

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-01/15-91
)
Appeal of)

INTRODUCTION

Petitioner appeals the closure of her 3SquaresVT benefits by the Vermont Department for Children and Families ("Department") as of December 31, 2014. Because petitioner reapplied for benefits after closure and was found eligible, this appeal concerns a discrete period of closure from January 1 to January 15, 2015. The following facts are adduced from a hearing held March 12, 2015 and post-hearing submissions of the parties.¹

FINDINGS OF FACT

1. Petitioner was a recipient of 3SquaresVT benefits in November of 2014, during which month the Department mailed her an Interim Report (IR) form requesting that she indicate changes, if any, in several areas which might affect her eligibility or level of benefits. Department records establish the IR form was mailed on November 24.

¹ Petitioner's hearing was initially scheduled for February 12 but continued to March 12 at her request. After the hearing, the record was left open until March 17 for the submission of any additional information.

2. Petitioner did not return the form, and was subsequently mailed a Notice of Decision dated December 18, 2014, that her benefits would end on December 31, and advising her to contact the customer service center.

3. Petitioner is disabled, uses a wheelchair for ambulation, and relies on a care attendant in her home arranged through the Medicaid Choices for Care program, which like 3SquaresVT, is a program operating under the auspices of the Agency of Human Services. Petitioner's care attendant assists her in a variety of areas, such as personal care, cleaning, and transportation, as well as bringing her mail to her.

4. Petitioner has a case manager through the local area agency on aging. In the past she has relied on her case manager to assist her with selected benefit applications.

5. Petitioner has been a recipient of some form of assistance from the Department since 1989 and a 3SquaresVT recipient for several years. She testified credibly to the diligence of her efforts to stay organized and handle her affairs, such as benefit applications, in a timely way, while acknowledging her reliance on assistance as described above. Her income is from SSI.

6. Petitioner testified at hearing with a high degree of certainty that she did not receive the IR form and that she had experienced problems with her mail in the apartment complex where she resides. She expressed less certainty as to whether she received the Notice of Decision, though she did not recall receiving it. Petitioner's testimony that she did not receive the IR form is credible.²

7. When petitioner became aware her benefits were going to close, she contacted her agency on aging case manager.

8. During the time period the record was left open after the hearing, petitioner's representative in this appeal informed Department counsel and the Board that petitioner had located the Notice of Decision in her records, and provided a credible statement from her agency on aging case manager that petitioner had made contact with her on December 28 (prior to closure of her benefits) indicating a problem with her 3SquaresVT benefits. The case manager went on medical leave on December 29, and forwarded petitioner's message to her

² It is noted that the Department never received the form back in the mail as undeliverable.

supervisor.³ On January 14, 2015 the supervisor contacted petitioner's case manager at the Department to report the 3SquaresVT problem.

9. In the interim, on January 7, petitioner contacted her Department case manager regarding her 3SquaresVT, and was advised to reapply for benefits after reporting she had never received the IR form. Petitioner subsequently completed the reapplication process and was found eligible as of January 15.

10. Petitioner had been certified for 3SquaresVT for a two-year period. The IR form was sent to her in the middle of that period, after a 12-month period of receiving benefits.

11. There is no specific dispute as to petitioner's eligibility for benefits during the period of closure. Her income and expenses are largely consistent, which is the reason she was initially certified for a two year period. Petitioner seeks retroactive benefits from the time of her closure to when her eligibility was reestablished.

³ Petitioner's representative provided this information to Department counsel and the Board in the form of an email from the agency on aging case manager. This information is accepted as credible and reliable.

ORDER

The Department's decision is reversed.

REASONS

Review of the Department's determination is de novo. The Department has the burden of establishing, by a preponderance of evidence, the appropriateness of its determination under the applicable rules.

Under the 3SquaresVT program, the Department must periodically review the continuing eligibility of recipients, who have an obligation to report any changes. See Food Stamps ("FS") Rules § 273.10(f); 3SquaresVT Interpretive Memo Re: Rule 273.10(f) (April 5, 2013); FS Rules § 273.12. This is the basis for the Interim Report form that petitioner was mailed and requested to complete and return. Petitioner testified credibly that she never received this form. In what can only be construed as good faith, petitioner contacted her agency on aging case manager prior to the closure of her benefits. While the Department was not contacted prior to the closure, the fact that the agency on aging ultimately contacted the Department supports a reasonable expectation by petitioner that her contact with the agency would lead to timely contact to the Department on

her behalf. Furthermore, petitioner applied for benefits shortly after her closure, was found eligible, and there is no specific dispute regarding her eligibility during the period of closure.

Petitioner's credible testimony, her reliance on care providers and her case manager, her continued eligibility, and her diligence in following up on her loss of benefits and reapplication, as a whole compel a finding of "good cause" for her failure to submit the IR form and reversal of the Department's closure of her benefits as of December 31, 2014. See 3SquaresVT Interpretive Memo Re: Rule 273.10(f) (April 5, 2013) ("Failure without good cause to submit a required interim status report will result in case closure and loss of ongoing benefits."); see also Fair Hearing Nos. T-04/13-361 (awarding retroactive 3SquaresVT benefits for a closed period of time) and B-12/09-630 (same).⁴

⁴ Federal commentary on the food stamp regulations also support reversal of the Department: "The Department wishes State agencies to apply a consistent policy that a household must be ineligible for benefits before its case is closed, either because it no longer meets the criteria for participation or because it does not cooperate in clarifying its circumstances." *Federal Register Vol. 65, No. 225*, at 70179 (November 21, 2000). A failure to cooperate cannot reasonably be found under petitioner's circumstances, nor is there any reason to believe she is ineligible for benefits during the period at issue. See e.g., Fair Hearing No. T-04/13-361 (*supra*) ("In the absence of any claim or evidence at this time that the petitioner had income and/or resources during this period in excess of the maximums allowable under the 3SquaresVT program, the Department's decision terminating her benefits . . . must be reversed.").

As such, the Department's decision is inconsistent with the rules and the Board must reverse.⁵ See 33 V.S.A. § 3091(d); Fair Hearing Rule No. 1000.4D.

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⁵ The Department remains free to seek verification of petitioner's eligibility from January 1 to January 15.