

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 18,434
)
Appeal of)

INTRODUCTION

The petitioner appeals decisions by the Department of Prevention, Assistance, Transition and Health Access (PATH) denying her applications for General Assistance in the Fall of 2002 and most recently in the Spring of 2003 based on excess income.

FINDINGS OF FACT

1. The petitioner is a single woman who has no regular source of income. She applied for General Assistance last Fall for personal needs and food but was denied assistance. She asks now to be heard on those denials which encompass a period of time from October 28, 2002 through December 17, 2002. The petitioner did subsequently receive Food Stamp benefits in December which were retroactive to October. However, the petitioner wants to be heard on the hardship to her of living without the food during that period of time and her failure to receive \$2 per day in personal needs money for the month.

2. There is no evidence that the petitioner appealed these denials before April 15, 2002. In fact, these denials were not actually contained in the written appeal sent to the Board on April 15, 2002. The petitioner says that she mentioned these grievances in the course of another appeal hearing involving a request for housing assistance (Fair Hearing No. 18,212 heard January 22, 2003) and was told they would be heard in the future. There is no record that this occurred but it may very well be as the petitioner typically raises new grievances which were not part of the original appeal at her appeals hearings. When she does so, she is told to notify her worker that she wishes to appeal that issue and is told she will then receive a notice for a hearing on those grievances. The petitioner also receives information on the back of her General Assistance decisions on how she can request an appeal and the time limit for taking that action. There is no evidence that the petitioner told her worker that she wished to appeal the above grievances in the ninety day time period contained on the notice.

3. On March 31, 2003, the petitioner applied for General Assistance benefits for help with housing, food and personal needs. The petitioner acknowledges that she receives Food Stamps but says she is too far from a store to use them.

At the time of her application, the petitioner reported receiving \$250 from an employment enterprise on March 12 and \$146.44 on March 26, 2003.

4. PATH subjected the petitioner's total income during the prior thirty days to a \$90 earned income disregard for a countable amount of \$306.44 and compared it to the standard for receiving General Assistance. That standard is calculated by adding the petitioner's basic needs of \$465 per month to her shelter costs of \$112 for a total needs amount of \$577. That amount is ratably reduced by 50.1 percent to determine the standard that PATH will pay. In the petitioner's case, that standard was calculated to be \$289.08 per month. Since the petitioner's countable income was a little over \$17 above the standard she was denied for excess income. She was referred to the Social Security Administration to apply for disability benefits.

5. The petitioner reapplied for General Assistance on April 7, 2003. She was denied because she was still within the thirty-day period of having received the above income which was excessive for the program. She was advised to apply through the community action organization for crisis fuel assistance. She was also advised to reapply on April 14, 2003 at which time she received benefits.

6. The petitioner believes that PATH's decisions on these two general assistance applications were improper because it did not considered all of the expenses she had for the month and did not consider that the income amount used was a gross figure from which she had to pay taxes.

ORDER

The appeal of the Fall decisions is dismissed as untimely and PATH's decisions with regard to the Spring applications is upheld.

REASONS

Under Fair Hearing Rule No. 1, an applicant for or recipient of benefits from PATH is required to file an appeal within ninety days of the time a grievance arises. If the appeal is not filed within that period of time, the Board has no jurisdiction to hear that case. Notices of decision sent to applicants or recipients contain information on how appeals are to be filed and the time period involved. Appeals are commenced under Fair Hearing Rule No. 1 when an applicant or recipient mails a request to the clerk of the human services board or indicates to the agency, in this case PATH, that she wishes to appeal in which case the agency mails the request to the board. Fair Hearing Rule 1. An appeal is not commenced

by mentioning new grievances to the hearing office in the course of a hearing on another appeal.¹ There is no evidence that the petitioner was ever told this was the process. The evidence shows that the petitioner has filed other appeals in the past including the other two companion appeals here and appears to understand the process. The petitioner did not notify her worker or the board clerk of her desire to file an appeal on her personal needs grievances within ninety days of the last action taken in the Fall, which would have required an appeal by the middle of March 2003. The Board cannot take jurisdiction over these cases now. The petitioner should be aware that it is particularly important to immediately appeal denials in the General Assistance (GA) program as that program is not an entitlement program in which benefits may be due retroactively after several months have passed regardless of current circumstances. The GA program focuses on the petitioner's "emergency" need for that assistance, a need

¹ It is not unusual for petitioners to try to add new grievances to their appeals at hearing. Those requests are always spurned unless the grievance is an integral part of the current appeal and would affect the outcome of that appeal. If PATH indicates that it needs more time to prepare to address the new related grievance the matter is usually postponed. However, if the new grievance involves a different matter, it must be docketed by the Court clerk and the agency must have fair notice of the grievance so that it might review the matter and either reverse it or prepare to defend its position. Hearing officers who conduct the hearings do not work in the clerk's office and do not docket appeals. Neither do they work for the agency charged with mailing appeals to the Board.

which may evaporate over time, rendering a hearing months in the future not only difficult in terms of reconstructing need but possibly meaningless if the need has been resolved some other way. See W.A.M. 2600.

The petitioner has filed a timely appeal with regard to her March 31 and April 7, 2003 General Assistance denials. Those denials both occurred because the petitioner was determined to be over-income for the program. Regulations adopted by PATH require as a condition of eligibility that:

Net income received during the 30-day period immediately prior to application, computed pursuant to 2608, is below the applicable Reach Up payment level for that size household in similar living arrangements.

W.A.M. 2600C(1)

Net income is calculated by first determining the "gross sum of all monetary remunerations received from any source for any reason" including "wages or compensation for services performed as an employee." W.A.M. 2608. That income is then subjected to applicable deductions which in the petitioner's case would be the "standard work expense" deduction of \$90. W.A.M. 2608.1. The regulations state that this deduction is "in lieu of actual employment expenses for taxes, insurance, dues, clothing, transportation, etc." Id. The result after

this deduction is the "net" income which is the figure compared with the Reach Up payment level.

The Reach Up payment level for a family of one with the petitioner's housing expense is \$577 per month based on a basic needs standard of \$465 per month and a shelter need of \$112 per month. W.A.M. 2245.2 and 2245.3. The needs amount is ratably reduced to reflect the 50.1 percent of need which PATH will pay, or \$289.08 per month. W.A.M. 2245.24. The evidence shows that for the thirty days before each of her applications on March 31 and April 7, 2003 the petitioner's countable income exceeded this payment standard. As such, PATH was correct in denying the petitioner's eligibility for that period of time and the Board is thus bound to uphold the decision. 3 V.S.A. § 3091(d) and Fair Hearing Rule 17.

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