

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 14,979

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare establishing an overpayment amount for ANFC and Food Stamps and assigning error to the petitioner for purposes of recoupment of the overpaid amounts.

FINDINGS OF FACT

1. The petitioner, her ex-husband, and three children were a household assistance unit for ANFC and Food Stamps until the parents divorced in December of 1996. The petitioner and her children continue to receive benefits. During the Spring of 1993, the petitioner's then husband became employed. In July of 1993, he worked for 171 and one-half hours and earned \$1,502.82. During August of 1993 he worked for one hundred and sixty-two and one-half hours and earned \$1,496.35.
2. The Department was not aware that the petitioner's ex-husband worked during this period of time and paid the petitioner's household Food Stamp benefits in the amount of \$553 and ANFC benefits in the amount of \$1,214 for July and August of 1993 to which it was not entitled based on the income available to it. The Department determined that no ANFC was payable for those two months because the petitioner's ex-husband had worked more than one hundred hours in each month. Neither was the household eligible for any Food Stamps for either month because it failed the gross income test for July and the net income test for August.
3. The Department became aware of the petitioner's ex-husband's employment late in July of 1993 during an interview with the two of them in which they gave the Department information about his employment in order to establish the number of quarters worked by him. At that time the petitioner and her ex-husband willingly signed a release of information form for the Department to receive all information about his work history.
4. In February of 1994, the petitioner was notified that the Department was referring her to the Fraud Unit for investigation of the circumstances surrounding her failure to report the income at issue. This referral was based on an allegation by the DSW worker that the petitioner had been to the office many times over the summer of 1993 and had never mentioned that her husband had been employed.

Eventually the investigation was concluded and a decision was made not to prosecute the petitioner for fraud.

5. On April 8, 1997, the petitioner was mailed a notice that she was considered to have been overpaid ANFC in the amount of \$1,214 for the months at issue and that \$67 would be deducted from her ANFC check each month until the amount was repaid. The notice did not say when the deductions were scheduled to begin. On April 9, 1997, she was also notified that beginning May 1, 1997, her Food Stamp allotment of \$313 per month would be subjected to a \$62 monthly deduction "to repay the overpayment which you were told about in a previous letter." The amount of the overpayment was not stated in the letter but the petitioner was told that her period of repayment was "estimated to end February, 1998." The Department was unable to produce the prior letter provided to the petitioner. However, it indicated that it had previously given the petitioner an incorrect figure for overpayment of \$620 which should have read \$553.

6. The petitioner timely appealed the decision and no recoupment took place in either program. The Department produced verification of the petitioner's ex-husband's income during the period at issue which was not disputed by the petitioner. Neither did she dispute that the family received Food Stamps and ANFC during that period of time amounting to \$1,214 and \$553, respectively, to which she was not entitled. The verification received by the Department showed that her ex-husband began to work in late May of 1993 at a company in Massachusetts and worked there on a more or less full time basis for June, July, August and September of 1993, and sporadically for the next few months.

7. The petitioner asks that no recoupment take place from her benefits because she was unaware that her ex-husband was working. Her credible testimony was that she thought he was out of state looking for work during the Spring and Summer of 1993. She was unaware that he had found work until late summer at which time she joined him in Massachusetts where she lived for about a month before returning to Vermont. It was not unusual for her husband not to tell her his whereabouts or what he was doing. He did not use the family's ANFC money to live on, instead relying on cash borrowed from his parents and from time to time obtaining money by illegal means, i.e. forged checks. No evidence was presented that the petitioner has ever had difficulty with the Department before this time over a reporting issue.

8. Based on the above, it is found that the petitioner's failure to report her ex-husband's 1993 income was inadvertent error on her part.

#### ORDER

The Department's decision to recoup ANFC benefits in the amount of \$67 per month is affirmed. The decision to recoup \$62 per month in Food Stamp benefits is reversed and remanded to the Department for notification to the petitioner of the amount of the Food Stamp overpayment, how it was calculated, her options for repayment, and for correction of the amount which would be recouped from her ongoing Food Stamp grant (ten percent) if she chooses that option.

#### REASONS

The ANFC program provides for the repayment of overpayments as follows:

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. . . .

Recoupment shall be made each month from any gross income (without application of disregards), liquid resources and ANFC payments so long as the assistance unit retains from its combined income 90 percent of the amount payable to an assistance unit of the same composition with no income. For assistance units with no other income, the amount of the recoupment will equal 10 percent of the grant amount.

If, however, the overpayment results from Department error or oversight, the assistance unit must retain from its combined income 95 percent of the amount payable to an assistance unit of the same composition with no income. For assistance units with no other income, the amount of the recoupment will equal 5 percent of the grant amount. . . .

W.A.M. § 2234.2

The petitioner does not dispute that her assistance group was overpaid in the amount calculated by the Department. The petitioner's overpayment of ANFC payments was not due to error or oversight by the Department, but rather her own inadvertent error. Therefore, the Department is required to recoup the overpaid amounts by reducing her grant by ten percent per month. As she has only ANFC income of \$671 per month, the calculation is relatively simple--she must repay \$67 per month. The Department has notified her of its intention to recoup just that amount and it cannot be said that this is error on the part of the Department.

Under the Food Stamp regulations, the Department is required to make a claim for the repayment of overpayments of Food Stamps resulting from "inadvertent household error". F.S.M. 273.18(a). However, that claim can be repaid in many ways and must be initiated by a demand letter which clearly sets out the amount and origin of the overpayment and the options for repayment available to the recipient. F.S.M. 273.18(d)(3). There is no evidence that the petitioner ever got such a letter in this matter. Furthermore, the Department's proposal to recoup \$62 per month is much more than the ten percent of the monthly allotment specified in the regulations when Food Stamp reduction is the selected method of repayment. F.S.M. 273.18(g)(4)(i). The petitioner was clearly overpaid Food Stamps in an amount equal to \$553 but she has a right to receive notification of her repayment options and a right to have a recalculation of her reduction amount if monthly recoupment occurs from her benefits. Therefore, a remand to the Department to take that action is appropriate.

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