

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 17,624  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals a decision of the Department of Prevention, Assistance, Transition, and Health Access (PATH) establishing an overpayment in the ANFC program. PATH has moved to dismiss this appeal as not timely filed.

FINDINGS OF FACT

1. The petitioner and her husband are RUFA recipients with three children. They were notified on June 6, 1996 that they had been overpaid \$1,126 in ANFC benefits from April of 1994 through June of 1994 which federal law required the Department to recover. The reason for the overpayment was listed as "R.T., second parent, was not absent from the home. Client not entitled to grant due to the presence of R.T. in the home . . . while assistance was based on absence." They were also notified that they had until June 18 to contact the Department about repayment or the monthly grant would be reduced until the overpayment was completely repaid. They were advised that if they failed to contact the Department

they would receive a notice concerning reduction of the grant sometime after June 18. The reverse of the notice laid out extensive information about her right to speak with the Department, her right to appeal within 90 days to the Human Services Board, how her benefits could be continued and where she could obtain free legal assistance.

2. The notice was mailed out under the signature of the income maintenance supervisor. He testified that he prepared such notices when a client's regular worker was out for some reason. It was his practice to prepare the notice, sign it and send it to the clerical unit for mailing. He does not remember this particular notice because so much time has elapsed since it was sent, but believes it would have been subject to his regular practices. If a notice was returned as undeliverable, the notice would have been returned to the worker and the worker would try to redeliver it. No return of the notice occurred in this case.

3. No appeal was filed of the June 6, 1996 overpayment notice. No further action was taken to recoup the overpayment, however, because PATH had established three other overpayments before this one and could only recover one at a time.

4. In February of 2002, a computer sweep of the petitioner's case determined that the other three overpayments had been satisfied as of January 1997 and that the 1996 overpayment was still outstanding. The petitioner was notified that \$49 of her \$812 grant would be recouped to satisfy the overpayment beginning March 1, 2002.

5. The petitioner contacted her worker to protest the recoupment. The worker informed her that the debt had been established in 1996 and provided her with a copy of that notice.

6. The petitioner testified that she could not remember if she had seen the notice previously. She also testified that she believed the "copy" of this notice provided to her by the Department in March had actually never been sent to her previously and that the Department had backdated the notice to make it appear that it had been mailed five years ago. The petitioner wants to contest the establishment of the overpayment and says she can present evidence that her husband was not in her house then and was in fact living in a separate apartment and receiving General Assistance payments at the time. Her husband testified that he did not remember seeing the notice either but said that it could have come to their home in 1996. He believes he would have appealed it if it

came but agrees that he did not appeal any of the other three overpayment notices which he received prior to that time.

7. The testimony of the Supervisor that this notice was mailed in the due course of business in 1996, was sent to the correct address and was never returned to the Department as undeliverable is found to be credible. The petitioner and her husband's lack of memory and vague testimony about this event cannot support a finding that they did not receive the notice. The petitioner's assertions that the notice was a backdated forgery are found to be not credible as there is no evidence to support that allegation.

ORDER

PATH's motion to dismiss for lack of jurisdiction is granted.

REASONS

The rules of the Human Services Board require that fair hearing requests be made by a recipient "within 90 days from the date when his or her grievance arose." 3 V.S.A. § 3091, Fair Hearing Rule 1, adopted October 16, 1995. The rules of PATH specify that the date of the grievance is the date of the mailing of the notice of decision. W.A.M. 2380.2. The notice

establishing the claim was mailed to the petitioner on June 6, 1996. A letter mailed to the correct address carries a presumption of receipt by the addressee. Mary Fletcher Hospital v. City of Barre, 117 VT 430 (1953), Estey v. Laveille, 119 VT 438 (1957). The petitioner has not offered any credible testimony to rebut that presumption. It must be found that the petitioner did receive the prior notice.

W.A.M. 2228 requires that recipients of ANFC (now RUFA) receive a written notice affecting their benefits which:

1. Specifies the type of action to be taken, and explains the action with reference to dates, amounts, reasons, etc.
2. Includes clear explanation of individual rights to confer with Department staff to request reconsideration of a decision, to request a fair hearing, and to request continuation of benefits pending a fair hearing decision if requested within specified time limits.

W.A.M. 2228

The notice sent by PATH on June 6, 1996 comports with all of these requirements except it does not specifically say that the conference with a staff member could result in a reconsideration of the action. The failure to have this specific language, however, is not a significant violation of the spirit of this regulation since the notice clearly advises the recipient that she may talk to the worker, supervisor or

director about the decision and gives the phone number and address of those persons. The notice goes beyond the regulation by telling the petitioner that she can also get free legal help. There was no evidence offered that the petitioner was in any way misled because this information was contained on the back of the notice.<sup>1</sup> The notice in this case is found to be adequate under PATH's regulations.

As the notice was mailed on June 6, 1996 and the appeal was not filed until March 1, 2002, the appeal deadline was missed by three and a half years. The failure to meet the deadline means that the Board is without jurisdiction to hear the appeal now. See Fair Hearing No. 9,216. The fact that the petitioner may have had a good defense to the establishment of the overpayment does not allow the Board to

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<sup>1</sup> It should be noted that the petitioners, long time ANFC and RUFA recipients, did not claim at the hearing that they did not understand that their rights to appeal were printed on the back of the notices. They only claimed that they never got the notice. This argument was made by an advocate who assisted them after the hearing.

assume jurisdiction.<sup>2</sup> The matter of the establishment must be dismissed because the Board lacks jurisdiction.<sup>3</sup>

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<sup>2</sup> The petitioner seems to believe that she has an open and shut case because she can present a landlord ledger showing that her husband paid rent at an apartment and that the Department even assisted him with this rent. PATH, however, may have had evidence that the petitioner's husband was nevertheless not absent from her home as defined in the regulations. PATH did not attempt to present any evidence on this issue because it was focusing exclusively on the jurisdiction issue.

<sup>3</sup> There appears to be nothing in W.A.M. 2234.2 which would prevent the Department from collecting now on the overpayment established six years ago, although the petitioner's advocate did not raise that issue. The petitioner always has the ongoing right to appeal the monthly recoupment amount and the procedures involved if she feels she is aggrieved. The petitioner is encouraged to talk with her advocate about those issues.