

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. M-01/20-40
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Appeal of)
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INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families (DCF) denying a retroactive increase in her 3SquaresVT benefit for September 2019 following her failure to provide verification of an income decrease during that month. The following facts are adduced from a hearing held February 13, 2020, and documents submitted by the Department.

FINDINGS OF FACT

1. The benefit period at issue in this case is the month of September 2019. Petitioner was, at the beginning of that month, a recipient of 3SquaresVT benefits. Petitioner's benefit had been calculated to include income that she received from working at Walmart.

2. On September 12, 2019, petitioner contacted the Department to report a decrease in her hours of employment at Walmart. Petitioner sought an increase in her September 3SquaresVT benefit because she asserted that her employment

income would be less than it had been in the prior month. Specifically, petitioner stated that she was no longer working many hours and since September 3, 2019 she had been given zero hours. The call notes from this contact do not reflect how many hours petitioner anticipated being given during the remainder of the month or that petitioner had in fact stopped working at Walmart because she had been terminated.

3. In response, on that same date, the Department called petitioner's employer to obtain telephone verification of the information provided by petitioner about a change in her employment. No one reached by telephone at Walmart would agree to verify the employment change. Therefore, the Department mailed petitioner a 218 EC form, requesting petitioner to obtain from her employer, verification of the employment change she was reporting. A deadline was established of September 22, 2019 for this information to be submitted.

4. The Department received the Form 218 EC back one day after the deadline, on September 23, 2019. However, it had not been signed by the employer, but instead, had been filled out by the petitioner. On the form, petitioner noted, for the first time, that the issue was not just that her hours had been decreased, but that in fact she had been terminated on September 3, 2019. On the form petitioner gave the name and

phone number of the Store Manager for Walmart. Petitioner also noted that she had appealed her termination.

5. On September 25, 2019 the Department rejected this form, because it was not filled out or signed by the employer, and because it did not give employer verification of the termination or provide any specific wage information for the month of September. The Department again called Walmart, this time to try to verify that the petitioner's employment with Walmart had in fact ended, and also to determine how much income she had received or would receive during the month of September from Walmart so that the Department could calculate an appropriate 3SquaresVT benefit for that month. No one at Walmart would provide the information requested.

6. Petitioner did not contact the Department again until October 1, 2019, at which time she called them to ask that they check with the Department of Labor (DOL) to verify that her employment had ended. The Department obtained petitioner's permission to make another collateral call to Walmart to verify petitioner's employment termination, but Walmart again was unwilling to respond to this request. DOL did not have information available on that date to verify petitioner's termination of employment. In response, the Department sent petitioner a different form, Form 218ET (Employment Termination), asking her to obtain verification of

her employment termination from her employer and return it by no later than October 11, 2019.

7. On October 8, 2019 petitioner visited the Department's District Office in Barre to ask about her 3SquaresVT benefits. As no response had been received from Walmart regarding petitioner's termination, Department representatives offered to make a collateral call to attempt to verify the termination and petitioner declined this offer.

8. On October 11, 2019 petitioner again visited the Barre District Office and this time did permit Department representatives to make a collateral call to Walmart. Walmart's Human Resource staff person indicated that they would not give out such information over the phone but agreed to fill out the form if the Department faxed it to them. The Department representative faxed the form to Walmart, but it was not returned.

9. On October 18, 2019 petitioner once again appeared at the District office to enquire about the status of her benefits. A Department representative called and spoke with the same Walmart Human Resource staff person from the week before, who insisted that the 218ET form had been returned to the Department, but agreed that if the Department faxed it again, that they would immediately fill it out and return it.

The Department sent the form again by fax, but Walmart never returned it.

10. On that same day, DOL was able to provide the Department current unemployment benefit income information for petitioner, for the month of October. DOL also verified that petitioner had been terminated from Walmart as of September 3, 2019. However, no information was ever obtained for the amount of income petitioner received in September. While it is unclear why DOL did not have that information, it is undisputed that the Department attempted to obtain it from numerous sources during September as well as October.

11. The Department issued a Decision dated October 18, 2019 granting petitioner benefits of \$194 per month (the maximum amount) as of October 1, 2019. This figure was based on the unemployment benefit that the petitioner was now receiving.

