

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-06/13-446
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families, Economic Services Division that she was ineligible for 3SquaresVT benefits from June 1 through June 16 2013, on the grounds that she failed to submit timely verification of income to determine her continuing eligibility. The following facts are based on documents and testimony admitted into the record during a telephone hearing held on January 8, 2014.

FINDINGS OF FACT

1. In Spring 2013 the petitioner was a recipient of Reach Up, health, and 3SquaresVT benefits. On April 6, 2013 the Department mailed the petitioner eligibility forms with a "Review Reminder Notice" advising her to complete the enclosed forms by May 1, 2013, with the additional notice: "If you don't return your completed forms and complete any interviews required your benefits will end as of May 31, 2013 for all programs." The petitioner alleges that, most likely

due to mail delivery problems at her place of residence, she did not receive this notice and the enclosed forms.

2. The Department's records show that the petitioner met with her Reach Up case manager on April 11, 2013, and gave her paystubs for "contract work" she had recently performed. The Department's records also show that the petitioner conferred with her Reach Up case manager by phone on May 13, 2013, and reported that she was still working.

3. On May 15, 2013 the Department sent the petitioner a "Verification Change Request". The request gave the petitioner a deadline of May 17, 2013 to provide the paystub information specifically requested, and provided her with contact information if she had any questions or problems. The petitioner does not dispute that she received this notice.

4. On May 22, 2013 the Department sent the petitioner a "3SquaresVT Closure Notice" advising her that her benefits would stop on May 31, 2013 due to missing information regarding her eligibility. The notice advised the petitioner: "Please contact the ESD Customer Service Center immediately if you don't not want to lose your benefits, or if you do not know what information is missing." The petitioner does not dispute that she received this notice.

5. The Department's records show that on May 31, 2013 the petitioner left a phone message with her Reach Up case manager asking about the status of her benefits. The Reach Up case manager testified at the hearing in this matter that she called the petitioner back at 12:54 p.m. that day and left a voice message that her benefits were due to close that day and that she still needed to provide a check stub from her recent employment. The case manager advised the petitioner to contact the ESD call center if she had any questions. The case manager testified that she is trained to initiate fair hearing requests for individuals whenever she perceives that a recipient is contesting an adverse action, but that she did not perceive such a concern or indication from the petitioner in the brief phone message the petitioner had left for her.

6. The petitioner's 3SquaresVT benefits were terminated effective June 1, 2013. There is no dispute that on June 12, 2013 the petitioner met with her case manager and provided paystubs for the work she had done in May. She also orally requested a fair hearing for the closure of her 3SquaresVT benefits.

7. On June 16, 2013 the petitioner filed a reapplication for 3SquaresVT benefits. On July 5, 2013 the

Department notified the petitioner that she had been found eligible for 3SquaresVT benefits effective June 17, 2013. The issue in the petitioner's fair hearing remains her eligibility from June 1 through 16, 2013.

8. Other than the phone message the petitioner left with her case manager on May 31, 2013, the Department has no record of any contact from the petitioner by any means from the period May 13 through June 12, 2013. Based on the testimony and evidence presented there is no credible basis to find that any such contact occurred.¹

9. There is also no credible basis to find that the petitioner gave any indication in her phone message to her case manager on May 31, 2013 that she wanted to appeal the

¹The petitioner initially alleged (in telephone status conferences) that she had left several unreturned phone messages at the Vermont call center between May 22 and May 31, 2013. The matter was continued several weeks to allow the Department to check its records of such contact. At the hearing the Department offered credible evidence that all the calls it receives, including those in which a caller placed on hold hangs up before speaking with a Department representative, are recorded in its system, and that the only record of a phone call from the number provided by the petitioner during this period was made to the Vermont Tax Department. When confronted with this evidence at the hearing, the petitioner alleged for the first time that she made the calls from her employer's phone while she was at work. At the hearing, she alleged she had made "at least three" calls from this number, but that she had hung up each time after having been placed on hold. Even if this testimony were to be credited, however, it would not provide a sufficient basis to conclude that the Department was in any way responsible for the petitioner's failure to have timely provided the information that had been requested.

pending closure of her benefits. There is no dispute that she did not attempt to return the case manager's message.

10. There is no evidence or allegation that the petitioner has any cognitive deficits that rendered her unable to fully understand any of the notices she received from the Department. There is also no evidence or allegation that there existed any circumstances that impeded or prevented the petitioner from providing the requested information in a timely manner.

ORDER

The Department's decision is affirmed.

REASONS

Under the 3SquaresVT program, the Department must periodically review the eligibility of recipients. ESD Rule 273.14(a). This is the basis for the forms that petitioner was mailed on April 6, 2013 and requested to complete and return. The notice sent that day clearly set out a deadline for its return and that benefits would be terminated if the form is not completed and returned by that date. Whether or not the petitioner received that notice and the enclosed forms, subsequent notices clearly set out the information

that was necessary and timely provided the petitioner with clear warning of the consequences of her failure to comply.

The regulations also provide that households who do not complete the process in a timely manner shall not be eligible to receive benefits beyond the current certification period. Id. 273.14(e)(2). The petitioner in this matter does not appear to dispute the requirements of completing the forms and verifying income information. Id. 273.14[b][4]). It is difficult to perceive from her testimony whether she feels that the Department was responsible in any way for her failure to have timely provided the requested information. Her appeal appears to be based mostly on an assertion that she should not be penalized for the period at issue because the information she *ultimately* submitted shows that she would have been found eligible for benefits during that period if it had been submitted timely.

The Board has held that absent a showing of either a compelling reason beyond a recipient's control, or Department error, there is no basis under the regulations to establish retroactive eligibility once validly and timely noticed compliance deadlines have passed. Fair Hearing No.

B-12/12-799.² Therefore, it must be concluded that the Department's decision in this matter is consistent with the applicable rules and regulations, and that the Board is thus bound to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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²The case cited by the petitioner (Fair Hearing No. T-04/13-361) is clearly distinguishable in that uncontroverted evidence in that case established that the recipient *did* provide the requested information within the timelines set by the notices she had received.