

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing Nos. 18,865
) & 18,911
Appeal of)

INTRODUCTION

These are two consolidated appeals brought by the petitioner which arise out of the same facts. The petitioner appeals a determination by the Department of Prevention, Assistance, Transition, and Health Access (PATH) finding that the petitioner has been overpaid in both the Food Stamp and Reach Up Financial Assistance (RUFA) programs.

FINDINGS OF FACT

1. The petitioner and her child received Food Stamps and Reach Up benefits from the State of Vermont during the months of November and December 1999 and January and February 2000. The petitioner moved back to New Hampshire in February of 2000 and her benefits closed thereafter.

2. During the four months at issue, the petitioner received child support payments through the State of New Hampshire which she did not report to Vermont. The petitioner says she knew she should not have gotten both payments but did not report the payments because the State of Vermont owed her

money. Although it appears that this might be a willful withholding, PATH, for reasons relating to file access, is treating the failure to report as client error.

3. PATH has supplied the petitioner and the Board with considerable documentation showing that it received information from New Hampshire that she received \$410 in support in both November and December 1999, \$512.50 in January of 2000 and \$102.50 in February of 2000. PATH has also provided information to the petitioner and the Board showing her what benefits were actually paid to her during those months and what benefits should have been paid based upon the extra child support she received. Based on those documents and the testimony at hearing, it is found that the petitioner was overpaid a total of \$276 in Food Stamps during those months and a total of \$1,212.50 in RUFA payments.

4. PATH discovered on June 18, 2003, based on a referral from the fraud unit, that the petitioner may have received unreported child support in late 1999 and early 2000. After an investigation that was undertaken in July, PATH mailed the petitioner a notice on October 20, 2003 informing her that she had been overpaid Food Stamps in the amount of \$276 "because she did not give . . . correct, complete or timely information by mistake." She was asked to make a written agreement to

repay the debt but was not told that she could ask for a compromise or waiver of the amount owed. When PATH heard nothing from the petitioner, she was sent a detailed letter on March 28, 2004 making a second claim and advising her of efforts PATH was planning to make to recoup the money from the Treasury Offset Program unless an agreement to pay was obtained.

5. On December 19, 2003, the petitioner was notified that she had been overpaid in the "ANFC" program as well for the last two months of 1999 and first two of 2000. She was asked to repay those amounts by mail or in person to the District Office.

6. The petitioner appealed those overpayments raising a "statute of limitations" claim because the overpayment occurred several years ago.

ORDER

The decision of PATH is reversed with regard to the establishment of an overpayment in the ANFC (RUFA) program and reversed and remanded with regard to the overpayment in the Food Stamp program for further proceedings consistent with this opinion.

REASONS

PATH has adopted regulations in its Reach UP (ANFC) program which require it to recoup overpaid benefits when the overpayment is due to client error. W.A.M. 2234.2. However, the regulation does place a "statute of limitations" on recovery of overpayments as follows:

No recoupment shall be attempted if the overpayment took place more than twelve months prior to the date of discovery unless the overpayment was caused by the recipient's willful withholding of information which affected the amount of payment. In such cases, recoupment of overpayments which took place within a three-year period prior to the date of discovery can be attempted.

M2234.2.

The overpayment in this case occurred in late 1999 and early 2000. The discovery of the overpayment was made sometime after June 18, 2003 when PATH first got a tip from the fraud bureau that it should investigate the petitioner's income for those dates. PATH agreed in its first notices to the petitioner that her failure to report the child support income was a "mistake". Given that finding, PATH's own regulation would prohibit it from attempting recoupment of any overpayment which occurred more than a year before the discovery. It would be restricted to recovering overpayments that occurred only after June of 2002. Even if the petitioner

had "willfully" withheld information about her child support income from PATH, its own regulations would not have allowed establishment of an overpayment on these dates unless it was discovered by February of 2003. In either case, PATH cannot attempt to establish a claim against the petitioner for the dates at issue and its decision must be reversed as inconsistent with its own regulations.

The Food Stamp program does not contain the same statute of limitations. It provides that unintentional household error claims be established for overpayments within 180 days of the date the claim was discovered. F.S.M. 273.18(d). In this case, the possibility of a claim was brought to PATH's attention on June 18, 2003. The regulations define "date of discovery" as the date on which the "staff determines there is 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). It does not appear that PATH determined there was actually a claim until some time after that date, in July of 2003. The claim was mailed to the petitioner on December 19, 2004, within the 180 day window set by the regulation. Although the claim was timely made, the notice failed to tell the petitioner that she had a right to ask for a reduction or waiver of the claim based on inability to repay. F.S.M.

273.18(e)(3)(M) and (e)(7). Therefore, the matter is remanded so that the petitioner may make a request for a waiver on compromise before a claim can finally be established.

#