

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 18,108
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision of the Department of Prevention, Assistance, Transition and Health Access (PATH) establishing an overpayment of benefits to her in the Food Stamp program.

FINDINGS OF FACT

1. The petitioner is a disabled mother who has three children who are on RUFA benefits. She has been a Food Stamp recipient for some time. On October 18, 2002, PATH mailed the petitioner a notice telling her that she had received \$1,912 more in Food Stamps than she was eligible for from March 1, 2002 through October 31, 2002. She was told in that letter that if she did not repay that amount, the Food Stamps would not be reduced. The petitioner appealed that decision on October 30, 2002. She was sent a subsequent "corrected notice" on December 27, 2002 advising her that the error which caused the overpayment was PATH's and listing a number of possible collection remedies available to PATH. She was told

finally that "the department may reduce any part of the claim it determines your household is unable to repay."

2. A claim form prepared by PATH showed that it had failed to count child support payments averaging \$506.80 per month reported by the petitioner for an eight month period. The petitioner was provided with a copy of the form showing how much was paid to her in Food Stamps in each of the applicable months and how much she should have received if it had counted the child support.

3. The petitioner does not disagree with the fact that PATH failed to count child support which she had reported nor with the calculations that PATH prepared regarding the amounts paid and the amounts actually owed. Rather she appeals because she feels she has no obligation to pay for PATH's mistake, because the initial notice told her that she would not have to repay the amounts out of current benefits and because the "corrected notice" said the claim would be reduced if she were unable to pay.

4. PATH notified the petitioner on January 10, 2003 that the first notice saying no payments would be collected from her current benefits was sent in error and that PATH was still required to establish and collect overpayments regardless of fault. PATH also disagrees with the petitioner

that it is required to compromise her claim although it presented no evidence that her case was reviewed for a possible compromise.

ORDER

The decision of PATH is affirmed with regard to the amount of the overpayment but is remanded for consideration of the petitioner's request for a reduction or elimination of the amount owed based on inability to pay.

REASONS

Under Path's Food Stamp regulations, overpaid benefits creates a "federal debt that must be established and collected in accordance with these rules and other federal regulations governing federal debts." F.S.M. 273.18a. The regulations make it clear that all overpayments must be established and are subject to collection regardless of whether the error leading to the overpayment was PATH's or the recipient's fault. F.S.M. 273.18b. PATH correctly acted in determining that it must establish a claim against the petitioner for Food Stamps to which she was not entitled.

The regulations specify a number of methods available to PATH for collecting overpaid claims. See F.S.M. § 273.18f. When a household is currently receiving Food Stamp benefits,

the most common method of recovery is an allotment reduction of the monthly amount until overpayment is recovered. Under the regulation, the amount of the claim when it resulted from agency error is limited to 10 percent of the household's monthly allotment. F.S.M. 273.18.

The petitioner argues that the Board should compromise her claim because she did not cause the overpayment, is disabled and will probably face a decade long reduction in her Food Stamps to repay the claim. The Board has no power to take that action. The only function of the Board in these appeals is to confirm the validity of the claim. Once the claim is confirmed, it is within the province of PATH to determine if, how or when it will collect the overpayment within the confines of the regulations, so long as it does not act arbitrarily.

In this case, PATH advised the petitioner in writing that her claim could be reduced if she was unable to pay. In fact, PATH does have a regulation which allows it to "choose to compromise (reduce or eliminate) a claim or any portion of a claim if it can be reasonably determined that a household's economic circumstances dictate that the claim will not be paid in three years." F.S.M. 273.18(e)(7). However, PATH has not indicated that it has considered or is willing to consider

whether the petitioner's claim will be compromised in any way based on her ability to pay.

PATH is correct that this regulation does not create a right in the petitioner to receive a reduction in or limitation of the claim. However, if the above regulation and the notice sent to the petitioner are to have any meaning, it must be found that these provisions at least create a right to make a request for a reduction and to receive consideration of that request. As part of that consideration, the petitioner has a right to receive a response containing reasons why the request will or will not be granted. Since PATH has not yet taken that action, the matter is remanded for consideration of whether the amount will be compromised. The petitioner may appeal any decision by PATH with regard to that request but The Board will defer to the decision of PATH unless it is arbitrary, capricious or an abuse of discretion.

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