

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. T-01/17-27  
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Appeal of )  
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INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Economic Services Division, that she was overpaid 3SquaresVT (Food Stamp) benefits due to inadvertent household error. The issue is whether the overpayment was caused by agency error or inadvertent household error.

The following decision is based on the representations of the parties at and documents submitted pursuant to hearings held on February 7 and 28, 2017.

FINDINGS OF FACT

1. The petitioner was the head of a 3SquaresVT household in October 2015 that included her daughter, who had turned eighteen.

2. The petitioner's daughter began working in October 2015. The Department has no record that the petitioner reported this at or near the time in question.

3. In August 2016 the petitioner was contacted by a Department investigator who informed her that the Department had obtained information from another agency that her daughter had begun working in October 2015 and that the petitioner had not previously reported this to the Department.

4. On September 15, 2016 the Department notified the petitioner that her 3SquaresVT benefits would end effective October 1, 2016. On October 20, 2016 the Department notified the petitioner that she had received, and was liable to repay, an overpayment of 3SquaresVT benefits from January 1 through September 30, 2016 in the amount of \$1,459.

5. The petitioner does not dispute that due to her daughter's earnings the household was not eligible to receive any 3SquaresVT benefits as of January 1, 2016. She also does not dispute that the Department's calculation of the amount of the overpayment is accurate.<sup>1</sup>

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<sup>1</sup>Based on the notice requirements in the regulations, January 1, 2016 would have been the earliest date the Department could effectuated any change in benefits, even if the petitioner had timely reported her daughter's income.

6. The petitioner alleges, however, that she called the Department in October 2015, when her daughter had started working, and that she was told that her daughter would not be considered part of her household if she ate her meals separately. The petitioner does not recall the name of the person she spoke with, but based on when her daughter started working, she knows the conversation could not have taken place before October 2015. The petitioner does not now dispute that such information, had it been given, would have been erroneous, in that the regulations require adult children living with their parents to be considered members of the same household as their parents and their income to be deemed available to the entire household. However, the petitioner maintains that in light of receiving contrary information from the Department, any overpayment that subsequently occurred must be attributed to a Department error.

7. At the hearing on February 7, 2017, the parties agreed to continue the matter for the Department to check its case records to determine the date and substance of any calls that were made by the petitioner at that time. At the hearing on February 28, the Department produced a printed "case action log" that showed three separate phone

conversations with the petitioner in September 2015, none of which noted any discussion of her daughter working. (As noted above, the petitioner concedes that she wouldn't have reported her daughter's work as early as September 2015.) However, the next contact of any kind from the petitioner noted in the Department's records was not until March 23, 2016, which again did not note any discussion of her daughter's income.

8. The Department represents that its practice is to record the time and substance of all calls to and from recipients in its case action log. The Department concedes it is possible, but considers it highly unlikely, that it would have failed to log a call of the type described by the petitioner.

9. The petitioner admitted that when she was contacted by the Department's investigator in August 2016, they discussed the household composition and income reporting requirements concerning adult children. It was only after being questioned at the hearing about the timing of *this* conversation that the petitioner alleged an earlier conversation with a worker she could not identify.

10. Solely on the basis of the petitioner's unsupported recollection, it cannot be found that she timely reported

that her daughter was working and that the Department not only failed to act on this information, but also failed to enter the petitioner's alleged telephone contact in its records.

11. The Department does not allege that the petitioner's failure to timely report this information was intentional. It has attributed her failure to report this information as an "inadvertent household error" (see *infra*).

ORDER

The Department's decision is affirmed.

REASONS

The amount of 3SquaresVT benefits a household receives is based upon a complex formula that is set out in the Department's regulations at § 273.9. A change in household income most often triggers a change in the amount of benefits. To ensure that benefits are calculated correctly, households must attest that they will inform the Department of any change in their income within ten days.

Under the 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."

This action includes recouping the overpayment, whether the overpayment is due to agency error or inadvertent household error. § 273.18(a).

Whether an overpayment is due to agency error or inadvertent household error is important because there are differences (1) in how the overpayment is calculated such as not allowing the earned income deductions for inadvertent household error and (2) in determining whether and how a claim can be compromised.

Inadvertent household error includes "an overpayment resulting from a misunderstanding or unintended error on the part of the household" such as not reporting a change in circumstances. § 273.18(b)(2). Agency error includes an overpayment "caused by State agency action or failure to take action" such as failure to take appropriate action when a household reports a change. § 273.18(b)(2).

The petitioner in this matter argues that she reported her daughter's earnings to the Department in October 2015, but the Department told her at that time that it would not affect her benefits. Thus, she claims agency error.

As noted above, however, there is no information in the Department's records to support petitioner's claim that the Department knew of her daughter's employment prior to the

time it was reported from other sources in July 2016. As noted above, it cannot be found the petitioner's alleged recollection, in and of itself, is sufficiently credible to support her claim.

The record supports the Department's position that the overpayment is due to inadvertent household error. Thus, the Department's decision must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4(D).

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