

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 17,324  
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Appeal of )

INTRODUCTION

The petitioner appeals a decision of the Department of Prevention, Assistance, Transition, and Health Access (PATH) regarding the calculation of Reach Up Financial Assistance (RUFA) grants for children in her care.

FINDINGS OF FACT

The following findings are based partly upon a stipulation by the parties and partly upon testimony of the petitioner and her worker.

1. The petitioner is a fifty-seven year old legally blind woman who receives disability and other benefits of about \$1,100 per month. She lives in a rented single family dwelling along with a varied and changing group of family members and friends. She currently lives with C.W., her nineteen year old disabled granddaughter, N.W., her seventeen year old granddaughter, Z.M. her three year old ward, B.W. her disabled adult daughter and B.W.'s adult friend R.V. Others have lived in the household from time to time but the parties

agree that their presence has no effect on the outcome of this matter.

2. Since April of 1993, the petitioner has been the caretaker relative for N.W. N.W. has received an ANFC grant for some time which was calculated based on a \$300 per month rental expense allocation for this child. Although records have been destroyed for the pre-May 2000 time period, it appears that the \$300 came from the fact that the petitioner's rent was \$600 per month and that one or more other household members were already contributing \$300 per month to the rent.

3. The petitioner became the caretaker guardian for Z.M. on June 15, 1999. She applied for ANFC for this child and had a conversation with the worker about his shelter expense. The worker recalled that during their conversation, the petitioner said Z.M. was just a small baby and so she did not think that he should be charged a shelter expense. For this reason, no shelter expense was added for this child. However, there is no evidence that the petitioner was informed that the amount of benefits that she would receive was directly tied to the amount of shelter expense allocated for the child. The petitioner says now that if she had realized that connection, she would have asked for the maximum possible as she is a low-income woman and had little money to care for

these children. The petitioner's assertions are found to be credible as it would not be reasonable to think that an impoverished person would knowingly turn down money needed to care for a child.

4. Z.M. was added to the assistance grant for A.W. and they received benefits for a household of two. PATH acknowledges that this was an incorrect action and that the children should have been two households of one person each because they are not related to each other.

5. In June of 2000, the petitioner moved and her rent went up to \$1000. Although she reported this fact to the Department and the fact that she continued to get a \$300 per month contribution towards the rent from other household members, the shelter allowance for the children in her care was not adjusted. Again, the worker asserts that the petitioner did not ask for an allocation. The petitioner could have received a \$350 rental allocation for each child. Again, the petitioner asserts credibly that she did not know that her benefits would increase if she did ask for such an allocation. The petitioner was receiving a grant of about \$478 per month during this time period. She testified, again credibly, that she was nearly destitute and had difficulty making ends meet for the two children.

6. In November of 2000, the petitioner became the relative caretaker of another granddaughter, A.W. She applied for a grant for this child and was again asked about the rental allocation. The petitioner replied that she didn't think the child would be in her household for very long so she would not charge her rent. Again, the evidence indicates that no attempt was made to explain to the petitioner that she could maximize her grant by allocating some of the household rent to the child. The petitioner, again, credibly testified that she would have claimed the maximum allocation if she had known because she had little money to live on. At this time, a rental contribution of \$300 was being made to the petitioner by another household member leaving her with \$700 in rental expenses to cover with other income. Only \$300 was allocated as a rental expense to the three children.

7. A.W. was added to the grant with the other two children as part of a three-person household even though she is not the sibling of either N.W. or Z.M. The Department acknowledges that the inclusion of these three children in one grant was an error and that each child should have received an individual grant as a one-person household. The three received a total grant of \$583 per month. If they had been

separated and had maximum shelter allocations, they would have had three grants totaling over \$1300 per month.

8. In June of 2001, the petitioner's rent went up to \$1,300 per month. A.W. was no longer a member of the petitioner's household at that time. Records indicate that the petitioner was receiving a rent contribution of \$650 from other individuals in the household. The petitioner had a remaining rental obligation of \$650 but still had only \$300 being allocated to the two children. The children were also continuing on the same grant. There is no evidence that the petitioner was advised at this point that she should raise the amount of the rental allocation to maximize benefits to the children.

9. In September of 2001, PATH notified the petitioner that her grant would be reduced again to around \$400 because A.W. was no longer in the household. The petitioner did not think she could live on this amount and went to legal aid to talk about the low amount of the grant she was getting. She learned from a legal aid attorney that each child should be on his or her own grant and that each child could have a portion of the petitioner's entire shelter expense attributed to him or her. She filed an appeal in September of 2001 asked that a corrected benefit be issued to her as of the date Z.M. came to

her household in June of 1999 which would include a full rental calculation.

10. In response to this appeal, PATH determined in December 2001 that N.W., Z.M. and A.W. should have been on separate grants and that the grants would be corrected retroactively for twelve months from September 2001, the month of discovery of the problem. PATH gave each child a \$375 shelter allowance and her or his own grant which resulted in a \$419 payment for each. The Department declined without giving a reason to extend the twelve-month retroactive period back to June of 1999, as the petitioner had requested. The Department also declined to correct the grants retroactively to reflect maximum shelter allowances which the children could have received back to June of 1999.

