

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. A-04/11-213
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Economic Services Division, finding that petitioner was overpaid 3SquaresVT (food stamps) benefits due to agency error and that the overpayment should be repaid through a monthly recoupment of \$20.00 from her food stamp benefits.

The issue is whether the petitioner was overpaid food stamps.

The decision is based upon the evidence adduced at hearings on May 11 and June 8, 2011.

FINDINGS OF FACT

1. The petitioner is a seventy-one year old individual who lives alone. Her income is comprised of Social Security Disability Income and Supplemental Security Income disability benefits totaling \$746.04 per month. Under the food stamp rules, she is a one-person household.

2. The petitioner went through a confusing period with the Department starting in November 2010 when the Department sent petitioner a Notice dated November 18, 2011 noting that petitioner had not returned an interim report. Interim reports are used for redeterminations of food stamp benefits for a new certification period.

Working with the Department, petitioner sent the Department application forms on December 1, 2010. When the Department told petitioner that the December 1, 2010 application form was not received, she sent another application form to the Department on December 9, 2010.

At the same time that petitioner was working with the Department on her recertification, petitioner received a Notice of Decision from the Department that they were adjusting her October, November and December 2010 food stamps to reflect a change to the shelter/utility allowance.

The petitioner was credible about being confused by the Department's actions.

3. The Department received both the December 1 and December 9, 2011 applications. The Department inputted the information incorrectly on one of the applications changing the last letter of petitioner's name and inputting the social security number incorrectly. As a result of these errors,

the Department granted food stamps on both applications leading to the overpayment. The Department categorizes the overpayment as agency error.

4. On December 23, 2010, the Department sent petitioner a Notice of Decision under her correct name notifying petitioner that she was eligible for food stamps beginning December 10, 2010. Her full monthly benefit starting January 2011 was \$200.00.

The Department issued a check on December 23, 2010 in the amount of \$140.00 for December food stamps and issued a check on December 30, 2010 in the amount of \$200.00 for January 2011 food stamps. Both checks were endorsed by petitioner. The Department issued February food stamps by EBT card and March food stamps by direct deposit into petitioner's bank account. Petitioner's bank statements show deposits for \$200.00 on February 7 and \$200.00 February 28, 2011 corresponding to February and March food stamps.

5. On January 14, 2011, the Department sent a Notice of Decision under the incorrect name approving the food stamp application. The overpayment stems from this decision.

The Department issued an EBT card. The Department placed the following amounts on the EBT card: \$320.00 on January 13, 2011; \$200.00 on February 1, 2011; and \$200.00 on

March 1, 2011 for a total of \$720.00. Petitioner used a total of \$507.45. The sum of \$507.45 is petitioner's portion of the overpayment.

The Department closed these benefits on March 31, 2011.

6. The Department issued petitioner a Notice of overpayment on March 14, 2011. Petitioner disputed the overpayment and the notice of recoupment by requesting a fair hearing on April 6, 2011.¹ Petitioner did not use the full \$720.00 placed on the EBT card issued under the incorrect name. The petitioner's portion of the \$720.00 overpayment is limited to the \$507.45 she used.

7. The Department has not yet applied their compromise policies to the overpayment.

ORDER

The Department's decision that petitioner was overpaid food stamps due to agency error is affirmed but the petitioner's share of the overpayment is \$507.45. The case is remanded to the Department for the claim to be compromised.

¹Petitioner's timely request for fair hearing stayed the recoupment, although the Department mistakenly sent petitioner a Notice of Decision on May 25, 2011 that recoupment would start July 1, 2011.

REASONS

The Food Stamp program was created to combat hunger and malnutrition among low-income households. FSM § 271.1. The regulations governing eligibility and the calculation of benefits are complex. FSM §§ 273.9 and 273.10. To determine continuing eligibility, the Department certifies a household for a period of time and then updates information to determine continuing eligibility and benefit amounts.

During late 2010, the Department looked at petitioner's continuing eligibility and benefit level. Petitioner submitted applications on two occasions in December 2010 because the Department informed her that they had not received applications. However, the Department received both applications but, due to an error, processed two different cases leading to the Department issuing food stamp benefits to petitioner on two separate accounts. The Department correctly characterized the overpayment as agency error. But, the petitioner does not understand why her current food stamps should be reduced to reimburse the Department for their error.

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). Even though the overpayment is due to agency error, the Department is required to "take action to establish a claim against any household that received an over issuance due to an . . . administrative error if . . . [a] state agency; assigned an incorrect allotment" as long as not more than twelve months have elapsed between the month the over issuance occurred and the month the state agency discovered the error. FSM §§ 273.18(a)(2) and (b)(2)(ii). During the time the household is overpaid benefits, they benefit from the Department's error.

If the household continues to receive food stamps, the required repayment is limited to the **greater** of ten percent of the household's monthly allotment or \$10.00 per month. FSM § 273.18(f)(1)(iii). In petitioner's case, the repayment is limited to ten percent of her current allotment of \$200.00 or \$20.00.

Petitioner first questioned receipt of an overpayment based on her records for direct deposit and EBT benefits. At hearing, looking at petitioner's bank statements and the materials from the Department, petitioner concurred with the information from the Department.

The evidence shows that petitioner was overpaid food stamps in the amount of \$720.00 of which petitioner used \$507.45. The Department agrees that their compromise policy should be applied to the claim and, before, recouping the overpayment, the Department needs to determine the amount of the overpayment after compromise.

Accordingly, the Department's decision to assess an overpayment due to agency error is affirmed and the case is remanded to the Department to compromise the overpayment prior to recoupment. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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