

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 17,757  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals a decision of the Department of Prevention, Assistance, Transition, and Health Access (PATH) finding that she was overpaid in the Food Stamp program. The issue is whether the petitioner's husband should have been considered part of the household when he resided elsewhere.

FINDINGS OF FACT

1. The petitioner and her husband experienced marital difficulties and separated in May of 2000. At that time they had two children who went to live with the petitioner in a subsidized apartment she obtained through the public housing authority. The petitioner's husband went to live with his parents and later moved into his own apartment in New Hampshire.

Comment:

2. The petitioner and her husband lived apart for the next fifteen months with the exception of two months in the summer of 2001 when her husband lived with her while convalescing from an accident. The petitioner filed for

divorce in January of 2001. The couple continued in counseling even after the divorce action was filed.

3. Sometime in late July or early August of 2001, the couple decided to reconcile and the petitioner asked the housing authority to add him to the lease so that he could live with her. The housing authority refused saying her husband had poor landlord references. The petitioner began to look for other housing and her husband continued to reside with his parents. He spent a good part of each day at the petitioner's apartment, often coming early to take care of the children so she could get to work by 7:00 a.m. He usually ate one meal with his family every day but rarely stayed overnight as a provision in the lease restricted overnight visitors to fourteen days per year.

4. In September of 2001, the petitioner became pregnant with the couple's third child and by December, on the advice of her doctors, cut back on her work hours. At that time she applied for assistance from PATH with Food Stamps and Reach Up Financial Assistance (RUFA) benefits. She explained to her benefits specialist at PATH what her family situation was.

5. After discussing the situation with her supervisor, the benefits specialist determined that the family should be considered one which included two parents and two children

because of the level of involvement the petitioner's husband had with the family. Although he could not live in the same apartment with them, the specialist and her supervisor believed that the rules would not consider him an absent parent. Her husband has not been employed at any time relevant to this appeal.

6. The petitioner was notified that she would receive both RUFA and Food Stamps beginning December 21, 2001 based on a four-person household. She was paid Food Stamps of \$67 for the last ten days of December, \$452 for January and \$350 each for the months of February and March of 2001.

7. In March of 2001, supervisors at the central office who reviewed the case determined that the petitioner's husband should not have been included in the household for Food Stamps or RUFA benefits because he had a different address and did not reside with his family. The petitioner was notified that her benefits would be decreased to a household of three beginning April 1, 2001.

8. On April 5, 2001, the petitioner was mailed a notice advising her that she had been overpaid \$323 from December 20, 2001 to March 31, 2002 entirely due to Department error. She was told that she should have received \$32 in December, \$356 in January and \$254 in February and March. On April 8, 2002,

the petitioner was notified that PATH would collect the overpayment by recouping \$23 per month (or 10 percent) from her ongoing Food Stamp grant of \$231 per month beginning on May 1, 2002. The appeal rights provided on the reverse of the notice advised the petitioner that although she had ninety days to appeal, she had to ask for a hearing before her benefits were reduced in order to keep the current amount.

9. The petitioner appealed those decisions on May 2, 2002, a day after the reduction went into effect. On May 15, 2002 she finally found a subsidized apartment which would accept her entire family and her husband moved in with her. The Department restored the family's benefits to the four-person level as of that date.

10. As of the date of the appeal, the Department had not sent the petitioner a notice of overpayment in the RUFA program.

ORDER

The decision of PATH is affirmed.

REASONS

The rules of the Food Stamp program, which are almost entirely determined by federal regulation, define eligibility

in terms of a "household" which may be a single individual or "a group of individuals who live together and customarily purchase food and prepare meals together for home consumption." F.S.M. § 273.1(a)(1).

Although it is clear from the facts in this matter that this family wanted to live together, they were not actually able to do so until May 15 of this year. The petitioner's husband lived with his parents and appears to have eaten most of his meals with them. This factual scenario should have led PATH to a conclusion under the above regulations that the four family members could not have been included in the same household.

PATH admits that the fact that they were considered to be in the same household for several months was entirely its fault. The petitioner relies on this admission as a reason for avoiding the assessment of an overpayment against her.

While the petitioner's request to cancel the overpayment is an understandable one, the federal Food Stamp regulations

require the establishment and collection of an overpayment regardless of who is in error:

The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive. . . . A claim shall be handled as an administrative error claim if the overissuance was caused by State agency action . . .

F.S.M. 273.18a

The amount of the claim is figured by comparing the amount of the Food Stamps actually paid out with what the family should have received. F.S.M. 273.18c. PATH is then required to send a written demand letter to the petitioner for the amount of the overpayment, including possible methods of repayment. F.S.M. 273.18d. In an "administrative error" case, the first letter to a family still receiving Food Stamp benefits must advise it that unless a timely request is made for a fair hearing and continued benefits, its allotment will be reduced "with the first allotment issued after a timely notice." F.S.M. 273.18d. If the error is an administrative one, the regulations require a recoupment of the Food Stamp overpayment at the rate of ten percent of the household's allotment. F.S.M. 273.18g (4)(ii).

The petitioner does not dispute the amount of the overpayment. She was advised by the Department on April 5, 2002 of the amount of the overpayment and that a recoupment

would begin on May 1, 2002 unless she appealed before that time. She did not appeal until May 2. The recoupment is apparently already in place. PATH has followed its own regulations in assessing the amount of the Food Stamp overpayment, in sending the petitioner a notice of her rights and in collecting on the overpayment. The decision of the Department thus must be upheld as consistent with its regulations. 3 V.S.A. § 3091(d).<sup>1</sup>

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<sup>1</sup> The petitioner does not argue that her husband should have been part of her household from March 31, 2002 when the reduction to a three-person household was made through May 15, 2002 when the four person household was put back in place. If she had made such an argument with regard to the Food Stamps the Department's decision would have been upheld with regard to those weeks for the same reasons stated herein. The RUFA program has similar language in that it only includes parents who "live in the home" with the child. See W.A.M. 2242. PATH has not yet sent the petitioner an overpayment notice in the RUFA program. If it does take such an action, the petitioner may appeal it at that time and is encouraged to do so since the rules are slightly different for recovery of RUFA benefits.