

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,670

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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 ANFC benefits of \$618 for the period October 16 through November 15, 1996. The issue is whether the Department's decision is in accord with the pertinent regulations.

FINDINGS OF FACT

The facts are not in dispute. In August, 1996, the petitioner reported to the Department that her husband had recently started working. For whatever reason, the Department failed to promptly follow up on this information, which would have been to ask the petitioner to verify those earnings. In late October, 1996, the Department discovered this lack of verification and notified the petitioner to verify her husband's earnings. The petitioner provided this verification; and the amount of her husband's earnings led the Department to close the petitioner's ANFC and Food Stamps effective November 16, 1996. The petitioner does not dispute the closing of her grants on that date.

However, the Department also notified the petitioner that due to its error in not promptly instructing the petitioner to verify her husband's earnings, the petitioner was overpaid ANFC and Food Stamps for the period October 16 through November 15, 1996.⁽¹⁾ The Department admits that the overpayments are due to its own administrative error.

ORDER

The Department's decision is affirmed.

REASONS

The ANFC regulations, at W.A.M. § 2234.2 provide in pertinent part:

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.

The Food Stamp regulations differ in that overpayments that are due to administrative error cannot be recouped involuntarily from a household. See F.S.M. § 273.18. The Department is not attempting to collect the petitioner's Food Stamp overpayment.

Although the petitioner feels that the Department should not be able to collect the ANFC overpayment either, the regulations are clear that the Department has the right to do so.⁽²⁾ Inasmuch as the Board is required by law to affirm a decision of the Department that is in accord with the regulations, this must be the result in this case.⁽³⁾ 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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1. Had the Department properly instructed the petitioner, and had the petitioner provided the requested information within the maximum amount of time allowed for her to do so, October 16 would have been the earliest date her benefits could have been closed.
2. As a practical matter, unless and until the petitioner goes back on ANFC, the Department will not be able to recoup her ANFC overpayment either.
3. The ANFC overpayment provisions were written in response to federal requirements that may no longer be in effect. Therefore, it may well be that the Department is now free to amend certain provisions in its regulations that it feels may be too harsh. However, it is clear that the Board does not have the authority to order any such amendments.