

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 14,314

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Appeal of )

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare finding her liable to repay an overpayment of \$166.00 in food stamps for the months of January and February, 1996. The issues are whether the petitioner received her food stamps in February, whether the income of the petitioner's husband should have been considered available to the petitioner's household for that month, and whether the petitioner failed to report her own earned income to the Department in a timely manner.

FINDINGS OF FACT

As of October, 1995, the petitioner was living with her husband and their two children. The petitioner's husband received Social Security benefits and the petitioner was unemployed. The family received food stamps as a household of four persons.

On November 4, 1995, the petitioner filed a relief from abuse petition against her husband in Family Court. On November 6, 1995, the Court issued an order providing that the petitioner's husband not "cohabitate" with the petitioner, but not ordering him from the petitioner's house and not terminating his custody of the children. The order also provided that the petitioner's husband had to participate in a psychological evaluation and counseling.

According to the testimony of the petitioner and her husband, the husband then "moved" to an apartment near the petitioner's residence and began staying there overnight. They testified that as of that time, however, the husband would come to the petitioner's home every day from 6 A.M. to 11 P.M. During those hours he would care for the children and otherwise fully participate in family activities, including food shopping and meals. The petitioner had begun working in late October or early November (which raises a separate issue that will be dealt with below), and her husband was primarily responsible for the children when she was at work.

The petitioner did not notify the Department about the Court order and did not request that her food stamps be increased due to her husband's "absence" and/or the loss of his income. On November 16, 1995, the petitioner applied for GA, and on the application she included her husband as a member of her

household and claimed his income as available to the household (see infra). The petitioner later received food stamps for December and January as a household of four persons.

In early January, however, the petitioner's caseworker at DSW saw an item in the local newspaper that the petitioner's husband had been arrested for arson and was being held in jail. The worker took it upon herself to remove the husband from the petitioner's household and to recalculate the family's benefits for January, not counting the husband's income (at this time the Department was still not aware that the petitioner, herself, was working--see infra). This resulted in the Department mailing the petitioner a notice to this effect with an additional \$224.00 in food stamps for the month of January.

Only three days later, however, the caseworker saw the petitioner and her husband shopping together at a local food store. On January 19, 1996, the worker sent the petitioner a notice stating that as of February 1, 1996, the family's food stamps would be reduced to \$51.00 because the husband was back in the home. The petitioner did not appeal either action that was taken on her case in January.

Sometime in February, 1996, the Department received an "anonymous" report that the petitioner had been employed since November, 1995. The Department subsequently obtained payroll records showing that the petitioner had received paychecks biweekly from November 6, 1995, through February 18, 1996. The amount the petitioner earned in this period is not in dispute.

The Department's records show that on January 24, 1996, the petitioner was mailed \$51.00 in food stamp coupons for February. The petitioner alleges that she did not receive these coupons, but she did not report their non-receipt until she met with her worker on March 12, 1996, at a case review. The petitioner also alleged at that time that she had not received her March food stamps. The Department's records verified this, and the Department promptly issued the petitioner her March food stamps. The Department refused, however, to reissue her any food stamps for February.

The petitioner and her husband testified that the Family Court advised them on February 28, 1996, that the husband could move back in, and that since that time the husband has been living and sleeping in the petitioner's home.

On April 10, 1996, the Department notified the petitioner that she had been overpaid \$166.00 in food stamps for January and February, 1996, due to her not reporting her earned income to the Department during this time.<sup>(1)</sup> The petitioner appealed this decision on several grounds, which will be discussed separately below.

First, the petitioner now alleges (although she didn't do so prior to this fair hearing) that her husband should not have been included in her food stamp household anytime from November 4, 1995, until February 28, 1996, because of the court order that he not "cohabitate" with her. Putting aside the factual and legal questions of whether the petitioner's husband in fact slept elsewhere during this time and, if so, whether this means he was not "living together" with the petitioner's household during this period within the meaning of the pertinent regulations (see infra), this argument actually works to the petitioner's detriment. The petitioner's and her husband's testimony, and their contacts with the Department during this period, make clear that the petitioner and her children had access to and use of most, if not all,<sup>(2)</sup> of her husband's income during this time. He spent virtually all his waking hours with the family, and he fully participated in the family's shopping and meal preparation. Because of the regulations regarding income (see infra), it is clearly to the petitioner's benefit to have her husband considered to have been a

member of the household during this period. This is because a household of four is eligible for a higher benefit amount than a household of three with the same or similar income. In light of the above, in determining the amount of the petitioner's overpayment for February, 1996, the hearing officer deems it unnecessary to determine if the petitioner and her husband were "living together" during that month.<sup>(3)</sup>

The petitioner next claims that she should not be required to repay any food stamps for February because she never received her coupons that month. As noted above, the Department's records show that it mailed \$51.00 in food stamp coupons to the petitioner's address on January 24, 1996. As also noted above, the petitioner had received a notice from the Department dated January 19, 1996, that on February 1 she would be receiving this amount of food stamps. She had received her food stamps on or near the first day of each month since at least November, 1995. But, the petitioner did not report her non-receipt of food stamps in February until a review of her case that took place on March 12, 1996. The petitioner's demeanor at the hearing was feisty and assertive. Considering all the above, it strains credibility to conclude that the petitioner would not have received her food stamps at the beginning of February, but would not have reported this to the Department until the middle of March. It is, therefore, found that the petitioner received her February, 1996, food stamp allotment of \$51.00.

