STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 18,715
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Economic Services Division, (DCF) establishing an overpayment claim and recouping benefits in the Food Stamp program. The issue is whether DCF is barred by a three-year collection rule from establishing the overpayment at this time.

FINDINGS OF FACT

The parties have agreed to the following facts:

1. During the period between June 1, 1999 and October 31, 1999, the petitioner and her husband received benefits from PATH (predecessor to DCF) under the Food Stamp and Reach Up programs. They received these benefits on a continuing basis over this time period.

2. Following an August 1999 recertification, PATH sent an income verification form to the husband’s employer. On September 7, 1999, the employer’s bookkeeper completed the form. PATH received the completed from on September 13, 1999.

The form showed that the husband had been working full time and earning wages since April 30, 1999.

3. On September 16, 1999, this matter was referred to PATH's Fraud Unit for investigation. On December 13, 2000, the Fraud Unit referred the case to the County State's Attorney. The materials were returned to the Fraud Unit on September 29, 2003, with a handwritten note from the State's Attorney's office declining prosecution.

4. On October 7, 2003, PATH sent petitioners a "Food Stamp Claim Notice." The notice informed the petitioner, *inter alia*, that "[w]e have found that your household received $1,739 more Food Stamp benefits than you should have for the period 6/1/99 to 10/31/99 because: you did not give us correct, complete or timely information by accident."

5. The October 7, 2003, PATH notice also informed the petitioner that "[a]n amount will be deducted from your Food Stamp benefits each month to repay this overpayment.

6. Prior to October 2003, the petitioners received from PATH no notice of the overpayment or of the decision to recoup it.

7. On October 15, 2003, the petitioner requested a fair hearing to oppose the proposed recoupment from her ongoing Food Stamp benefits. The petitioner's household was receiving

Food Stamps under a current grant in October 2003, and the household continues to receive Food Stamps at this time.[1]

8. Recoupment action against the petitioner's household under the Food Stamp program has been stayed pending resolution of this appeal.

ORDER

The petitioners' motion to vacate the Food Stamp claim as barred by time restrictions is denied.

REASONS

The petitioners have moved to vacate DCF's Food Stamp overpayment collection action alleging that it is out of time. DCF opposes this motion saying that it has followed its regulations and that the claim is timely. The regulations regarding the establishment of claims are specific and contain specific deadlines. The pertinent parts are set forth below:

> Claim referrals shall be managed using the following processing standards:
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> . . .
>
> - For claims involving a potential intentional program violation, a referral for fraud investigation should be made within 60 days of the date of discovery
>
> . . .

[1] The parties did not submit their stipulation in this case until November 3, 2004.

> Claims involving a referral for prosecution or to an ADH [administrative disqualification hearing] should be established, if appropriate, within 30 days of the date of resolution of the referral for prosecution or ADH.
>
> Claims under investigation by the fraud unit or referred to the state's attorney for prosecution shall not be pursued while the investigation or prosecution is pending
>
> . . .
>
> The date of discovery of a claim is the date that district or claims unit staff determines there is a foundation for a claim and the department considers it is more likely than not that an overpayment has occurred.
>
> F.S.M. 273.18(d)

In this case, DCF (formerly PATH) discovered that there was a foundation for a claim on September 13, 1999 when it received the information on the husband's earnings from the bookkeeper. Three days later, well within the thirty-day period set forth in the regulations, the matter was referred to the fraud unit. The fraud unit referred the matter to the state's attorney for prosecution and while the matter was pending there, DCF made no attempt to establish or recover the claim as it is directed to do by the above regulations. When the matter was returned to DCF on September 23, 2003 with a resolution (determination not to prosecute), DCF sent the establishment of claim letter eight days later, again well

within the thirty days set forth in its regulation. It must be concluded that DCF followed the above regulation with regard to establishing the food stamp overpayment claim against the petitioners.

The petitioners' request to vacate the overpayment claim rests upon a provision in the Food Stamp regulations which says that "[a] claim delinquent for three years or more must be terminated and written off unless it is a claim to be pursued through Treasury's Offset Program." F.S.M. § 273.18(e)(8)(D). The petitioners argue that the notification sent to them on October 7, 2003, is more than three years since DCF (then PATH) discovered the claim. A "delinquent claim" is defined in the regulations as follows:

> A claim shall be considered delinquent if one of the following conditions is met.
>
> - The claim has not been paid by the due date, and a satisfactory payment arrangement has not been made. The date of delinquency is the due date on the initial written notification or demand letter. The claim will remain delinquent until payment is received in full, a satisfactory payment agreement is negotiated, or allotment reduction is invoked.
>
> - A payment arrangement has been established, and a scheduled payment has not been made by the due date. The date of delinquency is the due date of the missed installment payment. The claim will remain delinquent until payment is received in full, allotment reduction is invoked, or the department

> decides to either resume or renegotiate the repayment schedule.
>
> A claim will not be considered delinquent, however, if another claim for the same household is currently being paid through an installment agreement or allotment reduction and the department expects to begin collection on the claim once the prior claim is settled.
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> A claim is not subject to the requirements for delinquent debts if the delinquency status cannot be determined because collection is coordinated through the court system.
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> F.S.M. 273.18(e)(5)

For purposes of this claim, the "date of delinquency" would be the due date on the initial demand letter establishing the claim. The initial demand letter establishing the claim was not sent out until October 7, 2003.[2] Therefore, any delinquency which might occur with regard to this demand letter would not be three years overdue until at least October 7, 2006. The petitioner confuses the date of discovery of a possible claim, which was September 13, 1999, with the date of actual establishment of the claim which, under the above regulations, had to wait until the fraud unit and state's attorney's office had considered criminal prosecution of the claim. The letter sent on October

[2] Because the petitioners are currently receiving Food Stamps, they were told that repayment would begin through recoupment from their current Food Stamp benefits. No "due date" was contained on the demand letter but

7, 2003 is not one collecting an already delinquent claim, but is rather one which seeks to establish the initial claim. DCF is not barred by the three-year rule from attempting to establish its initial claim of overpayment. As DCF has acted in accord with its regulations, its action seeking to establish the overpayment must be upheld. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

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presumably, a delinquency would exist as soon as they stop receiving Food Stamps and recoupment cannot occur in any month.