ORDER

The decision of PATH refusing to correct the payment retroactively to June of 1999 and to add in the maximum possible shelter deduction is reversed.

REASONS

PATH has conceded that it had been in error since July of 1999 in failing to pay the children in petitioner's care

separate grants based on the fact that they are not siblings. See Welfare Assistance Manual 2242.<sup>1</sup> The Department agreed to put the two remaining children in the household into separate grants for the future and to separate all of the children into separate grants retroactively for a twelve-month period from the date the matter was raised on appeal. That separation will result in a retroactive payment of over \$3,000 to the three children. It has also agreed for the future to allow each of the children a \$375 per month shelter allowance. It has refused, however, to adjust the retroactive grants to increase the shelter allowance or to make corrections all the way back to July of 1999 when the incorrect calculations began.

PATH calculates grant amounts by combining a basic need standard for the number in the household (in this case each child is a one-person household) with a shelter expense amount to determine a "need standard." W.A.M. 2245. PATH makes payments by subtracting other income from the standard of need and then "ratably reducing" the amount by a certain percentage

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<sup>1</sup> That section provides that "An ANFC assistance group must include one or more eligible dependent children. In addition, the assistance group must include all **siblings (including half-siblings)** who live with the dependent child. . ."

depending upon what the Department can afford to pay out.

W.A.M. 2245.24.<sup>2</sup>

The basic need standard is set by regulation (currently \$428 for a one-person household) and is not calculated based on actual expense. W.A.M. 2245.2. The shelter allowance, however, is based on the actual verified costs of shelter up to a certain maximum (currently \$400 outside of Chittenden County). W.A.M. 2245.3. Special rules apply when one or more RUFA assistance groups live in the same household and share shelter expenses with others who are not part of their assistance groups. W.A.M. 2245.5. The applicable regulation is as follows:

Shared Households

Total monthly requirements of each assistance group which shares a household or housing unit with one or more separate assistance groups and/or non-recipient members shall be computed in accordance with the following rules . . .

3. When one or more assistance groups share a household headed by a non-recipient:
  - a. Budget assistance group(s) for full basic [needs] considering eligible members of the assistance group;
  - b. Include housing cost as incurred by each recipient group, each group's share not to exceed the housing allowance maximum, and the sum of all shares, including any non-

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<sup>2</sup> The current amount that the Department will cover is 51 percent of need. W.A.M. 2245.24

recipient's share, not to exceed the total cost of housing. . .

W.A.M. 2245.5

This regulation allows the assignment of a shelter amount to any RUFA household up to the actual amount of the rental liability with two limitations: (1) the amount of the shelter allowance cannot be greater than the maximum shelter amount set forth in the regulations, and (2) that amount when added to other contributions made by other members of the household cannot exceed the amount of the actual rent. The Department has tacitly acknowledged the operation of this rule by allowing each of the children presently in the household to prospectively take a \$375 shelter allowance. That amount is less than the \$400 maximum and when added to contributions made by other household members (presently \$550 per month) does not exceed the rent of \$1,300 per month.

It goes without saying that any low-income person who fully understood the operation of this rule would want to claim the maximum shelter allowance in order to get the highest possible benefit. Getting the maximum is particularly critical since the allowed basic and shelter expenses are

reduced by almost one-half before payments are made.<sup>3</sup> It is also indisputable that PATH has an affirmative obligation to explain the operation of the benefits programs to recipients so they may obtain the maximum benefits payable to them.

Lavigne v. Department of Social Welfare, 139 Vt. 114 (1980).

Although the petitioner and the worker apparently had many conversations about shelter allocation as the rent changed and children moved in and out of her household, there is no evidence that the worker made any attempt to explain to the petitioner that the assignment of a shelter allocation was an advantageous step to take because it meant that she would get more in ANFC benefits. The conversations as recounted by the worker in this matter make it appear that the petitioner, who is an unsophisticated person, was anxious not to look as if she were taking advantage of the children in her care. She obviously did not understand the actual monetary value of the housing she provided for the children's well being and did not make a connection between her failure to allocate a shelter charge and her lack of money for the children. This is information which should have been carefully explained to her

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<sup>3</sup> This means that if the petitioner claimed that the child's shelter expense is \$375 she will only actually receive \$187.50 towards the rent for that child.

before she waived any shelter allocation. PATH failed in its duty to her when it did not give her this careful explanation.

After the intervention of the petitioner's lawyer, PATH has adjusted the allocation for the future. The remaining questions are whether this rent allocation can be adjusted retroactively and whether any correction can be made to either the size of the grants or the allocation of rent for the period prior to twelve-months before the appeal. The regulations in the Reach Up program governing payment adjustments provide in pertinent part as follows:

Underpayments

Department errors that resulted in underpayment of assistance shall be promptly corrected retroactively under the following conditions:

1. When the information was available to the department at the time the error occurred to enable authorization of the correct amount.
2. Retroactive corrected payment shall be authorized only for the 12 months preceding the month in which the underpayment is discovered. Payments shall be authorized irrespective of current receipt of, or eligibility for, benefits.
3. The retroactive corrective payments shall not be considered as income or as a resource in the month paid or in the following month.

