

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. N-09/17-443
)
Appeal of)
)

INTRODUCTION

The petitioner appeals a decision by the Department of Children and Families (DCF) denying a 3SquaresVT benefit for July 2017 based on her alleged failure to provide a termination of employment verification form that was necessary to determine her eligibility. The following facts are adduced from a hearing held March 13, 2018, documents submitted at hearing, and further written submissions from the parties. The hearing was continued several times, by agreement of the parties, prior to the merits hearing.

FINDINGS OF FACT

1. While the benefit period at issue in this case is July 2017, the facts relating to petitioner's June 2017 application are also relevant. Petitioner had applied for 3SQUARESVT benefits in June 2017, but the verification process was not completed, and benefits were not granted.

2. One of the verification requirements that was not completed for the June application was receipt of a termination of employment form (form 218ET or "form") from Advantage Sales. Petitioner had reported to the Department that she stopped work at Advantage Sales in late May 2017.

3. Petitioner reported that she submitted the form to Advantage Sales in June 2017. She also reported that she called Advantage Sales payroll in June to follow-up. While she does not remember whom she spoke with at the Department, she stated that she called the Department to notify them of her efforts. Petitioner's efforts to get the form from Advantage in June are confirmed in a Department case note dated August 30, 2017. The case note indicates that on June 16th the Department made a "collateral" attempt, meaning the Department took the step of trying to make phone contact with Advantage Sales directly after speaking with petitioner. While the reasons for the Department making this collateral contact are not specified in the case note, the Department characterizes the attempt as a "courtesy" contact, without an explanation or reason.

4. Whatever the reason for this collateral contact, it is specifically found that the Department was on notice as of

June 16 that a collateral contact had been attempted and had been unsuccessful.

5. On July 7, 2017, petitioner called the Department to say she was no longer working at Kinney Drug and was now working elsewhere. She asked that the forms for verification of termination of employment and verification of employment be mailed to her.

6. Petitioner filed a reapplication for 3SquaresVT benefits online on July 11, 2017. The application noted the prior employment with Advantage Sales and Kinney Drug. Petitioner talked to a Department worker on July 11th and reported that she had sent the forms to both Advantage Sales (for the second time) and Kinney Drugs. The Department's case note from that date states that the staff person told her they had not received the forms and that she was sending her duplicate forms for both companies, so she could resubmit them. The Department requested that the forms be returned within 10 days, or by July 21st.

7. Petitioner stated that she sent the form to Advantage twice in July (three times total) and left two telephone calls with the company in July and that she communicated that to the Department. At least a partial confirmation of that statement is contained in the

Department's July 11th case note stating that petitioner said she had already mailed the form to the company in July and the Department's note that it was sending her a duplicate form.

8. The Department issued a Decision dated July 26, 2017 denying the application for failure to produce completed verification forms from her former employers. The notice of Decision stated that petitioner's application would be reconsidered if she provided the missing information within 60 days of the date of her application.

9. The Department received the verification form for Kinney Drugs by July 31, 2017, so it considered that verification timely as it was received before the end of the 30-day processing period. However, the Department never received the verification form from Advantage Sales.

10. A Department staff member entered a case note after speaking with petitioner on August 30, 2017. He noted that he made a second "collateral" attempt to contact Advantage Sales on that date and was not successful. As a result of reviewing that case note, on the same date a Department supervisor then accepted petitioner's "self-declaration" as verification of her end of employment at Advantage Sales. However, this finding was deemed untimely for an award of July benefits.

11. There is no allegation or evidence that petitioner ever refused to verify, or refused to attempt to verify, her end of employment with Advantage Sales. Nor is there any dispute that petitioner's employment there had ended at the time she specified.

12. It is specifically found that any delay in verification of petitioner's end of employment with Advantage Sales was wholly out of her control.

ORDER

The decision of the Department is reversed.

REASONS

Review of the Department's determination is de novo. The Department has the burden of proof at hearing if terminating or reducing existing benefits; otherwise the petitioner bears the burden. See Fair Hearing Rule 1000.3.0.4.

To determine financial eligibility, the Department requires applicants to report current income for the month in which they are applying. 3SQUARESVT Rules ("Rules") §273.10(a)(1). In addition, the Department may request information on income received during the past 30 days to be used as an indicator of anticipated future income. If it determines that a 30-day lookback alone is not sufficient, it

may use a longer period of past time to provide a more accurate indication of anticipated fluctuations in future income. Rules §273.10(c)(1)(ii). Applicants must also report prospective changes in employment or other income within 10 days of the date the change becomes known. Rules §273.12.

Once the application is completed, a verification process follows. The applicant has the "the primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information." Rules §273.2(f)(5). A verification form(s) is supplied to the applicant to deliver to current and former employers. The verification forms must be returned within 10 days or the application is denied. 3SQUARESVT Program Manual, Application Verification. The Rules provide that the Department shall otherwise complete processing an application within 30 days of submission. Rules §273.2(g).

