

4. There is no dispute as to the petitioner's income and resources or that her income is in excess of eligibility for Food Stamps. The issue is whether the petitioner should be considered to have been overpaid \$245 in Food Stamps for the month of October 2005.

ORDER

The decision of the Department is affirmed.

REASONS

The petitioner does not dispute that she was required to report her receipt of earnings within 10 days of her first paycheck. See F.S.M. § 273.12(a)(2). Whether or not she did so, there is no dispute that her earnings, had they been timely reported, would have made her ineligible for Food Stamps as of October 1, 2005.

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). Even if the overpayment can be determined to have been the Department's fault, the regulations provide: "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—twenty percent or \$10 when caused by household error. F.S.M. § 273.18(g)(4). However, 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. If and when the petitioner again applies for Food Stamps, and the Department makes a decision on the rate of recoupment for the existing \$245 overpayment, the petitioner can file an appeal if she

disagrees with the Department's determination as to who was at fault.

At this time, however, inasmuch as the Department's decision that the petitioner was overpaid \$245 in Food Stamps for October 2005 is in accord with the above regulations, the Board is bound by law to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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