Corrective payments shall be retroactive to the effective date of the incorrect action, not subject to the above limitations, when:

1. Ordered as a result of a fair hearing or court decision.
2. Authorized by the Commissioner as the result of a department decision rendered on a formal appeal prior to hearing.

Retroactive corrective payments will be applied first to any outstanding unrecovered overpayment. The amount of corrective payment remaining, if any, shall be paid to the assistance group.

W.A.M. 2234.1

Under this regulation PATH has the strict obligation to correct any payments retroactive to twelve months prior to discovery if it had information available to it at the time the error occurred which would have enabled it to authorize the correct amount. In this case, as PATH readily concedes, it had information that the children were not siblings and could have made a correct decision at the earlier time that the children should have been on separate grants. It is willing to make that correction.

PATH claims that it did not have information about the rental allocations back to September 2000 which would have allowed it to make a proper decision at that time. That may be true but the reason the Department did not have that information is that it failed in its duty, as discussed above, to explain the program to the petitioner so that she could properly allocate rent to the children. What the Department

did know was the total amount of the petitioner's rent and the total amount of contributions from non-ANFC households. These amounts were reported to the Department on a regular basis.<sup>4</sup> As the petitioner has made it clear that she would have taken the maximum amounts if she had understood, it would be easy for the Department to calculate what those amounts should have been. The Department cannot rely on its breach of duty as a defense to making a corrective payment now.<sup>5</sup> It must be concluded that the petitioner has an absolute right to have her payments corrected not only with regard to the provision of separate grants but also with regard to the use of the shelter allocations for at least the the twelve-month retroactive period discussed in the regulations.

The final question is whether the corrections can be made all the way back to June of 1999 when the error first

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<sup>4</sup> The Department has destroyed its records before May of 2000 and is not certain any longer of the amounts actually paid by non-ANFC household members from June of 1999 until that date. It should not be too difficult, however, to at least estimate what amounts the other households paid during the prior twelve months based on reports made in May of 2000.

<sup>5</sup> Because PATH clearly breached its duty to the petitioner it is not necessary to enter into a full discussion of whether the Department is formally "estopped" from imposing its rules on the petitioner. However, it should be noted that the four elements of estoppel laid out by the Supreme Court in Burlington Fire Fighters Assn v. City of Burlington, 149 Vt. 293, 299 (1988) are fully met here: the Department knew the correct facts about shelter allocation as it related to payments, the petitioner did not; the Department knew or should have known that the petitioner would rely upon information it gave to her or did not give to her about the advantages of allocating the maximum possible shelter amount; and the

occurred. The regulations make it clear that the Commissioner or the Board can authorize such a payment. No standard has been set for extending the time frame. The Commissioner has chosen not to extend the payment all the way back. PATH has offered no practical or policy reasons for not extending these benefits. There seems to be no reason for the Board not to make the payment retroactive to the date of the problem and many good reasons for doing so.

The primary reason to make the full payment is that three children suffered a real detriment by not getting amounts they needed to live on and should be recompensed now. The worker involved seems to have had insufficient training in setting up grants and advising petitioners as to their rights which lack of training impacted financially upon this family. Quality control procedures which are designed to detect such failures did nothing to pick up these errors. The incorrect payments continued for over two years and were only remedied when the petitioner's attorney brought them to PATH's attention. Finally, the petitioner has had to wait for a resolution in this matter for an additional nine months while the Department considered whether it wanted to resolve this matter without a

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petitioner did in fact not allocate the maximum shelter allowance to children in her care and they therefore suffered a financial detriment.

Board decision and finally said no giving very little explanation, at least as to the twelve-month limitation. The petitioner has yet to see a penny of the admitted twelve-month underpayment from September 2000 to September 2001 let alone any other amounts. Limiting payment to these children now could only be viewed as a reward for error and delay which should not be countenanced. The petitioner has made a good case for extending the corrective payments back to the original date of the error.

For reasons set forth in this decision, the grants of all three children should be recalculated back to June of 1999 by separating them into separate households and by allocating the maximum shelter amounts available to each child.<sup>6</sup> The decision of the Department not to correct these overpayments should be reversed.

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<sup>6</sup> The formula used for this calculation should be the total amount of the rent minus payments actually made by other household members. That figure should be divided among the children in the household who were then on an ANFC grant. That is the amount of the rental allocation unless the figure is in excess of the maximum shelter allowance per household in effect at that time. If the figure is in excess than the maximum shelter allowance should be used. It is not necessary under the regulation to presume or require a shelter contribution from any household member who does not actually make a contribution. This rule would include the petitioner herself as the non-recipient caretaker.