

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. A-06/08-264  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families that she was overpaid Food Stamps due to inadvertent household error. The issue is whether the Food Stamp overpayment was caused by agency error rather than inadvertent household error. The decision is based on the evidence adduced at fair hearing.

FINDINGS OF FACT

1. The petitioner is a disabled individual residing with her two children.
2. On or about May 1, 2008, the Department sent petitioner a notice that she had been overpaid Food Stamps for the period of October 1, 2007 through March 31, 2008 due to a failure to provide correct and timely information to the Department. On or about June 17, 2008, the Department sent petitioner a notice that they planned to recoup \$10 per month from her Food Stamps to recoup the overpayment. Petitioner filed a notice of appeal on or about June 17, 2008. The

parties dispute whether petitioner timely informed the Department about her son's part-time job.

3. Petitioner's household was comprised of four people during September 2007 including her two children and a friend. Petitioner was sent a recertification application during September 2007. At the time that petitioner completed the recertification, her son was not employed. Petitioner was aware that changes in income had to be reported.

4. During September 2007, A.B. became petitioner's caseworker because petitioner's assigned caseworker was ill. A.B. was a case aid at that time; she subsequently became a benefit program specialist in January 2008. The district office was understaffed during this period. A.B. was assigned over 200 cases; she estimated that fifteen to twenty-seven telephone messages per day are left on her voicemail.

5. Petitioner's son started a part-time job in October 2008 as a substitute with his school district. The wage records obtained from The Work Number, an automated employment and verification service used by the Department, show the son receiving his first earnings of \$30 for the pay period ending October 16, 2008 and show a work start date of October 14, 2007.

6. Petitioner testified that she telephoned A.B. and left A.B. a message that her son had started to work part-time. Petitioner testified that she placed this telephone call a couple of weeks after her son was hired because she wanted to make sure that her son would take the job before notifying A.B. Petitioner testified that she believed her son was hired at the end of September or beginning of October 2007; she was not sure of the date. Petitioner's testimony that she left a message for A.B. is credible.

7. A.B. testified that she did not receive a telephone message from petitioner that petitioner's son started a part-time job. A.B. did not recall receiving any telephone messages from petitioner during October 2007. During testimony, A.B. explained that she keeps a daily telephone log. The telephone log was retrieved. A.B. found that petitioner had telephoned her several times on dates spanning from October 4 to October 18, 2007. A.B. did not take verbatim messages from her voice mail; she noted in the phone log that petitioner called regarding Food Stamps. A.B. did return the telephone calls but did not connect with petitioner; she left messages instead. During the month of October 2007, the petitioner and A.B. played telephone tag and did not have a direct conversation. A.B. maintained that

she does not remember receiving a telephone message from petitioner that petitioner's son started a job.

8. During the latter part of 2007, petitioner's case was transferred to another district office due to the short staffing in petitioner's home district. Petitioner was hospitalized in December 2007 and applied for long-term care Medicaid that was subsequently granted. Petitioner testified that her memory of that time is a blur due to her illness and medications although she recalls doing paperwork for the Department. There is information in the record that the new district office updated a Food Stamp review on February 12, 2008 and used information from petitioner's long-term care Medicaid application.<sup>1</sup>

9. Petitioner's telephone call to A.B. on October 18, 2007 took place within ten days of her son's job start date of October 14, 2007. The son's start date of October 14, 2007 triggered the timeline for reporting a change to the Department.

ORDER

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<sup>1</sup> Petitioner was found eligible for long-term care Medicaid on February 14, 2008 effective December 31, 2007. The long-term care application does not ask the same household income questions as the Food Stamp application. There is no information in the record that the caseworker assigned in February 2008 looked beyond the information in the long-term care application when updating petitioner's Food Stamp information.

The Department's determination that petitioner was overpaid Food Stamps from the period of October 1, 2007 through March 31, 2008 is modified to December 1, 2007 through March 31, 2008. The Department's determination that the overpayment was due to inadvertent household error is reversed and changed to agency error. The case is remanded to determine the amount of the overpayment based on the preceding changes and to allow petitioner to seek a compromise of the overpayment.

REASONS

The amount of Food Stamps a household receives is based upon a complex formula that is set out in Food Stamp Manual (FSM) § 273.9. A change in household income can trigger a change in the amount of Food Stamp benefits. When the Department obtained wage information for petitioner's son, the Department recalculated the amount of Food Stamps due petitioner's household and determined that petitioner had been overpaid Food Stamps.

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). However, the claim should reflect the actual period of the overpayment.

Households have an obligation to report changes in income or the start of a new job within ten days time of when the change occurred. FSM § 273.12(a)(2). Once income or the start of a new job is reported, the Department has ten days to recalculate the Food Stamp benefits. The Department cannot change the amount of Food Stamps without first giving ten days advance notice. FSM § 273.12(c)(2).

In petitioner's case, her son started working on October 14, 2007. Under the regulations, petitioner needed to inform the Department by October 24, 2007 of the change. The Department would have recalculated the Food Stamp benefits and, under the regulations, would have instituted a change for the December 2007 Food Stamp benefits.

Instead, the Department determined overpayments for October and November 2007. Based on the regulations, the petitioner's Food Stamp overpayment is comprised of the period of December 1, 2007 through March 31, 2008.

Whether the remaining overpayment is due to agency error or inadvertent household error, the Department is required to take action to recoup the overpayment. F.S.M. § 273.18(a). However, 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 how a claim can be compromised. The Department categorizes petitioner's case as inadvertent household error. The petitioner is claiming that her overpayment resulted from agency error.

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. FSM § 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. F.S.M. § 273.18(b)(2).

Petitioner testified that she left a telephone message that her son was employed. The evidence shows that the caseworker logged a message from petitioner on October 18, 2007 or four days after the date petitioner's son started his job. The evidence shows that the district office was understaffed and that A.B. was recently assigned to an existing caseload. A.B. was responsible for more than 200 cases; she faced multiple telephone messages from her caseload that she had to return while juggling her other work. She had and has a tough workload to manage.

A.B. did not initially remember that petitioner left messages for her in October 2007. A.B.'s log indicates petitioner did call about Food Stamps. A.B. did not write verbatim messages from her voice mail. Without verbatim messages, the Department cannot conclude that petitioner did not leave a message about her son's employment.

Although the petitioner did not remember exact dates for her telephone calls to A.B., petitioner did call A.B. Although, petitioner was unsure of when her son was hired and waited until he was working, petitioner understood her obligation to report, telephoned A.B. and left a message. It should be noted that the date of hire and the start date are not necessarily the same. Petitioner's testimony is credible that she contacted the Department to report that her son started a job. This information was not act upon.

Based on the above, the overpayment is considered agency error. The Department's decision that the overpayment encompassed October 1, 2007 through March 31, 2008 is modified to December 1, 2007 through March 31, 2008. The Department's decision that the overpayment was due to inadvertent household error is reversed and changed to agency error. Petitioner's case is remanded to recalculate the amount of overpayment and to allow for consideration of a

compromise of the Food Stamp overpayment. 3 V.S.A. §  
3091(d).

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