

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 16,750
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision of the Department of PATH assessing an overpayment of ANFC based on the petitioner's failure to report his wife's earnings during the period September 1998 through March 1999. The issue is whether the petitioner's wife is eligible for work-related deductions in the computation of the overpayment.

FINDINGS OF FACT

1. The petitioner and his wife were recipients of ANFC at all times during the seven-month period in question. During this time the petitioner's wife worked part time.

2. The petitioner alleges that based on discussions he had previously had with his worker he misunderstood his duty to report the receipt of these wages to the Department. As a general matter, earned income is subject to a \$150 per month disregard in calculating a family's eligibility for ANFC. The petitioner maintains that he understood this to mean that he didn't have to report his wife's earnings to the Department if they were under \$150 a month.

3. It turns out, however, that in all but two of the months in question (September 1998 and February 1999) the petitioner's wife's earnings exceeded \$150. During those five months her income ranged from \$157 to \$255. The Department has agreed to allow the petitioner the earned income disregard in the two months her earnings were below \$150, thereby effectively eliminating any alleged overpayment of ANFC during those months.

4. The Department has determined that the petitioner is liable to repay an ANFC overpayment of \$1,026.75 for the remaining five months of the period. In determining the amount of the overpayment the Department has not allowed the petitioner a \$150 per month disregard.

5. The petitioner agrees that the Department has the correct information on the amount of unreported income his wife made during those months. As best the hearing officer can determine, the petitioner also does not claim that he had any reasonable basis to believe that he did not have a duty to promptly report his wife's income in any month in which she made more than \$150.

6. Nonetheless, the petitioner argues that in the overpayment calculation his wife should have received the work deductions from ANFC she would have received if this income had been timely reported. He claims that the failure to report was an inadvertent error on his part and that it is

unfair not to allow the \$150 disregard for those months (which would lower the overpayment to \$260.75).

ORDER

The decision of the Department is affirmed.

REASONS

The ANFC regulations require the inclusion of earned income when calculating eligibility including "all wages, . . . from activities in which the individual is engaged as an employee." W.A.M. § 2253. The issue in this matter is whether or not the petitioner's wife was eligible for the earned income work disregards in the ANFC program when the correct amount of her ANFC grant for the months September 1998 through March 1999 was recalculated.

W.A.M. § 2254.1 includes the following provision:

. . .the disallowance of earned income disregards will be imposed on any new or increased earned income which the recipient fails without good cause to report by the end of the calendar month following the month in which the new or increased income was first received. Disregards are allowed for the income which is reported timely. Circumstances which could be considered as good cause for failure to report timely are limited to the following:

1. Natural disasters, such as fires or floods;
2. Illness of such severity that the recipient is unable to direct his or her personal affairs.
3. Refusal of an employer to provide earned income verification, or the unavailability of an employer to provide verification before the deadline;

4. Lost or stolen mail which is confirmed by the Postal Service;
5. Total gross earnings of the individual, less any allowable business expenses (self-employment only), do not exceed the amount of the standard employment expense deduction.

The above deadline for exemption from this disallowance has no effect on an assistance group's responsibility to report all changes in circumstances within 10 days of their being known to the group. When a recipient reports new or increased earned income after the 10-day period but no later than the end of the calendar month following the month in which the new or increased earned income was first received, any resulting overpayment must be recouped, but no disallowance will be imposed.

The above regulation imposes a "penalty" on late reporting households that consists of the loss of any earned income disregards for the months in which the income is not reported within a month following the month in which it was first received. Moreover, the "excuses" for such late reporting, whereby the penalty can be avoided, are expressly limited to those set forth in the regulation. See Fair Hearing Nos. 15,493 and 14,180. Even if fully credited, the petitioner's principal alleged reason for nonreporting--i.e., his confusion as to his responsibility to report--is not included as "good cause" in the regulation. Regardless of whether the petitioner could be found to be at fault¹, it is clear that he cannot be considered "eligible" for the earned income disregards in any of the remaining months in question.

¹After initiating the process, the Department dropped its claim that the petitioner committed an intentional program violation in failing to report his wife's income.

Absent the application of these disregards, the Department's calculation of an ANFC overpayment of \$1,026.75 appears correct. The petitioner does not challenge the underlying obligation of the Department to establish and recover overpaid amounts in the ANFC programs.² Inasmuch as the Department's decision is in accord with the applicable regulations, the Board is bound by law to affirm it. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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²Welfare Assistance Manual (WAM) § 2234.2 includes the following provision:

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.

An overpayment is defined in the federal regulations as: "a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible." 45 C.F.R. § 233.20(a)(13). Both the state and federal regulations provide for the recoupment of overpayments regardless of whether it was the fault of the recipient household or the state agency.

The Food Stamp regulations contain similar provisions requiring the establishment of claims for all overpaid amounts whether they are "inadvertent household error or "administrative error." See F.S.M. 273.18 et seq. The petitioner does not dispute the Department's determination that he was overpaid Food Stamps during the period in question.