was reporting at that time.⁽¹⁾ The Department advised the petitioner, and the petitioner signed an agreement to the effect, that she was required to report any changes in her circumstances to the Department within ten days of their occurrence.

At the same time, the Department gave the petitioner a printed handout explaining some of her rights as a member of a "Group 2" household under the Department's Welfare Reform Program (WRP). The handout includes the advisement: "Your earnings are only partially counted against your ANFC benefits, so working can provide your family with a higher monthly income than the ANFC grant alone." The handout goes on to state that \$150 plus 1/4 of any remainder can be deducted from countable earnings each month. The handout makes no mention, however, of the recipient's duty to promptly report the receipt of income.

Beginning in November, 1995, the petitioner began working part time. The petitioner maintains that she did not promptly report her earnings to the Department because based on her reading of the "Group 2" handout she did not believe that they were enough to effect her ANFC grant, thus relieving her of her duty to report them.

Sometime in January or February, 1996, the Department learned of the petitioner's earnings in November and December, 1995, and assessed the petitioner an ANFC overpayment of \$245.00 for those months. The petitioner admits that she did not report her earnings that started in November, 1995, until

sometime after December 31, 1995. The Department admits that if the petitioner had reported this income in a timely manner, after applying the earned income disregards that apply to "Group 2" households, the petitioner's ANFC for those months would not have been affected, and there would be no overpayment. The issue in this matter is whether the petitioner is entitled to a retroactive application of the earned income disregards in determining whether she has been overpaid ANFC for those months.

ORDER

The Department's decision is affirmed.

REASONS

Welfare Assistance Manual (WAM) § 2234.2 includes the following provision:

Overpayments of assistance, whether resulting from administrative error, client error or payments made pending a fair hearing which is subsequently determined in favor of the Department, shall be subject to recoupment. Recovery of an overpayment can be made through repayment by the recipient of the overpayment, or by reducing the amount of payment being received by the ANFC group of which he is a member.

An overpayment is defined in the federal regulations as: "a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible." 45 C.F.R. § 233.20(a)(13). Both the state and federal regulations provide for the recoupment of overpayments regardless of whether it was the fault of the recipient household or the state agency.

As noted above, the issue in this case is whether the petitioner was eligible for the earned income disregard for the months of November and December, 1995, despite her late reporting of her income in those months. W.A.M. § 2254.1 includes the following provision:

. . . the disallowance of earned income disregards will be imposed on any new or increased earned income which the recipient fails without good cause to report by the end of the calendar month following the month in which the new or increased income was first received. Disregards are allowed for the income which is reported timely. Circumstances which could be considered as good cause for failure to report timely are limited to the following:

1. Natural disasters, such as fires or floods;
2. Illness of such severity that the recipient is unable to direct his or her personal affairs.
3. Refusal of an employer to provide earned income verification, or the unavailability of an employer to provide verification before the deadline;
4. Lost or stolen mail which is confirmed by the Postal Service;
5. Total gross earnings of the individual, less any allowable business expenses (self-employment only), do not exceed the amount of the standard employment expense deduction.

The above deadline for exemption from this disallowance has no effect on an assistance group's responsibility to report all changes in circumstances within 10 days of their being known to the group. When a recipient reports new or increased earned income after the 10-day period but no later than the end of the calendar month following the month in which the new or increased earned income was first received, any resulting overpayment must be recouped, but no disallowance will be imposed.

The above regulation imposes a "penalty" on late reporting households that consists of the loss of any earned income disregards for the months in which the income is not reported within a month following the month in which it was first received. Moreover, the "excuses" for such late reporting, whereby the penalty can be avoided, are expressly limited to those set forth in the regulation. The petitioner's alleged reason for nonreporting--i.e., her confusion as to her responsibility to report based on her reading of the "Group 2" handout--is not included as "good cause" in the regulation. Thus, regardless of whether the petitioner could be found to be at fault, it appears clear that she cannot be considered "eligible" for the earned income disregards in either November or December, 1995.

Absent the application of these disregards, the Department's calculation of an ANFC overpayment of \$245.00 to the petitioner for those months appears correct. Inasmuch as the Department's decision is in accord with the applicable regulations the Board is bound by law to affirm it. ⁽²⁾ 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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1. It is not clear whether the petitioner was already working prior to December 1, 1995. This fact does not affect the outcome of this matter, however.
2. The Board is compelled to comment however that the regulation as applied to the petitioner's situation produces an unnecessarily harsh and marginally defensible result.