

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,324

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare imposing a six month disqualification period on her receipt of Food Stamps based on a Court finding that she had committed fraud in the Food Stamp program.

FINDINGS OF FACT

1. The petitioner and her three children are a Food Stamp household. On March 18, 1996, the petitioner was convicted of fraud in the Food Stamp program, ordered to make restitution of \$2,315 to the Vermont Department of Social Welfare and placed on probation for five years. The sentencing order says nothing about an eligibility disqualification period as part of the penalty for fraud.
2. Even before her conviction, the petitioner had begun making restitution of \$62 per month through recoupment of a portion of her Food Stamps and currently owes about \$1,030. She is not appealing the recoupment of the overpayment.
3. On April 19, 1996, the petitioner was notified that she would not be eligible for Food Stamps for a six month period beginning May 1, 1996, based on her fraud conviction. That disqualification resulted in her Food Stamp benefits decreasing from \$300 to \$216 per month.
4. The petitioner appealed that determination because she was not told by either her Public Defender or the Court that she would be disqualified from receiving Food Stamps based on her conviction in addition to the requirement that she pay restitution.
5. In addition to her Food Stamps, the petitioner receives \$484 per month in ANFC benefits. She also lives in subsidized housing which reduces her housing costs to \$58 per month. The rest of her monthly income is consumed in utility, food, gas, car insurance and clothing payments for herself and her children. The loss of the \$84 per month in Food Stamp benefits will make it more difficult for her to meet her monthly food expenses.

ORDER

The decision of the Department is affirmed with regard to the imposition of the disqualification. However, the onset date of the disqualification is amended to March 18, 1996, instead of May 1, 1996.

REASONS

Vermont's Food Stamp regulations provide that:

1. Individuals found to have committed an intentional program violation either through an administrative disqualification hearing or by a Federal, State or local court, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the Program:

i. For a period of six months for the first intentional Program violation, except as provided under paragraphs (b)(2) and (b)(3) of this section;⁽¹⁾

...

5. If a court fails to impose a disqualification or a disqualification period for any intentional Program violation, the State agency shall impose the appropriate disqualification penalty specified in paragraphs (b)(1), (b)(2) or (b)(3) of this section unless it is contrary to the court order.

...

8. State agencies shall disqualify only the individual found to have committed the intentional Program violation, or who signed the waiver of the right to an administrative disqualification hearing or disqualification consent agreement in cases referred for prosecution, and not the entire household.

F.S.M. § 273.16

The above regulation requires that a disqualification period be imposed for six months against an individual adjudicated to have committed an intentional program violation (which would include fraud in obtaining benefits) unless it is contrary to a court order. The petitioner's order says nothing at all about the disqualification period. There is nothing in that order which would be contrary to the imposition of a civil remedy, in this case disqualification. The Board has held that the imposition of criminal penalties under state law does not alter the Department's right to impose additional civil penalties. Fair Hearing Nos. 11,263 and 12,451. In the absence of some specific language in the court order either waiving the disqualification period or establishing a different one, the Department is free, and indeed required, under its regulations, to impose a civil disqualification period.

Although the Department was correct in imposing the disqualification period, the initiation of the time period is incorrect. The Board, in a decision affirmed by the Vermont Supreme Court, held that the federal law at 7 U.S.C. § 2015(b) requires that following a court determination of fraud, a food stamp recipient "shall immediately upon the rendering of such determination, become ineligible for further participation in the program". Fair Hearing No. 12,390, Parrotte v. Department of Social Welfare, Vt.

Supreme Court Docket No. 94-464, January 13, 1995. In so holding, the Department's regulation providing for a postponement of the beginning of the period of disqualification (oddly and illegally reaffirmed in a February 1995 amendment), was invalidated as inconsistent with federal law. See F.S.M. § 273.16(g)(2)(ii).

Under the law, then, the petitioner's disqualification period had to begin immediately following her adjudication and sentencing for welfare fraud on March 18, 1996, not on May 1, 1996. Therefore, her period of disqualification should be amended with regard to the onset date, but the disqualification itself cannot be avoided. It may very well be that the petitioner misunderstood the full effect of her plea in the criminal fraud action. If so, she may have some remedy in the Court which she could pursue. However the Court's failure to waive or modify any civil disqualification period in its order is res judicata for purposes of this proceeding, and the Department may proceed with its disqualification process. See Fair Hearing No. 12,451.

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1. These two paragraphs concern using coupons in transactions involving the sale of a controlled substance or firearms and are not applicable here.