

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 17,090
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare establishing an overpayment of Food Stamps based on a calculation error made by the Department. The issue is whether the Department can assess an overpayment amount when the recipient is not at fault for the overpayment.

FINDINGS OF FACT

1. The petitioner has been a Food Stamp recipient for some time and has always accurately reported her circumstances to the Department. During a review in April 2001 the Department discovered that since October 2000 the petitioner had been receiving Social Security Widows benefits of \$552 per month that it had failed to factor into the petitioner's Food Stamp eligibility.

2. A notice was mailed to the petitioner on April 23, 2001, advising her that effective June 1, 2001 her Food Stamps would be reduced from \$130 a month to \$10. The notice also advised her that due to an error on the part of the Department

she had been overpaid \$840 in Food Stamps for the period October 1, 2000 through May 31, 2001, and that she would have to repay this amount by having her ongoing Food Stamp grant reduced by \$10, leaving her with no Food Stamps payable to her at this time.

3. The petitioner does not dispute that she was ineligible for the months at issue and that she received \$840 in Food Stamps to which she was not entitled. She argues, however, that it is not fair that she should have to pay back any amounts that were sent to her before the Department discovered its error.

ORDER

The decision of the Department is affirmed.

REASONS

Under the Food Stamp regulations, the Department is required to "establish a claim against any household that has received more Food Stamp benefits than it is entitled to receive." F.S.M. § 273.18(a). "A claim shall be handled as an administrative error claim if the over issuance was caused by State agency action or failure to take action . . ." F.S.M. § 273.18(a)(2). A state agency is required to "take action to establish a claim against any household that received an over

issuance due to an . . . administrative error if . . . [a] state agency incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment . . . " so long as not more than twelve months have elapsed between the month the over issuance occurred and the month the state agency discovered the error. F.S.M. § 273.18(b)(2)(ii). If administrative error occurred, the size of the Department's claim must equal the difference between what the household should have received and what the household was actually allotted. F.S.M. § 273.18(c)(1)(ii). If the household is continuing to receive Food Stamps, the required repayment is the greater of ten percent of the household's monthly allotment or \$10 per month when the claim is based on administrative error. F.S.M. § 273.18(g)(4)(ii).

Inasmuch as the Department's actions in this matter are required by the regulations the Board is bound by law to affirm. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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