

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 18,542  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals a decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) establishing an overpayment of Food Stamps based on a calculation error made by the Department. The issue is whether the Department can assess an overpayment amount when the recipient is not at fault for the overpayment.

FINDINGS OF FACT

1. The petitioner received Food Stamps from January through May 2003. During a review of her case in May 2003 the Department discovered that since late December 2002 the petitioner had been receiving Social Security and SSI benefits totaling about \$1,350 per month that it had failed to factor into the petitioner's Food Stamp eligibility.

2. A notice was mailed to the petitioner on May 7, 2003, advising her that effective June 1, 2003 her Food Stamps would be closed. The notice also advised her that due to an error on the part of the Department she had been overpaid Food

Stamps for the period January 1, 2003 through May 31, 2003, and that she would be liable to repay this amount to the Department.

3. The petitioner does not dispute that she was ineligible for the months at issue and that she received Food Stamps to which she was not entitled. The Department does not dispute that the petitioner informed her caseworker in December 2002 that she had been found eligible for Social Security and SSI benefits, and that any Food Stamps the petitioner received thereafter were the result of the agency's error. The petitioner maintains that it is not fair that she should have to pay back any benefits she received due to Department error.

ORDER

The decision of the Department is affirmed.

REASONS

Under the Food Stamp regulations, the Department is required to "establish a claim against any household that has received more Food Stamp benefits than it is entitled to receive." F.S.M. § 273.18(a). "A claim shall be handled as an administrative error claim if the over issuance was caused

by State agency action or failure to take action . . ."

F.S.M. § 273.18(a)(2). The Department is required to "take action to establish a claim against any household that received an over issuance due to an . . . administrative error if . . . [a] state agency incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment . . ." so long as not more than twelve months have elapsed between the month the over issuance occurred and the month the state agency discovered the error. F.S.M. § 273.18(b)(2)(ii). If administrative error occurred, the size of the Department's claim must equal the difference between what the household should have received and what the household was actually allotted. F.S.M. § 273.18(c)(1)(ii). If the household is continuing to receive Food Stamps, the required repayment is the greater of ten percent of the household's monthly allotment or \$10 per month when the claim is based on administrative error. F.S.M. § 273.18(g)(4)(ii).<sup>1</sup>

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<sup>1</sup> As a practical matter when, as here, the overpaid individual is no longer receiving Food Stamps, the Department rarely, if ever, attempts to collect such overpayments.

Inasmuch as the Department's actions in this matter are required by the regulations, the Board is bound by law to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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