

a lesser charge of giving false information to a police officer.

3. The petitioner had continued on Medicaid benefits throughout this period and was due for a review on May 2, 2002. The petitioner did not attend that review and was closed for failing to complete the review.

4. On June 14, 2002, DCF sent the petitioner a notice to the last address at which she received Medicaid benefits telling her that she had been overpaid Food Stamps in the amount of \$1,313 due to her error. She was asked to call or come into the office to discuss repayment of the amount. Identical notices were sent to her July 19, 2002, August 23, 2002 and September 27, 2002. The petitioner did not respond to any of these notices. None of the notices was returned to DCF as undeliverable.

5. The petitioner claims that she moved just prior to the date that these four notices were sent and she received none of them.

6. In February of 2003, \$410 was intercepted from the petitioner's tax return under the "TOPS" (Tax Offset Program) to repay her Food Stamp overpayment. She did not appeal that action.

7. In November of 2003, the petitioner reapplied for and was found eligible for the Food Stamp program. In a notice dated November 13, 2003, the petitioner was advised that DCF would "deduct \$14.00 from your Food Stamp benefits each month to repay the overpayment that we told about in an earlier letter. We estimate it will take until April 2009 to pay back the overpayment." The petitioner did not appeal that notice.

8. From December 1, 2003 until August 1, 2004, DCF deducted monthly recoupment payments from the petitioner's Food Stamp benefits.

9. The petitioner claims that she called her worker at DCF to talk about the recoupment at some point but was never called back. The worker claims that she always called the petitioner back when she called and has no memory that the petitioner ever called about the recoupment. The petitioner's testimony in this regard was vague and confused and cannot be credited. It cannot be found that the petitioner attempted to dispute the recoupment with her worker any time before June of 2004.

10. There were several conversations between the petitioner and her worker during May and June of 2004 when the petitioner applied for cash benefits due to a high risk

pregnancy. The petitioner was having difficulty getting an answer on her eligibility and her mother intervened for her. Her mother spoke with the supervisor of the worker in an attempt to expedite the matter. However, the difficulty was not that the worker was failing to respond to the petitioner but that the central office in Waterbury was not responsive. The worker was actively involved in trying to get answers from Waterbury and no finding can be made that she was unresponsive to the petitioner.

11. The petitioner was found eligible for Reach Up benefits. On June 16, 2004, the petitioner was notified on a Reach Up benefit notice detailing her award of benefits that she had been overpaid Reach Up benefits and had an outstanding balance of \$3,175. She was told that \$31 per month would be deducted from her Reach Up benefits until she no longer owed the money. She received the same notice on July 16, 2004 but this time the amount to be deducted was \$41 due to an increase in income.

12. The petitioner and her mother came in to speak with the worker in June and July regarding the overpayment issue. They told the worker that they believed that the overpayments were a mistake because her welfare fraud case had been dismissed. The worker explained that the dismissal of the

criminal case did not mean that the overpayments were still not owed to DCF through its administrative recovery processes. On July 30, 2004, DCF prepared a request for a fair hearing form for the petitioner. It stated that the request for the fair hearing involved recoupment of moneys in the Food Stamp program. The petitioner says that she was also appealing the recoupment in the Reach Up program. That allegation is found to be true based on the above circumstances.

13. Following a conference on this appeal, DCF voluntarily suspended recoupment in the Reach Up program because it was unable to produce the original notices establishing the overpayment. DCF, despite a diligent search, can find no notices establishing the Reach Up overpayment. DCF would not suspend the recoupment in the Food Stamp program as requested by the petitioner based on its belief that the appeal is not timely and the petitioner was properly notified of the establishment of the Food Stamp overpayment.

14. It is found based on the above facts that the petitioner knew or should have known as early as February of 2003 when her tax return was intercepted and at the latest by November of 2003 when she received a direct notice to that

effect that DCF was taking actions against her to recover Food Stamp overpayments. The earliest time at which the petitioner indicated that she was dissatisfied with this action was in June of 2004 when she and her mother began discussing the recoupments with the petitioner's worker.

15. It is found based on the above facts that the petitioner did not know prior to June of 2004 that DCF was recouping money from her in the Reach Up program and that she indicated that she was dissatisfied with that decision within a few days following those notices.

ORDER

The motion of DCF to dismiss the Reach Up and Food Stamp appeals as out of time is denied. The petitioner's motion to dismiss the Reach Up recoupment actions because DCF has failed to show that the petitioner was notified of the claim is granted. In addition, DCF's establishment and collection of the Food Stamp claim to date is dismissed because it has failed to show that the petitioner was notified of the claim as required in its regulations.

