

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 14,480

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare terminating her ANFC and Food Stamp benefits. The issue is whether the terminations were premature.

FINDINGS OF FACT

1. The petitioner has been an ANFC and Food Stamp recipient for many years and has always cooperated with the Department and provided information necessary to determining her eligibility.
2. On July 1, 1996, the petitioner reported that she was married on June 29, 1996. On July 2, 1996, the Department mailed a notice to the petitioner thanking her for reporting her marriage and asking her to verify information concerning her situation, including proof of identity of her new husband, proof of his income and resources and requiring her new husband to register with Reach-Up. She was given until July 14, 1996, to respond to the letter or risk losing her benefits. That notice was never returned to the Department as "undeliverable".
3. The petitioner, who was in the process of moving at this time, did not receive the request for verification mailed July 2. She did not contact the Department before July 14, 1996, for any reason. The worker called her on July 16, 1996 and found that her number had been disconnected. At that point, action was initiated to terminate the petitioner's Food Stamps and ANFC for failure to cooperate.
4. Simultaneously, the petitioner's case came up for a periodic review and she was notified by a different worker by letter dated July 11, 1996, that she was required to report and verify certain information about her family, including income of the household. She was advised to contact the Department by July 26, 1996, and that all paperwork had to be completed by August 1, 1996 or her benefits would terminate on August 31, 1996. The petitioner did receive that notice and believed that her benefits would continue until the last day of August, even if she did nothing further. She believed at that time that her new husband's income would probably disqualify her from receiving public assistance benefits after August of 1996.

5. On July 22, 1996, the petitioner was mailed a notice telling her that her ANFC and Food Stamps would be terminated beginning August 1, 1996, for failure to provide information requested in the July 2nd letter. The petitioner received this letter sometime around July 25, 1996 and immediately called the DSW office to object to the August 1 termination date. She explained that she had not gotten the earlier notice and could provide the verification that was requested but was told that it was too late to provide the verification and she could do nothing at that point but appeal.

6. If the petitioner had been given the opportunity to provide needed verifications when she contacted the office on July 25, 1996, she would have reported that her new husband earned \$1830.29 for the month which when added to her income and subjected to an earned income disregard would have resulted in a \$1,391.02 countable income amount for a three person family, which is considerably above the \$597.30 ANFC payment standard for that size group. Similarly she would have been found to be ineligible for Food Stamps for a three person household. The petitioner does not dispute the lack of eligibility for either program based on the inclusion of her new husband's income.

### ORDER

The decision of the Department is affirmed.

### REASONS

Both the ANFC and Food Stamp regulations provide for the termination of benefits if there is a refusal to cooperate with providing verification of information necessary to determining eligibility. See F.S.M. § 273.2(d) and W.A.M. 2211. However, those regulations clearly distinguish between refusal to give information and mere failure, the latter of which is not reason in and of itself to terminate benefits. W.A.M. 2211.3 and F.S.M. 273.2(d)(I.). The Food Stamp regulations provide for closure only if there is actual refusal to cooperate which it defines as the ability to cooperate coupled with a clear demonstration from the household that it will not cooperate. F.S.M. § 273.2(d)(I.). The ANFC regulations provide for probing into whether the failure was for good cause before a termination will take place. The District Director has the discretion to determine good cause under that regulation which specifically includes "lost or stolen mail which is confirmed by the Postal Service." F.S.M. 2211.3.

In this matter, the facts do not support a conclusion that the petitioner refused to cooperate. A lack of response to one letter from a recipient who had a history of cooperation and who offered a plausible explanation for her failure to respond does not demonstrate the kind of willful non-compliance contemplated by the Food Stamp regulations. The facts also make it clear that the Department never considered whether the petitioner had "good cause" for her failure to respond to the first notice in a timely manner as is required by its own ANFC regulations. The Department takes the position that failure to meet a deadline in a notice duly mailed to the petitioner is sufficient to terminate her benefits. That position must be rejected because the regulations do not support it and because the Board has never interpreted "refusal" as occurring in such a circumstance. See Fair Hearings No. 10,217 and 12,994. There is no reason to believe that the petitioner received and ignored the notice sent to her to provide verification. The circumstances surrounding her failure, including her prompt report of her remarriage, her history of cooperation and her immediate contact with the Department when she learned she was to be terminated indicate a high degree of responsiveness and militate against a finding of refusal to cooperate. If she did not receive the Department's request, and there is no reason to believe otherwise, she had good cause for not responding to it and should have been allowed to present her verification on July 25, 1996, when she discovered the error. Action terminating her benefits should have then been

deferred until her eligibility was determined.

The petitioner was never afforded the opportunity to verify her income until she got to the hearing on her closure when the hearing officer asked for an assessment of her eligibility. That assessment showed that the petitioner was not eligible for ANFC and Food Stamps at any time since the beginning of July of 1996 due to her husband's income (an assessment she does not dispute).

If the petitioner had made a timely response to the initial request for information, on or before July 14, 1996, she would have been found ineligible then and undoubtedly would have had her benefits terminated by the end of that month. Although the petitioner is, as discussed above, effectively entitled to an extension of the verification deadline, she cannot now use her lack of knowledge of the original deadline to create or extend eligibility which is subsequently found to have been nonexistent. Therefore, the Department's decision to terminate her benefits at the end of July 1996, as set forth in the original notice was correct but for a different reason, her lack of eligibility, rather than her failure to cooperate.

The petitioner's failure to receive that notice of termination, which appears to have been duly mailed, does not create new rights in her to benefits even if she had the misfortune of failing to receive that notice. Therefore, the decision of the Department to terminate her benefits as of the end of July 1996, must be upheld because the facts show that the petitioner was not eligible for those benefits and was notified at least ten days in advance of her termination of that fact. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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