

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. A-09/08-427
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Economic Services Division, assessing a Food Stamp overpayment due to inadvertent household error.

Petitioner appealed the denial of his request for compromise of the Food Stamp overpayment. The Food Stamp overpayment stems from the period of August 2007 through August 2008. The Department compromised the amount of the overpayment after changing his household status from a two person household to a one person household for Food Stamps effective October 2008.

The petitioner disputes the amount of the overpayment. The issues include how petitioner's household size should be configured effective February 2008 and the amount of the overpayment.

After a fair hearing, the Department was given additional time to consider the evidence and arguments

regarding the composition of Food Stamp households. The parties were unable to reach agreement.

The following decision is based upon testimony and the briefs of the parties.

FINDINGS OF FACT

1. The petitioner is a disabled elderly man. He resides with his adult son, T.R., in a two bedroom trailer. The petitioner's sole source of income is Social Security benefits. T.R. is disabled and receives Social Security benefits; T.R. has had periods of employment.

2. On or about August 1, 2007, the petitioner was certified for Food Stamps. Petitioner was considered part of a two person household. At that time, T.R.'s sole source of income was Social Security Disability benefits. Petitioner testified that he did not understand that both he and his son could set up separate Food Stamp households if they customarily purchased and prepared food separately.¹

3. On or about February 1, 2008, T.R. obtained part-time employment. T.R.'s employment was not reported to the Department. T.R.'s wages were not taken into account to determine the amount of Food Stamps.

¹Setting up as separate households may increase the total amount of food stamps.

4. The Department notified petitioner that he was overpaid Food Stamp benefits in the amount of \$873 due to inadvertent household error.

5. M.McG. of Legal Services LawLine submitted a request dated August 26, 2008 seeking a compromise of the overpayment on petitioner's behalf. In that request, the Department was notified that petitioner had been advised to apply as a one person household.

6. On September 2, 2008, the Department denied the request for a compromise because petitioner's two person household had sufficient funds to repay the overpayment within three years. The petitioner requested a fair hearing on September 3, 2008.

7. A telephone status conference was held on October 8, 2008 in which the Department indicated that a compromise of the overpayment would be offered. The offer was confirmed in writing on October 27, 2008. The Department offered to compromise the overpayment to \$633. The Department uses a formula to determine whether to compromise an overpayment caused by inadvertent household error. When the Department changed petitioner's status to a one person household in October 2008, their compromise calculations indicated that petitioner could pay \$633 over three years.

8. A telephone status conference was held on November 3, 2008. Petitioner questioned the amount of the compromise and whether the amount of the overpayment should be recalculated based on a change to his household status in February 2008. Time was given for the parties to pursue negotiations. A hearing was convened on January 14, 2009 to develop evidence as to household composition.

9. Petitioner testified that he lives in a mobile home with his son T.R. He has done so for five years. Petitioner testified that he does not share his income with T.R. Petitioner is responsible for the lights and fuel.

T.R. became employed part-time in February 2008. Before T.R. became employed, petitioner and T.R. ate most of their meals together. After T.R. became employed, petitioner ate most of his meals alone and shopped for his food alone.

Petitioner testified that he did not know that he could qualify as a separate Food Stamp household until he spoke to M.McG. during August 2008. He stated if he had been aware that he could file separately for Food Stamps, he would have done so earlier.

Petitioner does not understand how his Food Stamps are computed.

ORDER

The Department's decision is remanded to recalculate petitioner's Food Stamp benefits for the period of February through August 2008 and to recalculate the amount of the Food Stamp overpayment and any resulting compromise.

REASONS

The Food Stamp Program was created to combat hunger and malnutrition among low income households. Food Stamp Manual § 271.1. Households, not individuals, receive Food Stamps. In each case, the household needs to be identified because more than one household can live together. The general definition of a household is found at Food Stamp Manual (FSM) § 273.1(a) (1) which states:

A household is composed of one of the following individuals or groups of individuals ...

- i. An individual living alone;
- ii. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others;
- iii. A group of individuals who live together and customarily purchase and prepare food and meals together for home consumption.

The amount of Food Stamps a household receives is based upon a complex formula that is set out in the Food Stamp

Manual (FSM). FSM § 273.9. A change in household income, composition and/or certain expenses can trigger a change in the amount of Food Stamp benefits.

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).

The Department is required to take action to recoup the overpayment whether the overpayment is due to agency error or inadvertent household error. F.S.M. § 273.18(a). 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).

The parties do not dispute that petitioner was overpaid Food Stamps due to inadvertent household error during the period of August 2007 through August 2008; they dispute the amount of the overpayment.

Petitioner argues that, at the very least, he should be considered a one person household as of February 2008 and that the Department should determine the amount of Food Stamps both he and T.R. would have received as two separate

households. Doing so would lead to a recalculation of the overpayment and each household's responsibility.

The Department argues, in part, that the petitioner's claim to be a separate household is not credible based on information petitioner supplied in his recertification application on July 22, 2008. The application asks at question 8, "Does anyone live with you who does not share your food?". Petitioner answered no.

The problem with question 8 is its lack of clarity. Individuals can be two separate households even though they share food on occasion. An individual who shares food on occasion will answer "no" to this question.

Petitioner's response to this question does not undermine the credibility of his testimony in which he discussed the change to his household composition when his son became employed and he no longer routinely ate, prepared, or shopped for food with his son.

Petitioner testified that he did not understand how his Food Stamps were calculated. The Food Stamp regulations are complicated, and, in our prior decisions, the Board has seen how difficult it is to understand the requirements, the exceptions, and the actual calculation of the benefits.

Petitioner further argues that he should be considered a separate household as of August 2007 because he did not understand earlier that he had the option of considering whether to set up his Food Stamps as a separate household. Petitioner argues equitable estoppel. See Stevens v. Dept. of Social Welfare, 159 Vt. 408 (1992). However, the elements of equitable estoppel are not present in this case. There is no showing that petitioner detrimentally relied upon information given by the Department based on their understanding of the facts in August 2007.

Petitioner and his son customarily purchased and prepared food together until February 2008 when the son became employed. The son's employment was not reported. The change in how petitioner and his son dealt with food was not reported. In essence, the petitioner did not become a one-person Food Stamp household until February 2008.

In conclusion, the Department's decision is remanded to calculate petitioner's Food Stamps for the period of February through August 2008 and to recalculate the amount of overpayment and ensuing compromise of the overpayment. 3
V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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