

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 17,485  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals a decision of the Department of Prevention, Assistance, Transition, and Health Access (PATH) reducing her Food Stamp benefits for one month based on her failure to apply for Fuel Assistance.

FINDINGS OF FACT

1. The petitioner is a fifty-year-old woman who lives on Social Security benefits of \$610.04 per month. She is disabled by a serious lung disease. She has received both fuel assistance and Food Stamps for a number of years. The petitioner lives in federally subsidized housing where her rent payment includes all of her utilities. Nevertheless, by virtue of a federal regulation which allows it to do so, PATH has given the petitioner a large deduction for utility payments in calculating her Food Stamps because she has been a recipient of fuel assistance.

2. In July of each year, PATH sends all persons who have received fuel assistance during the previous year

applications for assistance for the upcoming heating season. The mailings contain notifications of filing deadlines<sup>1</sup> and emphasize the importance of applications for Food Stamp recipients.

3. PATH considers annual fuel assistance eligibility to be in effect from November 1 to October 31 of the following year. During a computer review of the petitioner's Food Stamp eligibility on October 22, 2001, PATH noted that the petitioner had not filed an application for fuel assistance for the fuel season beginning November 1, 2001. Without a fuel assistance application, the petitioner would not be eligible for her usual shelter deduction of \$297.98 per month in November. Without the deduction, the petitioner's food stamp income for November was \$476.04 which entitled her to \$10.00 of coupons per month. With the deduction the petitioner had been eligible for \$81.00 per month in Food Stamps.

4. The computer generated a notice to the petitioner dated October 22, 2001 advising her that she had lost her shelter allowance resulting in a reduction of her Food Stamps

---

<sup>1</sup> The "primary" application period is July 15 to August 31 each year. However, those who file by November 30 are still eligible for 100% of the season's benefits. Those who file between November 30 and the last day of

to \$10.00 effective November 1, 2001. The petitioner was advised to contact N.R., her eligibility specialist, if she had any questions at a phone number provided on the sheet and told that she could apply for a fair hearing.

5. N.R. herself did not mail out this notice but saw it at the time on her computer screen. She testified that all such notices are routinely mailed out of the central office unless there is a special marking indicating that a notice had not been mailed. This notice did not contain a special marking. If the notice is undeliverable, the procedure is that the notice is returned to the eligibility specialist and not to the central office. The notice mailed out on October 22, 2001 was not returned to the specialist as undeliverable. The evidence indicates that the notice was mailed out by the central office and was not returned to the Department.

6. If the petitioner had responded before November 1 to this notice by filing an application for fuel assistance, her Food Stamps would have been reinstated for November. However, the petitioner did not respond to this notice. The petitioner does not recall seeing this notice or receiving the application for fuel assistance in July of 2001. She does not

---

February get prorated benefits by month. Those who file by December 31 are eligible for 80% of the season's benefits. See W.A.M. 2902.1 and 2906.

recall ever applying for fuel assistance in the past and believed she just got it "automatically". The petitioner has lived at the same address for eight years and has not had any trouble she is aware of with people stealing her mail. She has a locked mailbox.

7. On November 1, 2001, the petitioner went to Arizona to visit a friend, while she was there her condition became worse and she was hospitalized for a few days. She returned home on November 12, 2001. She had some mail waiting for her in her locked mailbox but does not recall seeing any notices about her Food Stamp benefits. Her Food Stamp benefits are directly deposited into her bank account. She did not notice until she got her bank statement in December that only \$10 had been deposited in her bank account for November from the food stamp program.

8. The petitioner called R.N., her PATH eligibility specialist, on December 12, 2001 to ask why she had only received \$10 in Food Stamps for November. R.N. explained what had happened and told the petitioner that she had also received only \$10 for the month of December. She advised the petitioner to apply for fuel assistance immediately. She mailed fuel benefit application forms to the petitioner that day which were returned and approved on December 21, 2001. On

December 21, R.N. was able to recalculate the Food Stamp benefits for the month of December and the petitioner received the full benefit of \$81.00. The petitioner was notified of the restoration of her benefits retroactive to December 1 by a notice dated December 21, 2001.

9. The petitioner asked PATH to restore her benefits for the month of November as well. PATH has declined to do so saying that under the federal regulations it could not give her the shelter deduction in November because she had not been a fuel assistance recipient for that month.

ORDER

The decision of the Department is affirmed.

REASONS

Under regulations found in the state's Food Stamp program, which closely follow federal regulations, PATH may grant a deduction from income used in calculating eligibility for a "standard utility allowance . . . only to households which incur heating and cooling costs separately and apart from their rent or mortgage". F.S.M. 273.9(d)(6)(ii). The petitioner does not fall into that category but a special provision of that regulation includes in the above definition

"recipients of energy assistance payments made under the Low Income Home Energy Assistance Act of 1981". F.S.M. § 273.9(d)(6)(ii)(B). Thus, any month in which the petitioner is a recipient of fuel assistance she receives a standard utility deduction from her income as if she were a person actually incurring heating costs apart from her rent. The standard utility deduction (which is currently \$383 per month, see P-2590(A)(5)) helps considerably in maximizing the amount of Food Stamps which a renter in subsidized housing can obtain.

The fuel heating season by regulation runs from November 1 through March 31. W.A.M.2902.1. In order to keep the deductions in place year round, PATH considers that persons who have received fuel assistance during the previous season are continuing to be recipients up until the new season begins. Thus, Food Stamp recipients continue to receive monthly standard utility deductions from April 1 through October 31 by virtue of the prior season's fuel eligibility. Once a recipient has reached October 31 with no new application, the deduction cannot continue.

In this case, PATH saw in late October that the petitioner had not reapplied for fuel benefits and gave her ten days advance notice that her Food Stamp benefits would

decrease in November. The purpose of this advance notice period, in part, is to allow the petitioner some time in which to remedy the situation before the reduction takes place. The petitioner had not only those ten days but much of the month of November to try to remedy the problem. Upon a report to PATH that she had applied for and been found eligible for fuel benefits, the agency would be required by regulations to take "prompt action" on that change. F.S.M. 273.12(c). PATH did in fact take "prompt action" to reinstate the petitioner's Food Stamps as soon as it had information in December that she was a fuel assistance recipient. She became a fuel assistance recipient in December and she was given the full deduction retroactive to the start of that month.

The Food Stamp regulations allow deductions (actual or standardized) only in the month in which they actually occur. F.S.M. 273.9(d). The standardized deduction for which the petitioner was found eligible in December is a legal creation that requires the petitioner to be a participant of another program (fuel assistance). The petitioner did not participate in that program in November. The Department cannot change that fact. Furthermore, it cannot be found that the Department contributed to the existence of that fact. It appears that the Department attempted to communicate this

requirement to the petitioner on at least two occasions before it finally cut her benefits. Although the petitioner cannot recall receiving any of this information, it cannot be found on the evidence here that her ignorance was in any way the fault of the Department. The Department's decision that it cannot grant her the utility deduction for November of 2001 is consistent with the Food Stamp regulations and so must be upheld by the Board. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

It is always unfortunate when a person in grave need does not receive a benefit for which she would have certainly been found eligible due to failure to follow through with paperwork and applications. The petitioner should watch her mail carefully next July for information on next year's heating applications lest the same fate befall her in the autumn of 2002. If she does not receive an application in July, she should call her worker and ask for the forms.

# # #