

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. B-10/10-452  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Economic Services Division, finding that inadvertent household error, rather than agency error, caused an overpayment in 3SquaresVt (food stamps) benefits.

The issues before the Board are whether (1) petitioner requested a fair hearing of the overpayment in a timely manner, and (2) if the fair hearing request was timely, whether the overpayment was due to agency error rather than inadvertent household error.

The Board received a request for fair hearing from the Department district office noting that petitioner requested a fair hearing on September 16, 2010 regarding a July 28, 2010 determination that petitioner was over-income for food stamps and fuel assistance.

A status conference was held on October 21, 2010 in which the petitioner indicated that she did not dispute the July 28, 2010 decision about her current eligibility for food

stamps and fuel assistance but that she was contesting a food stamp overpayment.

Petitioner's testimony was taken on November 15, 2010. The hearing was continued to December 9, 2010 when testimony was taken from A.H., Department program integrity specialist; A.C., Department program integrity investigator; S.H., Department program benefits specialist, and B.P., Department supervisor. Petitioner asked for testimony from S.L., Department program benefits specialist; testimony from S.L. was taken by telephone on December 22, 2010.

The following decision is based on the evidence adduced at hearing.

FINDINGS OF FACT

1. The petitioner lives with her husband and their two minor children. They are considered a household of four for food stamps. Petitioner has been involved with the food stamp program since 2007.

2. The petitioner is employed as a cafeteria worker for a local school system. She has a yearly contract and is paid for her work during the school year. She receives no wages during school breaks including the summer break. She does not qualify for unemployment compensation during the summer break.

3. During June or July 2009, petitioner's household was recertified for food stamps. S.H. was petitioner's program benefit specialist at that time. At that time, petitioner had no wages and her household's food stamp benefit was calculated using her husband's wages and other household income. They were granted \$148 food stamps/month.

4. S.H. testified that the application includes notification to recipients of their obligation to report changes to income within ten days. S.H. testified that she explained the ten-day rule to petitioner and explained that if income changed more than \$25/month, the change should be reported. S.H. explained that they rely on recipients to report changes. They have no way of knowing whether a seasonal employee returns to a job or, if the person returns, whether the hours and wages remain the same without information from the recipient. S.H.'s testimony regarding how she informs recipients including petitioner of their obligations to report changes in income is credible.

5. Petitioner returned to her job as a cafeteria worker at the start of the 2009-2010 school year. Petitioner did not report her return to employment to the Department. Petitioner testified that she assumed that the Department would automatically factor in her return to employment.

6. Petitioner's household continued to receive \$148/month in food stamps.

7. Petitioner was sent an interim report on or about December 24, 2009 asking if the household had any changes in income. The form listed her husband's income. Petitioner signed the form on or about December 31, 2009 stating there were no changes to the household's income, but petitioner attached a copy of her employment contract (E.U. HS District #46 Support Staff Agreement). These papers were date stamped January 14, 2010 by the Department. As of January 14, 2010, the Department had notice of the terms of petitioner's employment.

8. Petitioner's employment contract listed her hourly wage as \$11.63 and that her hours of employment would be up to three hours per day. Petitioner wrote on the employment contract that she does not receive unemployment for the period she does not work. The contract ran from July 1, 2009 through June 30, 2010.

9. Through a wage match with the Department of Labor, the Department received information that petitioner was working. A.C. calculated the amount of food stamps to which petitioner was entitled based on correct income information. Looking at the period of November 2009 through March 2010,

the Department found that petitioner's household was eligible for zero benefits for four months and eligible for \$35 for the month of January 2010.

10. A.H. entered a claim on or about May 19, 2010 for a food stamp overpayment of \$701 based for the period of November 1, 2009 through March 31, 2010.

11. On or about May 22, 2010, the Department mailed petitioner a notice that she had been overpaid \$701 in food stamps. This notice was signed by S.L.

12. On or about May 25, 2010, the petitioner called S.L. because she had questions about the overpayment. S.L. sent A.H. an e-mail asking A.H. to talk to petitioner about her questions. S.L. could not recall petitioner asking for a fair hearing. S.L. testified that she has little memory of her conversation with petitioner.

13. The petitioner and A.H. played telephone tag. The Department's CATN notes indicate attempts to reach petitioner on May 28 and June 4, 2010.

14. On or about July 28, 2010, the Department denied petitioner's application for food stamps and fuel assistance.

15. The CATN note from July 30, 2010 indicates that S.L. had telephone contact from petitioner who indicated that

she had not heard from A.H. yet. S.L. gave petitioner the direct line for A.H.

16. Petitioner and A.H. spoke on August 19, 2010. A.H. testified that petitioner indicated that she was considering asking for a fair hearing and would call the Department if she decided to ask for a fair hearing. A.H.'s CATN note for that date states:

She stated she expects to be filing for a fair hearing on the claim which should be processed through the district. CL will call CC if she decides on this.