12. Petitioner requested that she be awarded retroactive 3SquaresVT benefits for September of 2019, based on the fact that her employment had been terminated on September 3, 2019. The Department found petitioner ineligible for an underpayment for September 2019 benefits because she never provided information on how much income she had during that month.

13. At hearing, petitioner stated that while she had some income from Walmart during the month of September, she

did not know how much, and insisted that DOL should be required to provide this. Petitioner could not produce paycheck stubs, nor did she even provide an estimate of her September earnings. Petitioner also asserted, incorrectly, that the Department could, in the alternative, obtain this information from her banking records. Ultimately, petitioner never provided any information relative to how much income from Walmart she actually received in September of 2019, nor was the Department ever able to obtain such information from any source.

14. Petitioner also criticized the efforts of Department staff to verify her wage and employment information with Walmart, making unsupported claims that the Department staff did not get names and phone numbers of people with whom they spoke, or leave detailed messages with Walmart management. That these claims are not accurate is demonstrated by notes in the Case Action Log provided by the Department to petitioner and the Hearing Officer during the discovery process.

ORDER

The decision of the Department is affirmed.

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.

As a recipient of 3SquaresVT benefits, petitioner had an obligation to report changes in employment or other income within 10 days of the date the change becomes known. See 3SquaresVT Program Manual.

Upon receipt of notice of such a change, the Department requires applicants to verify those changes. The applicant has the "the primary responsibility" to provide verification of changes in income of employment. A verification form(s) is supplied to the applicant to deliver to current or former employers. The verification forms must be returned within 10 days. See 3SquaresVT Program Manual.

The manual anticipates 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) If an applicant cannot obtain a verification form, the Department is authorized to make a "collateral contact" to the employer to obtain the information. 3SquaresVT Program Manual, Verification.

Benefits are calculated prospectively under the program. Thus, for a decrease in income that warrants a benefit increase the manual directs that the Department should "Increase the benefit amount no later than the first issuance that is ten days after the change was reported or verified, whichever occurs last." (emphasis in the original) The manual also directs that when there is unclear change information from a household, it should not be "acted on until it is clarified or verified", and that if a household fails to provide required verification, the Department should "[d]etermine the household's benefit without allowing the change." 3SquaresVT Program Manual, Change Processing.

Turning to the facts of this case, as part of the verification process for petitioner's September 12, 2019 request to have her September benefits adjusted based on a change in her employment, the Department requested petitioner to provide a change of income form from her employer. The petitioner never returned the completed form and the Department's collateral calls to Walmart were not successful.

Later, on September 25, 2019 when Department staff learned that petitioner had in fact been terminated, a second effort, this time to verify petitioner's termination, was instituted. The Department sent the proper form to petitioner, but she never obtained the completed form from her

employer. The Department then made numerous collateral efforts to obtain the termination information from petitioner's former employer. Walmart's failure to respond to the Department in this matter is lamentable, but not the fault of the Department.

On this record there was no evidence that petitioner ever made any attempts herself to obtain a response from her former employer. The necessary forms were sent to petitioner, and it was her obligation to have her former employer fill them out. The Department, however, did more than adequately discharge their obligation to make collateral efforts to obtain verification including repeatedly calling the employer, faxing forms to the employer, and contacting DOL on more than one occasion to determine if that agency had sufficient information to verify petitioner's wages for September as well as her claim of termination.

Petitioner argues that she should be granted retroactive benefits for September 2019, because she made less money in September than she had in the prior month, and thus her eligibility for benefits should have been recalculated. Petitioner is right. A decrease in income normally does give rise to a benefit recalculation. However, after multiple requests for the information from petitioner as well as her employer, and DOL, the Department was never able to obtain an

income figure for petitioner's September 2019 income. Thus, there was no figure to use to determine what income should serve as the basis for a recalculation for September 2019. When, in late October 2019, the Department was able to obtain income information for petitioner for October, a recalculation was completed immediately for that entire month.

In this instance even before the Department placed the onus of verification on petitioner, they began efforts to secure verification through collateral means. They were unable to obtain the information that they needed to make the benefit adjustment requested by petitioner and in compliance with the manual, did not make the requested change.

As the decision of the Department was in conformance with its regulations, the Board must affirm. See 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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