STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 17,758
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals a decision of the Department of Prevention, Assistance, Transition, and Health Access (PATH) terminating her Reach Up Family Assistance (RUFA) benefits for both non-cooperation and excess income.

FINDINGS OF FACT

1. The petitioner is a single mother with three children who receives no child support. She is self-employed as a granite engraver and has a small cleaning business. She does not understand accounting methods and gives all of her self-employment paychecks and expense receipts to an accountant in order to figure her income for taxation purposes.

2. The petitioner has received Reach Up benefits for some time. As part of an income review in February of 2002, PATH mailed the petitioner a letter asking for copies of her “books” for the months of October 2001 through January of 2002. The request also asked for copies of the petitioner’s

paystubs for January as she had begun working part-time as a home health aide in November of 2001, in addition to her self-employment enterprise. She was advised in the letter that she could contact her PATH worker if she was having any trouble obtaining the verification and she would be assisted in doing so. She was also advised that she had to provide the verification by February 16, 2002 or her benefits could be terminated because the information was needed to determine her continued eligibility.

3. The petitioner responded to the letter and told her worker that she did not keep any “books”. All her financial information was kept in a box for the accountant who would not be figuring out her income for several months as hers would be the last return he prepared. She had already filed for an extension to file her taxes. The petitioner believed that this explanation was sufficient to get her an extension until the taxes were prepared to provide verification of her income. It does not appear that the worker offered her any assistance with an alternative method of verification which could be used before the deadline.

4. On February 21, 2002, PATH mailed a letter to the petitioner terminating her benefits because she did not

provide the requested information by the deadline. The termination was effective March 16, 2002.

5. The petitioner was upset by the termination but did not contest that decision immediately because she did not feel it would do any good. However, she spoke about her plight with a Department of Employment and Training worker who told her that the termination "did not seem right" and encouraged her to reapply.

6. The petitioner did reapply on March 21 and was assigned to a new PATH worker who told her that in order to become eligible she would still be required to verify her self-employment income. On March 28, 2002, PATH mailed the petitioner a new request for verification again asking the petitioner for copies of her "books" from October 2001 through January 2002. She was also told this time that she could submit a Schedule C from her 2001 tax returns. Again, it was explained to her that she could not receive benefits without providing the proof of income by the deadline for receipt of April 7, 2002.

7. In response to that letter, the petitioner provided her paystubs from her current employment. She spoke with her new worker about how she could verify her current self-employment income. Again, she explained that she did not know

her income because it had not yet been calculated by the accountant and probably would not be until after the tax deadline date. The new PATH worker consulted with the district director about what could be done to assist her in verifying her income. The district director spoke with the petitioner and told her to bring in her box of receipts and that he would try to calculate her income. The petitioner agreed to do so.

8. On the next day, March 29, 2002, before the petitioner could bring in the box of receipts, she received another call from her new PATH worker informing her that instead of going through the receipts, PATH would accept her old 2000 Schedule C from her tax filing as verification of her income if the petitioner felt it was an accurate representation of her current earnings. The petitioner was uncertain about her present income but said that she thought it would be all right to use the prior tax return. She says that she was not thinking very hard about anything at that time because she was depressed about being evicted from her housing in March.

9. The 2000 tax records showed that the petitioner had self-employment income of $434.25 per month. The Department added that figure to her $858.90 income from her new part-time

job as a home health care worker and subjected the total to a $435.78 earned income disregard. The net income, $857.37, was compared to the payment standard for a family of four with $400 per month in shelter expenses, which was $769.08. Because her net income was in excess of that amount, it was determined that the petitioner could not be eligible for RUFA benefits.

10. On April 1, 2002, the petitioner was notified that her Reach Up application had been denied because her income was in excess of the limit for assistance.

11. The petitioner did not immediately appeal that decision. Later in the month of April her car broke down and she was forced to quit her home health aide job. On May 2, 2002, the petitioner appealed the February 21 decision to terminate her RUFA benefits and the April 1 decision denying her reapplication through the PATH office. It does not appear that the person who took the appeal talked with the petitioner about her current employment situation or advised the petitioner to reapply at that time. The petitioner did not report her income change to her worker until some time later during discussions about the appeal of the prior denials.

12. The petitioner’s tax preparer finished her 2001 Schedule C for late filing in June. That document showed that

the petitioner actually earned $109.91 per month during 2001, far less than the $434.25 shown on the 2000 Schedule C. The petitioner brought that information to her worker and a new application was filled out. The petitioner was found eligible for benefits on June 13, 2002. The petitioner continued her appeal, however, asking that she be granted RUFA benefits retroactively from March 21 to June 13, 2002 based on the actual amount of her self-employment income.

13. PATH agrees that using the 2001 Schedule C would have made the petitioner eligible for RUFA benefits during the time at issue but declines to find the petitioner retroactively eligible.

ORDER

The decision of the Department is reversed.

