

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 17,641
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) terminating her Reach Up Family Assistance (RUFA) grant. The issue is whether the petitioner received adequate notice of the fact that the Office of Child Support (OCS) would withhold two months of child support payments from her following her termination from RUFA. The facts, though complicated, are not in dispute.

FINDINGS OF FACT

1. On or about February 2000 the petitioner began receiving RUFA benefits. At the time, she was unemployed and was receiving child support payments through OCS. Under the Department's and OCS's rules and procedures (which are not in dispute, see infra) there is a two month administrative delay between the time OCS collects child support payments from a responsible parent and the time the Department applies those

support payments in its determination of the amount of the recipient's RUFA grant.

2. As a general matter (see infra) an individual is eligible for RUFA in any month in which her child support, combined with any other earned or unearned income is below the RUFA payment standard. After the first two months of RUFA eligibility the recipient's monthly RUFA grant is reduced by the amount of child support collected by OCS two months before (except for a \$50-a-month "passalong").

3. In February and March 2000 the petitioner received a full RUFA grant and also directly received the full amounts of child support collected by OCS in December 1999 and January 2000. In April 2000 OCS paid the petitioner the February child support it had collected on her behalf. However, beginning in April 2000 PATH began reducing the amount of the petitioner's RUFA grant by the amount of child support OCS had collected two months before (less the \$50 passalong).

4. The petitioner continued to receive RUFA benefits and direct child support payments in this manner each month for nearly two years.

5. In December 2001 the petitioner began working. On January 14, 2002 the Department notified the petitioner that based on her countable earned income her RUFA grant for

February 2002 would be reduced. Besides her earnings and the reduced RUFA grant, the petitioner received her full child support payment in February (based, as usual, on the amount OCS had collected two months before).

6. On February 13, 2002 the Department notified the petitioner that based on her earnings, beginning March 1, 2002 she would no longer be eligible for RUFA.

7. The petitioner does not dispute any of the Department's calculations regarding her eligibility for RUFA. However, what the petitioner did not know, and what the Department did not tell her when it terminated her RUFA benefits, was that for two months beginning in March 2002 OCS would send the petitioner's child support it collected for January and February 2002 directly to PATH so that the Department could be reimbursed for first two months of RUFA benefits that it had paid to the petitioner in February and March 2000.

8. The notice the Department sent to the petitioner on February 13, 2002 told her that she was no longer eligible for Reach Up as of March 1, 2002. It made no mention, however, of the fact that she would not be receiving any child support payments for the next two months.

9. Understandably, the petitioner was upset to learn on March 1, 2002 that she would not be receiving any RUFA or child support payments that month, or for April 2002. Because of the unexpected shortfall in her income those months the petitioner was left with several bills she could not timely pay. Due to the lack of notice the petitioner feels that the Department should pay her the January and February 2002 child support payments that it used to offset the RUFA benefits it had paid to her in February and March 2000.

ORDER

The Department's decision is modified as set forth below.

DISCUSSION

As a condition of receiving RUFA benefits recipients are required to assign to the Department their rights to child support in exchange for their benefits. W.A.M § 2331. Before receiving benefits recipients must sign an agreement allowing the Department to use all or part of any child support "to recoup or defray its expenditures for Reach Up financial assistance". Id. In this case there is no dispute that the petitioner signed such an agreement when she applied for RUFA in February 2000.

W.A.M. § 2240.2(1) includes the provision: "Direct child support is counted as income in the second month following the month the child support is received by the Office of Child Support." In this case it is not clear how much information the petitioner was given at the time of her application regarding the method in which the Department applies child support received by OCS toward an individual's RUFA grant. There is no dispute, however, that for the first two months of her eligibility for RUFA, February and March 2000, the petitioner received a full RUFA grant (not offset by any child support) and all of the child support collected by OCS. It also appears that the petitioner did not dispute when the Department reduced her RUFA grant effective April 2000.

The above notwithstanding, there is no question that in February 2002, when it determined that the petitioner was no longer eligible for RUFA, the Department gave the petitioner no notice whatsoever that she would not receive child support payments from OCS for the next two months.

W.A.M. § 2228 provides, in pertinent part:

Applicants for and recipients of ANFC (now RUFA) shall be furnished, prior to implementation of any decision affecting their receipt of such aid or benefits a written notice which:

. . .

1. Specifies the type of action to be taken, and explains the action with reference to dates, amounts, reasons, etc.

. . .

Regardless of what information was provided by the Department to the petitioner early in 2000, the notice sent to the petitioner in February 2002, which contained no mention whatsoever of any loss of child support payments, was clearly insufficient under the above regulation and as a matter of basic due process. Therefore, as a matter of law, this notice must be considered null and void.

However, six months have now elapsed since the date of the notice. Hearings were held on this matter on April 19, May 24, and July 19, 2002 before the above facts and procedures were understood and agreed upon. There is no question that the petitioner now understands what happened and the legal reasons for it. (She still disagrees with the result, but she does not dispute the underlying legal basis of the decision.) Her RUFA grant has now been closed since March 1, 2002 (because she has been working). She has received all her child support payments from OCS since May 1, 2002.

There is no question that the Department's underlying action (applying January and February 2002 child support to offset RUFA payments made in February and March 2000) was in

accord with its regulations and applicable federal law. If, on account of the deficient notice, the Board were to now order the Department to return to the petitioner the child support it kept from January and February 2002, the Department would still be entitled (after notice) to collect this amount as reimbursement for the first two months of RUFA benefits it paid the petitioner.¹

Had this case come to the Board in a more timely manner, the "relief" described above (i.e., the restoration of benefits until such time as proper notice is given) might have been meaningful to the petitioner. At this time, however, the petitioner has already been afforded constructive notice of the Department's actions and she has long since satisfied the amount of the debt she would still owe to the Department if the Department were now ordered to return those payments to her. Therefore, relief of this nature at this time would be pointless, if not actually detrimental to the petitioner.

The Department should note, however, that the Board is now "up to speed" on this issue, and should such a case arise in the future, depending on the timing, the above relief might be deemed entirely "appropriate". See 3 V.S.A § 3091(d).

¹ The Board has never allowed monetary "damages" against any Department solely as a punitive measure. See e.g., Fair Hearing No. 16,043.

Therefore, the Department is strongly advised to ensure that in the future its notices in such cases meet the requirements of the regulations (supra) and basic due process.

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