

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 17,433
)
Appeal of)

INTRODUCTION

The petitioner appeals a determination by the Department of Prevention, Assistance, Transition, and Health Access (PATH) that she was overpaid ANFC benefits due to a Departmental error in calculating her shelter allowance.

FINDINGS OF FACT

1. The petitioner is the working parent of two high school children who live with her. She also receives RUFA benefits although only one child is included in her grant because her oldest child, an eighteen-year-old honor student, will not graduate before her nineteenth birthday.

2. The petitioner reported shelter information to the Department in 2000 which was wrongly interpreted by the Department as indicating that she paid \$200 per month for rent when she only pays \$100 per month. Because of that error, benefits paid out to the petitioner under the ANFC program (the predecessor to RUFA) from April 1, 2000 through October 31, 2000 were erroneous.

3. The error was presumably discovered in October of 2000 because her grant was reduced starting in November of 2000 and stayed at the lower level for all subsequent months. A year later, the petitioner was notified that a review of her ANFC case indicated that she had been overpaid \$408.00 for the time at issue.

4. The petitioner does not disagree that she was overpaid \$408.00 due to Departmental error. She has been told, however, that she will have to repay that amount through a considerable deduction in her monthly RUFA benefit. The Department has informed her that the combination of her earned income, child support and her RUFA income cannot exceed 90 percent of the RUFA benefit which a non-working person with her household size and shelter expenses would receive.

5. The petitioner does piecework at home. Her average monthly income is about \$306.37 per month. PATH also distributes to her a \$112 per month child support payment (this is called a "Parent Share Payment") plus a \$50 "Family Bonus Payment" which it receives on her behalf from the Office of Child Support Enforcement. When the Department calculated her RUFA budget, the petitioner received a \$150 plus 25 percent work incentive disregard from her income. The \$50 "Family Bonus Payment" was not counted as income. This

petitioner's RUFA grant was figured by deducting her countable income of \$117.28 per month and her child support of \$112 per month from the payment standard of \$384.54. Her RUFA grant is usually \$155 per month.

6. The Department has calculated the petitioner's recoupment liability by deducting a \$90 employment expense from her income for a net figure of \$216.37. This figure was then compared to and deducted from 90 percent of the payment standard which is \$346.09. To this net amount of \$129.72 was added the \$50 "Family Bonus Payment". Finally the Department subtracted the \$112 in child support the petitioner receives. The expected RUFA payment was calculated to be \$67.72 per month. It was determined that the petitioner would get a \$90 per month credit every month toward her overpayment at this rate.

ORDER

The decision of the Department is modified and the calculations should be made in accordance with the regulations laid out in the section below.

REASONS

The Department's regulations require the establishment and collection of overpayments of ANFC (now RUFA benefits) that were made during the twelve months prior to discovery. W.A.M. 2234.2. The overpayment in this case was discovered sometime around October of 2000 and concerned the payments made during that month and the prior six. Under the regulations overpayments are subject to recoupment whether they were the result of an administrative or client error. W.A.M. 2234.2 The formula for recoupment is set forth in the regulations as follows:

. . .

Recoupment shall be made each month from any gross income (without application of disregards), liquid resources and ANFC payment 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

This regulation directs the counting of all gross income and liquid resources and ANFC, now RUFA, benefits in calculating the amount to be owed. Gross income, under the Department's regulations, would include all child support in excess of the \$50 "Family Bonus" (see W.A.M. 2252) and the petitioner's earnings. The regulation above says that "gross income" is to be used which is defined in the parentheses afterwards as prohibiting the application of disregards. The Department has interpreted this section as preventing the application of work disregards but as allowing it to subtract the standard \$90 deduction (W.A.M. 2253.31). As this interpretation is in the petitioner's favor, it will not be faulted.

These three things (income, resources and RUFA benefits) added together cannot exceed 95 percent of the benefits a person in the same situation receiving only RUFA benefits would get. The 95 percent figure is used when, as in this case, the overpayment was the result of administrative error. The Department's calculations wrongly compared the petitioner's income to 90 percent of the benefits, a figure used when the client is in error.

In the petitioner's case, her gross "adjusted" income from earnings is \$216.37 per month. Her "Parent Share

Payment" (child support) is \$112.00. Added together she has \$328.37 in gross income. She has no liquid resources to include. The parties agree that the amount that a person in a similar situation who received only RUFA benefits would be paid is \$384.54 per month. Ninety-five percent of that amount is \$365.31. The petitioner's RUFA grant must not put her over that amount. Therefore, she cannot get a RUFA grant that is over \$36.94 per month until the overpayment is repaid. Since the petitioner was entitled to a \$155 RUFA grant each month, she will be losing, and repaying, \$118.06 per month. That is a very large amount of her monthly income (over 20 percent depending on how you figure her net employment income) considering she was not at fault in the overpayment. However, this outcome is consistent with and required by the Department's regulations and the Board is bound to uphold it even if it should disagree with the harsh result. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

The final error in the Department's calculation was to include the child support "Family Bonus" in any way in the calculation. That \$50, as mentioned above, is specifically excluded from the definition of income in the regulations at both W.A.M. 2252 and 2255.1(28). It is completely outside of the recoupment calculations which count only specifically

defined kinds of income. The petitioner should continue to get that \$50 per month as long as OCS receives at least \$50 in child support payments every month. That amount is not subject to recoupment.

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