17. The appeal deadline for the overpayment was August 22, 2010.

18. Petitioner's request for fair hearing was noted by the Department on or about September 16, 2010. Attached to the appeal form is an undated letter from petitioner stating:

I have tried to contact several people in this unit to request a fair hearing without any success. I would appreciate the appropriate person to contact me in order not to delay the process further.

19. Petitioner testified that she believed she requested a fair hearing during telephone conversations within the appeal deadlines.

ORDER

The petitioner's appeal is considered timely. The Department's decision to ascribe the food stamp overpayment

as inadvertent household error is affirmed for the period of November 2009 through February 2010 and reversed for March 2010. The March 2010 overpayment is ascribed to agency error and recalculated.

REASONS

The Food Stamp Program was created to combat hunger and malnutrition among low-income households. Food Stamp Manual § 271.1.

The amount of Food Stamps a household receives is based upon a complex formula that is set out in the Food Stamp Manual (FSM) and that reflects the level of federal funding for the Food Stamp Program. FSM § 273.9. The Department counts the earned and unearned income of all the members of a food stamp household. Changes to a household's income necessitate recalculations of 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." FSM § 273.18(a). Moreover, the Department is required to take action to recoup the overpayment whether the overpayment is due to agency error or due to inadvertent household error. FSM § 273.18(a).

On or about May 22, 2010, the Department issued notice to petitioner that she had been overpaid food stamp benefits due to inadvertent household error. Notice of the overpayment triggered a ninety day period in which petitioner could ask for fair hearing. FSM § 273.15(g).

FSM § 273.15(h) defines a request for hearing as follows:

A request for a hearing is defined as a clear expression, oral or written, by the household or its representative to the effect that it wishes to appeal a decision or that an opportunity to present its case to a higher authority is desired. If it is unclear from the household's request what action it wishes to appeal, the state may request that household to clarify its grievance. The freedom to make a request for hearing shall not be limited or interfered with in any way.

At best, the evidence is unclear when petitioner requested a fair hearing. Petitioner first contacted the Department on or about May 24, 2010 with questions about the overpayment notice. The parties played telephone tag during that time. Petitioner reapplied for benefits on or about July 18, 2010 and was notified that her household was not eligible for food stamps. This denial triggered contact by petitioner to the Department. As a result of this contact, petitioner and A.H. spoke on or about August 19, 2010 during which time A.H. indicated that petitioner intended to request a fair hearing. Petitioner was directed to contact the



district office with her fair hearing request. The better course, giving the appeal deadline, was to file the request on August 19, 2010 to protect the filing dates.

The actual request for fair hearing was logged in by the district office on September 16, 2010 although petitioner's letter noted that she had tried to request a fair hearing earlier.

The petitioner retains the burden to show by a preponderance of evidence that she requested a fair hearing within the time limits. The ninety day appeal period is jurisdictional and the Board does not have the authority to hear a case in which the appeal is untimely. The petitioner meets this burden.

This case presents a history where the parties had difficulty connecting by telephone once the overpayment was assessed. The Department workers handling the overpayment work separately from the Department program benefits specialists. Both petitioner and Department witness A.H. are equally credible. But, the August 19, 2010 contact between petitioner and A.H. evinces intent to question the overpayment through an appeal process. Petitioner's request for fair hearing evinces past attempts to follow through with the Department on a fair hearing. The food stamp program is

a remedial program including the chance to question a decision through the fair hearing process.

Overpayments can be caused by agency error, inadvertent household error, or fraud. Agency error includes the Department ignoring or overlooking information they have when determining the amount of food stamps. Household error includes a household not reporting a change in their circumstances. FSM § 273.18(b). The distinction is important because the overpayment is calculated differently. FSM § 273.18(c).

Households have an obligation to report changes in their income within ten days of when the change occurred. FSM § 273.12(a)(12). The Department has ten days in which to recalculate the amount of food stamps. Once the Department recalculates the amount of food stamps, the Department must give a minimum of ten days notice before changing the benefits. FSM § 273.12(c)(2).

The petitioner did not report her return to her job as a cafeteria worker in September 2009. S.H. testified credibly that she informed petitioner of these obligations during petitioner's recertification. S.H. also explained the importance of reporting information because the Department cannot assume that a seasonal worker will return to a job, or

if they do return, the wage information will remain the same. Based on the petitioner's failure to provide this information, the cause of the overpayment for November 2009 through February 2010 is inadvertent household error.

On January 14, 2010, the Department logged in petitioner's interim report and a copy of her employment contract. The information in the employment contract should have triggered a review because the Department now had information about petitioner's wages. Given the time lines for recalculating benefits and giving advance notice of a change, petitioner's March 2010 food stamps are the earliest food stamps that would be affected.

Based on the foregoing, the petitioner's appeal of her overpayment is considered timely. Further, the Department's decision to determine that petitioner's overpayment for the months of November 2009 through February 2010, as inadvertent household error, is affirmed. The Department's decision to determine that petitioner's overpayment for March 2010, as inadvertent household error is reversed. The March 2010 overpayment is classified as agency error and recalculated.

3 V.S.A. § 3091, Fair Hearing Rule No. 1000.2A.

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