REASONS

PATH’s regulations unquestionably require recipients and applicants for assistance to provide written verification of income from their self-employment in order to determine and document eligibility. W.A.M. 2211.3. The regulations specifically provide that:

> Verification of income from self-employment requires careful evaluation by the eligibility worker considering the following:
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> 1. If the applicant or participant has been self-employed for a period of time and has reported this income to IRS, the latest income tax return can be used as one source, providing it reflects the current situation, for example, same type of self-employment, approximately the same number of hours and wages for employment.
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> 2. An applicant or participant who has recently become self-employed shall provide a written statement of potential monthly income and shall be required to maintain accurate records (for example, income received, source of income, hours of work) and to provide such records for bi-monthly review. In most cases this bimonthly review will continue until income has been reported to IRS. That income tax return can then be used as the primary source of verification as long as it continues to reflect the current situation.
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> W.A.M. 2211.3

While these methods are spelled out as the preferred ones for verifying self-employment income, the regulation actually allows PATH to accept other kinds of written verification statements so long as they “include sufficient detail to enable independent reviewer evaluation of the reasonableness of the resulting eligibility decision, including but not limited to a description of method used, dates, sources, summary of information obtained, and any computations required.” W.A.M. 2211.3.

Perhaps because the last IRS filing was over six months old, PATH was initially asking to see only the petitioner's current records regarding her self-employment enterprises. The regulations certainly allow PATH to do so. The problem for the petitioner is that while she kept all of her paychecks and business receipts, she did not keep records in a form that could be readily reviewed by PATH.

Certainly when the petitioner indicated that she did not keep such records, it was the obligation of the first worker, as she acknowledged in her February letter, to assist her to determine another method of verifying her income. Unlike the second worker involved in this case, there is no evidence that the first worker asked the petitioner for her raw data or inquired as to the continued validity of her last IRS statement. The evidence only shows that the petitioner was unable to provide the specific type of verification requested by the worker. There is every reason to believe, based on subsequent events, that the petitioner would have readily turned over her raw data to the worker if such a request had been made.

Given these facts, it was error for the first PATH worker to have determined that the petitioner had failed to cooperate and that her grant should have been closed. See M211.3. That failure, however, is a moot point unless the petitioner can show that she would have been found eligible from March 16 through June 13, 2002 based on the income she did actually have.

When the petitioner reapplied on March 21, 2002 she got a new worker who realized that she would have to take some steps to assist the petitioner in verifying her income. At that point she obtained counsel from the District Director who agreed to put the petitioner's raw data together into some sort of a record reflecting her income. The undisputed facts show that the petitioner was willing to turn her raw data over to PATH for analysis. For some reason, perhaps the prospect of going through all of those receipts, PATH offered to accept the petitioner's old Schedule C from her 2000 tax returns as written verification of her income. This is certainly a reasonable thing to do, but as the regulation points out, using that old form requires a "careful evaluation" by the eligibility specialist of whether the applicant is working the "same number of hours and wages" and doing the same type of self-employment in order to consider it a valid source. The record does not show that such an evaluation was ever made by the worker involved. Instead, the accuracy of the old form was left to the petitioner to decide, a petitioner who had said repeatedly that she did not know what her income was.

Although the PATH worker clearly intended no malice in choosing this method and indeed may have thought she was doing the petitioner a favor, it turns out that the methodology used by PATH was grossly inaccurate. As the petitioner rightly asserts, the raw information that would have showed her true financial condition was always available to PATH. That correct information was not used due to PATH's failure to follow its own regulations requiring a careful assessment of old IRS data. To be sure, this mistake was compounded by the petitioner's mistaken acquiescence in the methodology but that does not vitiate PATH's primary responsibility in this matter.

The petitioner now requests that her lost benefits for the intervening three months be restored. That request is clearly authorized by PATH's own regulation:

> Underpayments
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> Department error that resulted in underpayment of assistance shall be promptly corrected retroactively under the following conditions:
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> 1. When the information was available to the department at the time the error occurred to enable authorization of the correct amount.
> 2. Retroactive corrected payment shall be authorized only for the 12 months preceding the month in which the underpayment is discovered. Payments shall be

> authorized irrespective of current receipt of, or eligibility for, benefits.
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> 3. The retroactive corrective payments shall not be considered as income or as a resource in the month paid or in the following month.
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> . . .
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> W.A.M 2234.1

Since the information on the petitioner's income was available to PATH at the time the error in calculating her income occurred and since the error occurred during the last twelve months, PATH's own regulation requires the prompt retroactive correction of the petitioner's benefits. PATH's decision not to restore the benefits must be reversed as inconsistent with its own regulation.

It must be noted that it does not appear that anyone had ever discussed the record keeping requirement with the petitioner or referred her to a source, such as a community assistance program, that might train her in keeping records of her self-employment businesses. The petitioner struck the hearing officer as a sincere person who is putting a lot of personal energy into supporting her three children with very few resources. Any additional assistance she could receive in this regard would certainly be to her family's benefit and would make it easier for PATH to verify her income.

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