

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 17,613
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) finding that he has been overpaid in the Reach Up Financial Assistance (RUFA) and Food Stamp programs and requiring him to repay the overpaid amounts. The issue is whether the overpayments must be repaid even if they resulted from the Department's error.

A Recommendation was issued in this matter on May 14, 2002, which was considered by the Board at its meeting on May 22, 2002. The petitioner appeared before the Board and for the first time raised an issue regarding the amount of his overpayments. The Board remanded the matter for the hearing officer to consider whether the Department correctly calculated the amounts of the petitioner's overpayments.

At the Board meeting the Department indicated that it would not contest the fact that the overpayments had occurred as a result of Department error, and were not the fault of the petitioner.

Further hearing was held by phone on July 17, 2002. At that time the Department produced documentation that in August 2001 the petitioner's wife had wages from employment at Kmart totaling \$713, which if considered by the Department in calculating the family's RUFA and Food Stamp grants that month would have resulted in the family receiving \$270 less in RUFA and \$207 less in Food Stamps for that month.

The petitioner indicated that he had no basis to disagree either with the fact that his wife earned the wages that her employer reported or with the Department's calculations as to the family's actual RUFA and Food Stamp calculations for that month based on those wages. However, the petitioner continues to take strong exception to the policy (see infra) that requires these overpayments to be repaid even though they did not occur through any fault of the family. Thus, the following findings of fact remain essentially unchanged from the May 14 Recommendation.

FINDINGS OF FACT

1. The petitioner and his family receive Food Stamps and RUFA benefits. For one month in the summer of 2001 (August) the petitioner received \$207 in excess of the amount he should have received in Food Stamps and \$270 in excess RUFA

benefits because earnings received by the petitioner's wife during that time were not included in the Department's calculations of the family's eligibility. When the Department discovered the error it notified the petitioner on January 23, 2002 that he would have to repay that amount by having his Food Stamps reduced from \$318 to \$281 a month and his RUFA benefits reduced from \$678 to \$604 a month.

2. As noted above, the Department concedes that the overpayment was the result of its own error and will recoup the RUFA overpayment at rate of 5 percent rather than 10 percent (see infra).

ORDER

The decision of the Department that the petitioner is liable to repay the overpayments is affirmed.

REASONS

Under the federal Food Stamp regulations as adopted by the State of Vermont, the Department of Social Welfare is required to establish a claim against any household which has received food stamp benefits to which it was not entitled regardless of whether the agency or the household caused the overpayment. F.S.M. 273.18(a). DSW is required to take

action on any overpayment which occurred 12 months or less since the overissuance was discovered including overpayments which occurred either because a household unintentionally failed to report correct or complete information on income or because the state agency failed to take prompt action on a change reported by the household. F.S.M. 273.18(b).

Under this regulation, an overpayment must be established when there was an overissuance regardless of whether it was an unintentional failure to report income or was a failure by the Department to take prompt action. The Department is required to recalculate the income based on the correct information regarding the household's actual income and to establish a claim for any amounts which were overpaid during the previous twelve months. F.S.M. § 273.18(6). As noted above, the petitioner does not contest these calculations.

The Department is also required by the regulations to attempt to collect all overpayments in excess of \$35 per month. F.S.M. 273.18(d). It has a number of methods available to it for taking such action. However, if the family continues to participate in the food stamp program, the Department is required to collect outstanding amounts through reducing the monthly food stamp allotments. F.S.M. 273.18(g)(4). The amount to be collected by offset is the

greater of \$10.00 or 10 percent of the total monthly food stamp allotment whether the overpayment was the result of an error by either the household or the agency. F.S.M. §§ 273.18(g)(4)(I) and (ii). The Department is thus justified in this case in reducing the petitioner's future Food Stamp benefits by 10% per month until the total amount is repaid.

Under the RUFA program, Welfare 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.

However, unlike Food Stamps, the rate of recoupment under RUFA varies depending on whether the overpayment was caused by household or Department error. In cases of household error

recoupment is an amount that allows the household to retain 90 percent of its combined income. When caused by Department error the household is allowed to retain 95 percent of its combined income. WAM § 234.2. In this case, the Department has indicated that it will reduce the petitioner's RUFA grant by the 5 percent rate, based on its concession that the petitioner did not fail to report his wife's earnings during the month in question in a timely manner.

Unfortunately for the petitioner, however, the above regulations are clear that even overpayments resulting from Department error must be recouped through reductions in the petitioner's ongoing benefit payments. Therefore, the Board is bound to affirm the Department's decisions. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

#