

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 17,683  
 )  
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 Food Stamps. The issue is whether the overpayment must be assessed even if it resulted from the Department's error.

FINDINGS OF FACT

1. The petitioner is a recent immigrant to the United States and Vermont. Until recently he and his family received Food Stamps. As of February 1, 2002 these benefits were terminated due to excess household income. The petitioner does not dispute that decision.

2. The petitioner admits that he started working in August 2001. He states that he reported his employment to the Refugee Center believing that they would inform the Department. (The petitioner does not speak English. At his hearing, held on April 12, 2002, he had the services of an interpreter.) Although the Refugee Center's records show that

they sent a form with this information to the Department in August, for whatever reason it was not noted by the Department in its ongoing issuance of Food Stamps to the petitioner.

3. The Department learned of the petitioner's employment in January 2002 when it was revealed through a routine computer match with the Department of Employment and Training. The petitioner does not dispute that for the months October 2001 through January 2002 he received Food Stamps for which he would not have been eligible had the Department known of his employment. He does not dispute that the amount of Food Stamps paid to him during this period totaled \$769.

4. The Department does not allege that the petitioner did anything wrong, but that regardless of who was at fault it must assess an overpayment of \$769.

5. However, as noted above, the petitioner is employed and no longer receives Food Stamps. At the hearing it was explained to him that he would not be expected to repay the overpayment unless and until he again becomes eligible to receive them. At that time the Department would recoup the overpayment at a rate of 10 percent of whatever his monthly eligibility is determined to be.

ORDER

The decision of the Department is affirmed.

REASONS

Under the federal Food Stamp regulations as adopted by the State of Vermont, the Department of PATH 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). PATH 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). The petitioner has been notified of those amounts and does not dispute the Department's calculations.

As a practical matter, however, the Department does not actively seek recoupment of such overpayments unless the family continues to participate in the food stamp program. In such cases 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).

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