

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 16,580
)
Appeal of)

INTRODUCTION

The petitioner appeals a notice of recoupment sent to him by the Department of PATH.

FINDINGS OF FACT

1. The petitioner was notified on May 9, 2000, that his electronic ANFC account had accidentally received two deposits on May 1, 2000. The petitioner was supposed to receive \$339 but actually received \$678. This error occurred because the Department had initiated a vendor payment to the petitioner's landlord on May 1 which it reversed into the petitioner's account twice.

2. The notice sent to the petitioner advised him that he must repay the \$339 overissuance and that if he had not contacted the Department by June 9, they would assume that he wished to repay through monthly reduction of his grant.

3. When the Department heard nothing, recoupment in the amount of 10% (\$56) was initiated from the petitioner's grant starting with the July 1, 2000 check. The Department later

agreed that the recoupment should not have occurred without a prior ten-day notice telling him of the actual amount to be deducted. In addition, the amount deducted per month should have been 5%, not 10%, of the grant amount. The petitioner was informed that the actual amount to be deducted each month should be \$28. The amounts already recouped were reversed and the matter was put in abeyance pending the outcome of the fair hearing.

4. The petitioner does not deny that he received the double payment. He asserts that he had trouble getting his mail because he was moving around in May or he would have responded to the original letter establishing the recoupment amount. He opposes the recoupment both because it was not his fault that the overpayment occurred and because his family cannot afford any reduction in their monthly payment. At the time of the appeal, they were homeless and living in motels.

ORDER

The Department's decision is affirmed.

REASONS

The ANFC regulations require that any benefits which are overpaid to recipients are treated 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 the 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 the 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.

The language in the regulation clearly requires the repayment of any overpayment regardless of who was at fault. Fault only becomes an issue when the amount of the overpayment is determined. The Department correctly asserts (at least at this point), that it is required to recoup the overpayment at a rate of 5 percent per month because it caused the overpayment. Unfortunately, there is no provision in the regulation which

would prevent a recoupment based on hardship to the family. As the Department's decision to recoup at the lower rate is consistent with the regulations, the Board is bound to affirm the Department's decision. 3 VSA § 3091(d), Fair Hearing Rule 17.

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