REASONS

The rules of the Human Services Board require that appeals from decisions of DCF "shall not be considered by the

board unless the appellant has either mailed a request for fair hearing or clearly indicated that he or she wishes to present his or her case to a higher authority within 90 days from the date when his or her grievance arose." Human Services Board Fair Hearing Rule No. 1. Under regulations adopted by the Department of Children and Families effective July 1, 2002, notice of Food Stamp overpayments begins with written notification of the overpayment and adverse action to be taken by DCF. F.S.M. § 273.18(e)(3)(i) and (ii). That "claim" letter by regulation must contain some sixteen separate items, including details of how the claim was calculated, how the claim can be collected, information on DCF's authority to compromise claims and the right to request a hearing within 90 days. Id. At (iii).

DCF produced four identical notices sent to the petitioner on a monthly basis in the summer and fall of 2002 referring to the existence of an overpayment and asking for repayment. These notices contained very few of the sixteen required items; of particular concern is the lack of information about how the claim was calculated, the involuntary collection methods available to DCF and the

compromise provisions.¹ While the petitioner should have understood from subsequent notices sent to her that some sort of adverse action was being taken against her, she was not made aware of the entire collection picture or any possible defenses or remedies she may have had with respect to overpayments as is required under the regulations. Without this knowledge, the petitioner could not have fully understood the possible advantage to her in filing an appeal. It must be concluded that those subsequent notices, even if they had been received by the petitioner, fall far short of meeting the requirements of DCF's own regulations with regard to establishing overpayment claims. 7 C.F.R. § 273.18(e). It must also be concluded that DCF's actions and attempts to collect under the defective notices are a violation of its own regulations and quite possibly violate the petitioner's

¹ DCF pointed out during oral argument before the Board that the first of these notices was sent on June 14, 2002, two weeks before the current Regulation took effect. DCF argues that the first notice did comply with the Rule then in effect which did not require information about how claims were calculated, involuntary collection methods or compromise possibilities. See F.S.M. § 273.18d(3). January 24, 1997, Bulletin No. 97-2F. DCF's contention that this first letter was effective notice to the petitioner is without merit, even if it could be found that the petitioner received it, because the Vermont federal district court's decision in Malansen v. Wilson, D.Vt, Civil Action No. 79-116, August 12, 1980, holds that notices of coupon reductions due to overpayments in the Food Stamp program must also contain calculation information under 14th Amendment constitutional due process of law provisions. DCF's argument that the Court's reasoning should not extend to overpayment collections that result in other kinds of recoupsments, such as tax offsets, is totally without distinction or merit.

right to due process of law as well. See Mathews v. Eldridge, 424 U.S. 319 (1976).²

After speaking with her worker and understanding the significance of the overpayment notice, the petitioner did indicate in June of 2004 that she wished to be heard on the matter. Since DCF has yet to indicate that it has sent the appropriate claim letter to the petitioner, it cannot be found that her appeal is out of time. In fact, since DCF cannot produce the original claim letter or provide her with a new one at this time, it has no basis upon which to continue collection of the overpayment or to retain amounts already collected. See F.S.M. § 273.18(e). Absence a showing by DCF that a claim letter has been sent, the Board is constrained not only to allow the appeal but to determine it in the petitioner's favor.

With regard to the Reach Up appeal, there is no evidence that the petitioner should have been aware that she had a grievance in that matter before she received the recoupment notice in June of 2004. She appealed to the Board at the end

² The petitioner also relies on Bliek V. Palmer, 916 F. Supp. 1475 (N.D. Iowa 1966). While the reasoning in that case, that it is a violation of their due process rights not to inform recipients of their rights to compromise their overpayments is probably applicable here as well, that case involved a class of persons who were found to have had no fault in their overpayments. That issue is yet to be decided here.

of July 2004, well within the ninety day period allowed. While DCF claims that she only appealed the Food Stamp claim at that point, the surrounding circumstances show that the petitioner was complaining as well about the Reach Up recoupment. The petitioner did not prepare the appeal notice herself and the Board's regulations will count as an appeal "any clear indication (oral or written) that a person wishes to present his or her case to a higher authority." Human Services Board Fair Hearing Rule No. 1. Therefore, the Board has jurisdiction to hear the petitioner's appeal regarding the Reach Up overpayment.

The initial burden on DCF at any appeal of a Reach Up overpayment is to demonstrate that it has notified the petitioner of the overpayment including the dates that it occurred, reasons it occurred and how the amount of the overpayment was calculated. W.A.M. §§ 2234.2 and 2143. DCF was unable to provide any evidence that it had provided the petitioner with such a notice. Therefore, DCF's attempt to recoup any amounts from the petitioner's current benefits (or indeed any attempt to recover these amounts in any way) must be found to be in violation of DCF's own regulations and must be reversed. DCF has indicated that it plans to issue a new notice of overpayment to the petitioner containing the

requisite information. The petitioner may appeal any new notice if she is dissatisfied with DCF's decision. The latter is true of any new claim letter which DCF may send to the petitioner for the Food Stamp claim as well.

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