

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 16,038
)
Appeal of)
)

INTRODUCTION

The petitioners' appeal a decision by the Department of Social Welfare (DSW) terminating their eligibility for ANFC, Food Stamps, and Medicaid based on their alleged failure to cooperate in verifying income which was necessary to determining their eligibility.

FINDINGS OF FACT

1. Until recently, the petitioners, Mr. and Mrs. R., and their seventeen-year-old son, T., were recipients of ANFC, Food Stamps, and Medicaid based on the unemployment of all members of the household. Mrs. R. has applied for Social Security benefits based on her belief that she is totally disabled. Mr. R. and T., who does not attend high school, were both registered as Reach Up participants with the Department of Employment and Training (DET).

2. Sometime in late May of 1999, Mr. R. reported to his DET counselor, Dianna, that he thought he would start working

soon as a condominium renovator and that his son, T., would work with him. He was not sure of his hours or income but left the counselor with the impression that he would be earning a wage of anywhere from \$5.00 to \$15.00 per hour at this employment.

3. The DET counselor reported this information to the eligibility specialist at DSW who handles the petitioners' benefits. On June 8, 1999, the specialist mailed a letter to the petitioners with the following information:

Thank you for reporting a change in your situation. To determine if you are eligible for benefits or to figure out the amount of those benefits, we need the following verification (proof) of your situation:

I have not heard from you in a long time. I understand from Dianna at DET that you are working and that T. is working too. When you come in to see her next week, bring in proof of gross wages listed by each paydate for each of you to date and have her get a copy to me also. T. did not see Nancy or send in proof of his working by the first, so this must be done by your meeting next week with Dianna or your case may close for noncooperation for ANFC, Food Stamps and Medical. You have until Jun 21, 1999 (at least ten days) to bring or send us proof of items listed above. If we do not receive this proof we cannot determine your continuing eligibility and amount of benefits for ANFC, Food Stamps and Medicaid.

If you have any problems obtaining proof of any of the items listed, please call me on or before the date listed above. If I can help you obtain the proof, I will. In some cases the deadline date can be extended if you have good reason for not having the proof requested, but it is the Department's responsibility to decide if your reason is good.

Remember, you are responsible for providing proof requested by June 21, 1999 or contacting me no later than the same date to explain why you cannot do this. If you do not comply with this request, your benefits may be terminated.

Thank you in advance for cooperating in this way. If you have any questions please call me at [phone number].

4. The petitioners do not claim that they did not receive this notice. Mr. R. says it is likely they did but that his wife is forgetful about giving him messages and he was very busy setting up the new job at this time. He never called or gave any information to DET or DSW about the exact date of his job start or the amount of compensation in response to this letter.

5. On June 21, 1999, the specialist mailed a notice to the petitioners advising them that their ANFC grant of \$669 per month and Food Stamps would close on June 30, 1999 for "noncooperation" for failure to provide DET or DSW with proof of income.

6. On June 24, 1999, the petitioners left a voice mail message on the machine of their eligibility specialist saying that they wished to appeal this decision. Because they timely appealed, their benefits continued. However, during the time between their appeal and hearing, a period of some three

months, the petitioners never provided any verification information to the Department regarding their income.

7. At the hearing on September 23, 1999,¹ Mr. R. offered no explanation as to why he did not respond to the request for information during this time other than family preoccupation and miscommunication. Mr. R. understood that he had an obligation to report his income and understood that such a requirement included reporting any in-kind income he might receive. He says that he did mention at some point to Dianna at DET that he was getting in-kind income but not what its value might be. He said he assumed that she would report that to DSW.

8. Mr. R. said he never received cash for the renovation job but rather was paid in salvage—he was allowed to keep whatever he took out of the old buildings including windows, doors, lights, heaters, cabinets, carpeting and appliances. He was unable to place any value on these items. The person he worked for is about to deed him a small house appraised at \$38,000 in return for a garage Mr. R. plans to build for him. He plans to fix up the house using the salvage

¹ The matter was continued twice due to the petitioner's failure to attend the hearing. The first was reset after a friend called saying the family had gone out of state. The second resetting came after the petitioners called saying they had put the wrong date on their calendar.

items and move in with his wife and son. His son has been assisting him with the renovations.

ORDER

The decision of the Department is affirmed.

REASONS

Both the ANFC and Food Stamp programs² require that changes in income be reported and verified in order to continue eligibility under the programs. W.A.M. 2211.3, F.S.M. 273.2(f) and 273.12(a)(1)(ii). The ANFC program requires the submission of available paystubs or a statement from the employer on the wages and predicted hours of employment if the situation changes after initial certification. W.A.M. 2211.3. The Food Stamp program requires the same information if the change will amount to \$25 or more. F.S.M. 273.2(f) 8(ii). The Food Stamp program in addition requires that the Department send a notice of the

² The petitioners' eligibility for Medicaid is tied to their ANFC eligibility. They were cut off of Medicaid because they were no longer eligible for ANFC. For that reason, it is not necessary to formally consider the separate requirements of the Medicaid program although it should be noted that the regulations at M126 do require verification of income and provide that refusal to give necessary proofs can result in the denial of benefits. The petitioners have a right to reapply for Medicaid

required verification, a date for final submission (which requires a minimum of ten days to respond) and a warning that failure to furnish the proof will have an impact on the benefits. F.S.M. 273.12(c) and 273.14(b)(4).