The final issue is whether the petitioner failed to report to the Department that she was working. Again, unfortunately, the petitioner's testimony in this regard is contrary to her prior actions, and otherwise deemed not credible. The petitioner testified that shortly after she began working in November, 1995, she called her worker. She states that she got her worker's voice mail and asked the worker to call her back. The petitioner testified that having not heard back from her worker, on January 8, 1996, she sent her worker a note telling her that she had started working in November--but that, even then, she heard nothing back from her worker.

The petitioner's worker testified that she has no record or recollection of any message from the petitioner on her voice mail. The worker also testified that the note the petitioner sent her, although dated January 8, 1996, was not received by the Department until April 11, 1996. The Department's date stamp on the note confirms the worker's testimony in this regard. Moreover, the note itself states: "As of January 8, 1996, I will be going to work, part-time at the Ramada Inn at a pay rate of \$5.50 an hour." As noted above, the employment records obtained by the Department (and not disputed by the petitioner) establish that the petitioner had begun receiving biweekly earnings from this job on November 6, 1995. The Department's records also show that the petitioner did not report her earnings when she applied for GA on November 16, 1995.

All the above evidence casts considerable doubt on the petitioner's allegation that she attempted to call her worker in November, 1995, to report her job earnings. It is found that the petitioner did not report, or attempt to report, her employment earnings to the Department until well after she was paid food stamps for January and February, 1996.

#### ORDER

The Department's decision is affirmed.

#### REASONS

Under the food stamp regulations, overpayments of food stamps resulting from "inadvertent household

error" must be recouped by reducing the household's ongoing benefits by ten percent. F.S.M. § 273.18 (d)(4)(i). Overpayments resulting from "administrative error" on the part of the Department cannot be involuntarily recouped from the household. Id. § (d)(4)(ii). As noted above, it is found that the petitioner received her food stamps in both January and February, 1996, and that because she ("inadvertently", as determined by the Department) did not report to the Department the fact that she was working at this time, she was overpaid food stamps for those months to the extent that the Department did not count her income.

The remaining issue is whether the Department should have counted the income of the petitioner's husband during these months. Section 273.1(a)(1)(iii) of the regulations defines a food stamp "household" as "a group of individuals who live together and customarily purchase food and prepare meals together for home consumption". Even though the petitioner's husband continued to purchase food and eat his meals with the family during this period, it is arguable that because he was under a court order not to "cohabit" with the petitioner, and allegedly slept elsewhere, he did not "live together" with the petitioner and her children within the meaning of the above regulation. At the hearing the petitioner maintained that her husband was not in the household, and that the family was, thus, underpaid food stamps for February; and that any overpayment caused by the nonreporting of her income should be offset by this underpayment.

However, because the income of the petitioner's husband was at all times available to the petitioner's household, the Board need not deal with the issue of "household composition". Regardless of where the petitioner's husband was "living", the evidence is clear that all or most of his income was fully available to the petitioner's household for the purchase of their food and all other household necessities. F.S.M. § 273.9 (b)(2)(iii) includes in the definition of unearned income, "support...payments made directly to the household from nonhousehold members". F.S.M. § 273.9(c) provides that no income other than that specifically listed shall be excluded. Regular contributions toward the purchase of food and all other household expenses by nonhousehold members are not included in the list of excluded income. Therefore, whether or not the petitioner's husband was a member of the petitioner's household during this period, his income was properly considered by the Department to be available to the household in the computation of the household's food stamps. In light of the above, the fact that the Department considered the petitioner's husband to be a member of the household for February works considerably to the petitioner's advantage, because the benefit amount payable to a household of four persons is greater than the amount payable to a three-person household with the same, or nearly the same, income. Given that the husband's income was available to the household during February, the Department's inclusion of the husband in the petitioner's household actually maximized the household's food stamp payment--and minimized the amount of the overpayment (caused by not counting the petitioner's earned income)--for that month.<sup>(4)</sup>

For all the above reasons, the Department's decision is affirmed.<sup>(5)</sup>

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1. The Department concedes that had the petitioner reported her earnings in a timely manner her December food stamps would not have been affected. Thus, no overpayment is claimed for that month. The Department maintains, however, that based on the petitioner's income from her employment, the petitioner should have received only \$175 in food stamps for January instead of the \$290.00 she actually received; and that she shouldn't have received any food stamps for February instead of the \$51.00 she

received that month--a total of \$166.00.

2. It is not clear if the petitioner's husband paid rent on the apartment in which he slept during this time.

3. The Department maintains (concedes) that it made an "error" in removing the petitioner's husband from the food stamp household in January (because it thought the husband was in jail--see supra); and it is not seeking to recoup the additional food stamps the petitioner received that month as a result of her husband's income not being counted. See F.S.M. § 273.18(d)(4)(ii).

4. The petitioner's advantage for January was even further enhanced because even though the Department excluded the husband from the petitioner's household that month, it also (erroneously) excluded his income, and it is not seeking recoupment of the additional food stamps paid to the petitioner that month as a result of this decision.

5. Although the Department's decision in this matter is affirmed, certain actions by the Department in this case should not pass without comment. Caseworkers should refrain from taking unilateral action on cases based solely on unverified information. See F.S.M. § 273.2(f)(2). In this case, the petitioner's worker took it upon herself (albeit, initially in what she thought would be in the petitioner's best interest) to increase the petitioner's food stamps based solely on a newspaper article she read. She then decreased the petitioner's food stamps based solely on her seeing the petitioner and her husband together in a store. Neither observation was sufficient under the regulations for her to have taken action on the petitioner's case without an attempt to notify the petitioner and verify the information. The irony in this case is that the worker's precipitous actions ended up costing the Department more than it did the petitioner.