The Rules anticipate that problems with obtaining verifications may occur and that the return of the verification forms may be beyond the applicant's power. The 3SQUARESVT Manual provides that "[I]f a household reports difficulty in getting verification, or requests help to get the verification, the agency must offer to help." (emphasis in the original) 3SQUARESVT Program Manual, Verification. The

Rules confirm that the Department "shall assist the household in obtaining this verification provided the household is cooperative with the State as specified under paragraph (d) (1) of this section." Rules §273.2(f) (5). And, the Rules provide that "[T]he State agency shall not determine the household to be ineligible when a person outside the household fails to cooperate with a request for verification." Rules §273.2(d). (emphasis added)

If an applicant cannot obtain a verification form, the Department is authorized to make a "collateral contact" to the employer to obtain the information. Rules §273.2(f) (4) (ii). If the Department is still unable to obtain income verification, it may waive the verification and make an eligibility decision based on the information it has. The 3SQUARESVT Procedures Manual provides that:

The requirement for verification may be waived under extraordinary circumstances when the verification is unlikely ever to be available and obtaining it is outside the control of the client. In such cases the director or his or her designee may grant such a waiver.

If the grant is denied or closed for other than outright refusal and you later learn that your action was based on inadequate or incorrect information, grant for every month the client was eligible from the date of the original application. Document this in the case file or CATN. If you discover the error within 60 days of the original application, a new DSW 202 is not required.

3SQUARESVT Procedures Manual, P-2510, New Applications, Application Processing (Emphasis added).

The Rules confirm that there are alternatives to denial when verifications cannot be obtained.

Gross nonexempt income shall be verified for all households prior to certification. However, where all attempts to verify the income have been unsuccessful because the person or organization providing the income has failed to cooperate with the household and the State agency, and all other sources of verification are unavailable, the eligibility worker shall determine an amount to be used for certification purposes based on the best available information.

Rules §273.2(f)(1)(i).

The Department has access to alternate income verification information through the "Income and Eligibility Verification System" (IEVS). Rules §273.2(f)(9). Information from IEVS includes access to monthly reports from the Vermont Department of Labor on household income. 3SQUARESVT Manual, Verification and case notes. Applicants are notified at the time of application that the Department will use the information obtained from IEVS to verify income. Rules §273.2(b)(2).

Turing to the facts of this case, as part of the verification process for July benefits the Department required petitioner to supply a termination of employment form from

former employers Advantage Sales and Kinney Drugs. Kinney Drugs completed the form, but Advantage Sales never responded.

Petitioner argues that she should be granted retroactive benefits for July 2017 because she made reasonable efforts to obtain the verification form as she sent it to Advantage Sales at least three times during June and July, called the business multiple times to follow-up, and that she notified the Department of her efforts. Essentially, petitioner argues that the Department should have accepted her "self-declaration" or waived the verification in July based on her reported efforts instead of waiting until the end of August to do so.

At hearing, the Department indicated that the responsibility to obtain the verifications lies with the applicant and that an applicant who is having difficulty meeting that obligation must specifically notify the Department and request assistance. That statement is partially accurate; however, the plain language of the Rule also refers to the situation when a petitioner "reports difficulty obtaining the verification." As noted above, the Rules provide that an applicant who is cooperating should not be denied because a person outside the household fails to cooperate. And, even following a denial for lack of

verification, if it is discovered that a denial is based on "inadequate or incorrect" information, then eligibility must be determined going back to the date of application.

In this case, it was the former employer that failed to cooperate; a fact the Department learned when its staff twice attempted to contact the business to no avail. Petitioner failed to obtain benefits in June, in part because the form wasn't obtained from Advantage Sales. The lack of that same form was the only reason for the denial of July benefits. If the form was to report current income, the Department's need for the form would be more critical. But, the verification form at issue here was to confirm the end of employment from two-months prior. See Fair Hearing No. T-04/13-361 (In absence of any evidence that petitioner had income during the period for which she was denied benefits, Department should have accepted timely oral representation of compliance made during benefit period.)

Petitioner's two-month failed effort to obtain the verification form by submitting multiple copies of the form and calling the former employer on multiple occasions to follow-up meets the standard of "having difficulty obtaining the form." Petitioner met the notice provision to the Department by telling the Department in June and July that she

had submitted the forms and called the former employer without success. Moreover, the Department was on notice as early as June 16, 2017, that a collateral contact to the employer - which, as in this case, would normally result in a determination that the lack of verification was out of the applicant's control and allow for self-attestation, had been unsuccessful.

The conclusion in this case should not be understood to, in any way, transfer the primary responsibility of obtaining verification of end of employment forms to the Department. However, the language of the Rules authorizes the Department to assist an applicant once it is on notice that an applicant has made reasonable efforts and do not require an express plea for assistance.

As the decision of the Department was not in conformance with its regulations, the Board should reverse. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

#