

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 19,128
)
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 has received Food Stamps since January 2004. During a review of her case in June 2004 the Department discovered that since January it had been mistakenly deducting from the petitioner's income a weekly child support payment of \$175 that it had assumed the petitioner was still making.

2. The error resulted from the Department not correcting its computer records of the petitioner's child support payments as of June 2003, when she had last received Food Stamps. In June 2003 the petitioner had made a one-time

"prepayment" of child support out of a lump sum of income she had recently received. When she reapplied for Food Stamps in January 2004 she did not indicate she was making ongoing child support payments, but the Department nonetheless determined the amount of her eligibility at that time based on its erroneous computer records that the petitioner was still making weekly child support payments.

3. The petitioner does not dispute that the Department incorrectly calculated the amount of her Food Stamps from January through June 2004 based on this error. She also does not dispute the amount of the claimed overpayment--\$1,175. The petitioner maintains, however, 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).

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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