The petitioners reported a change in the employment status of Mr. R. and T. to their DET counselor. That information prompted the Department to make a written request for information regarding the new employment. That letter made it clear that the Department needed to know what income was being earned in that employment in order to calculate the family's continued eligibility in all of the programs; that the information was needed by June 21, 1999 (13 days from the date the letter was mailed); that the information could be provided through the counselor at DET during their regularly scheduled meeting or that it could be brought or sent to the DSW office; that the petitioners should let the Department know if there was a problem and they would assist them in obtaining the verification; and, that failure to provide this information by the above date would result in closure of their benefits in all three programs. The notice sent by the Department followed the dictates of the regulations and

under a different category (such as disability) and have their eligibility determined anew.

clearly informed the petitioners as to what was required of them.

The petitioners failed to respond to this notice in any way. Under the ANFC regulations, this failure to respond results in a closure unless there was "good cause" for the failure, which is defined in the regulations as follows:

. . .

Good cause reasons include:

1. Natural disasters, such as fires or floods, having a direct impact on the applicant/recipient or an immediate family member.
2. Illness of such severity on the part of the applicant/recipient or an immediate family member that the applicant/recipient is unable to direct his or her personal affairs.
3. Refusal of an employer to provide earned income verification, or the unavailability of an employer to provide verification before the deadline.
4. Lost or stolen mail which is confirmed by the Postal Service.
5. Refusal of a landlord to verify housing expense.
6. Death of the applicant/recipient or an immediate family member.
7. Inability of a third party (e.g. Social Security Administration) to provide the necessary documentation within the designated time period.

Other reasons may be found to constitute good cause with the approval of the District Director or his or her designee.

W.A.M. 2211.3

The Food Stamp regulations require that the "failure to provide verification" following a reported change "shall result in the increased benefits reverting to the original allotment." F.S.M. 273.12(c). The regulations do not specifically cover a situation in which the failure to provide verification of a change is expected to decrease or eliminate the benefits now being received. The regulations do require the Department to notify the household within ten days of the date a disqualifying change is reported that eligibility will cease. F.S.M. 273.12(2)(i). When these two regulations are read together, it would seem that a report of employment which could be disqualifying for which the petitioner has failed to provide any details after a specific request entitles the Department to assume that the information would be disqualifying if provided and treat the matter as a closure, unless there were some compelling reason not to do so.³

³ There is a specific regulation governing "refusal" to cooperate with verifying information on an application. F.S.M. 273.2(d). That regulation requires an action which can be interpreted as a "refusal", not a mere "failure" to provide the verification. While it is tempting to adopt that standard here, a delay in processing an application caused by the failure to cooperate only means that it may take the applicant longer to get benefits which she may ultimately be entitled to. The problem with adopting that standard in a change case is that the recipient is already receiving the benefits and his "failure" may cause him to continue to get benefits to which he is not entitled for an indefinite period of time until a "refusal" can be documented. This is not to suggest that the Department should be rigid about accepting information if a person who has failed to meet a cut-off deadline brings the information in before any action is taken or even shortly thereafter.

The petitioners are not claiming that they failed to receive the notice requesting the verification or that they did not understand what it was asking them to do. They explain their failure to respond as a lack of communication between family members and the simultaneous press of business involved in the start up of the renovation job. In order to find that the petitioner had "good cause", however, it would have to be determined that illness, death or some other very serious situation prevented the family from handling its usual business affairs at this time. There was no evidence confirming such a severe circumstance presented at the hearing. The fact that the petitioners were able to appeal the closure notice and continue their benefits only three days after the verification deadline undercuts their argument that they were too overwhelmed to accomplish the relatively simple task of verification. Equally problematic is the petitioners' failure to offer any explanation as to why they had still not supplied the Department with any verification of the details of the employment during the three months in which the appeal was pending. In addition, the petitioners, in spite of failing to appear for two scheduled hearings after their appeal was filed, managed to have them rescheduled through phone calls and letters and to thus avoid the discontinuation

of their benefits. It must be concluded from these facts that cooperating with providing requested verification was not an insurmountable task for the petitioners but rather one that they assigned no particular importance or priority. "Good cause" for their failure to follow through with this specific request has not been established. Nor can it be found that the petitioners were unaware of the consequences for their failure to cooperate since those were clearly spelled out in the notice. It would not be unreasonable to find under these circumstances that the petitioners had not only failed but had "refused" to do what they had been asked to by orchestrating delays and keeping details by their work agreements to themselves. Even at the hearing, the petitioner could offer no value for the in-kind compensation he had received.

Finally, the petitioners acknowledge that they were required to report "in-kind" income, not just wages, if they started to receive it. They argue, however, that they received no cash and so should have not been terminated from any benefits. The ANFC program considers income as "any cash payment or equivalent 'in kind' income which is actually available to the applicant or recipient." W.A.M. § 2250. The Food Stamp program excludes from income any benefit "which is not in the form of money payable directly to the household,

including in-kind benefits and certain vendor payments."

F.S.M. § 273.9c. This program, however, as well as the ANFC program, does count nonliquid resources, including personal property in determining eligibility. F.S.M. 273.8c and W.A.M. 2260. It is possible that the petitioners' payments in the form of salvage goods would not have been counted in either program. However, without the details involving these payments it is impossible for the Department to know whether they are countable. The point of verification is to allow the Department to look at the details and to make a decision about their effect, if any, on eligibility. When the petitioner did not provide this information he left the Department in the dark as to how to assess his situation. It does not matter at this point whether the income would have been countable or not as long as the Department had a right to request verification as a condition of eligibility, a right it clearly had.

As the decision of the Department conforms with its regulations, the Board is bound to uphold it. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17. The petitioners were advised at the hearing to immediately reapply for any benefits which had been closed and to be ready to verify their current income status.

#