

department's action, neither of which is disputed by the department as to the facts. First, the petitioner had an agreement with her insurance agency (which was in effect prior to August, 1988--the date on which the department maintains the cash value of her policy went over \$1,000) that each year's premium would be paid out of the cash value balance of her policy. Since her premiums exceed the amount of the yearly dividends credited to the cash value of her policy, this arrangement will result in a steadily-declining cash value (to a point, a few years from now, in which the petitioner will be forced to look elsewhere to pay the annual premium of the policy).

Before August, 1988, the cash value of the policy was below \$1,000--the department's resource maximum (see W.A.M. § 2261). The petitioner and the agency planned on paying the annual premium, which came due in August, out of the cash value--at the same time that a dividend due in August was credited to her account. Unfortunately however, her agent was on vacation when the company made its entries on the petitioner's account. The entire dividend for August was posted to the petitioner's account (bringing the cash value slightly over \$1,000), but the petitioner was sent a bill for the annual premium, rather than having had the premium deducted from her account as previously arranged.

During that time the petitioner was in the throes of a financial, legal, and emotional crisis regarding her divorce and the mounting debts of her husband. When the petitioner

got the bill from the insurance agency, she absent-mindedly paid it out-of-pocket (at considerable sacrifice, considering her income) rather than having attempts to have the insurance agency correct the billing internally. She was unaware that by so doing she had allowed the balance of her account to exceed (by \$145) the department's resource maximum. She did not realize what had happened until November, 1988, when the department discovered what-it-admits-was its own "error" in not "verifying" the value of the account back in August, when it had last "reviewed" the petitioner's case.

Upon being notified by the department of the loss of her ANFC the petitioner promptly verified the payment arrangement she had with the insurance agency and the fact that the agency considered the petitioner's out-of-pocket payments to have been "in error". The agency wrote the department that the premium "should have been paid out of the cash value in the contracts which is the reason the funds were left in there." The agency went on to note: "She is slightly over her \$1,000 amount for the total net cash value of the two contracts, but that money is earmarked to pay the upcoming loan interest and premium for 1989 so the contracts will not lapse."

Based on the above, the petitioner maintains that since the 1989 premium (\$476) is "earmarked" to be paid from her account, and that since her account less this amount will forever be below \$1,000, she should not be deemed to have

"available resources" in excess of \$1,000.

The petitioner also maintains that in order to keep her home she will have to pay past due property taxes on her home of \$540. Although her husband was ordered to pay this amount by the court, the petitioner knows with virtual certainty that he will not, and cannot, do so--apparently, her husband is a severe alcoholic who cannot, at this point, even support himself. Her attorney had advised her, however, to hold off paying this amount out of her own pocket until the divorce was final. That occurred on December 2, 1988. At her fair hearing, held on January 5, 1989, the petitioner indicated she must now either pay this amount out of her insurance policy account or use the account to meet other basic needs in order to afford the tax payment. Either way, there is no doubt whatsoever that the petitioner could have--and, had she known, would have--used at least \$145 of her insurance account to pay for "basic needs" (see infra).

Underlying all the above is that the petitioner's integrity and credibility are unquestioned. She has been, at all times, completely candid and forthcoming with the department regarding her rather complicated financial status. As noted above, the department does not contest any of the factual bases (supra) of the petitioner's claim.

ORDER

The department's decision is reversed.

REASONS

W.A.M. § 2260 includes the following provisions regarding "resources":

Resources are defined as any assets, other than income, which the recipients have available to meet need. . . .

Any portion of a bank account, cash on hand, etc., that a recipient has set aside for an expense currently being incurred and budgeted for in the grant but for which payment is not yet due, i.e., yearly property taxes, fire insurance premiums, etc., shall be disregarded. The equivalency of the recipient's monthly income can be disregarded from the combined resource maximum if it is established that this income constitutes cash on hand or money in a checking account to be used to meet current monthly expenses.

. . . .

The department's decision in this case can be reversed on at least two bases. One is that because at least \$476 of the petitioner's insurance account is "earmarked" by a legitimate previously-made agreement to cover premiums due in August, 1989, it cannot be concluded that the petitioner, in fact, has over \$1,000 in resources "available to meet need." See Fair Hearing No. 5574.

The other basis is that the petitioner can be deemed to have "set aside" a portion of this account--well in excess of \$145 (the amount by which the account exceeds the \$1,000 resource maximum)--for "an expense currently being incurred and budgeted for in the grant but for which payment is not yet due."²

For either or both of the above reasons,³ the

department's decision is reversed.

FOOTNOTES

¹To date, the department has taken no action regarding any claimed "overpayment" of ANFC for the months prior to the date of closure.

²Even if the petitioner's past due property taxes do not meet this definition, it is clear that the petitioner could easily and legitimately use at least \$145 to meet other future needs. Indeed, the hearing officer doubts that any ANFC recipient in the petitioner's position could not easily and legitimately meet this provision.

³Because of what-he-considered-to-be the overwhelming equities of the petitioner's situation and the sufficiency of the above-expressed legal bases to reverse the department's decision, the hearing officer deems it unnecessary to open the Pandora's box of an "equitable estoppel" analysis. Suffice it to say, however, that such an argument could well be yet-another compelling basis to reverse the department's decision in this matter.

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The compelling equity of this case and the clear legal defensibility of not finding the petitioner ineligible for benefits also raises again the troubling issue of the department's legal posture in this type of fair hearing. Apparently, this is another case in which the department felt it could not reverse its decision because of "pressure" from the federal agency. Without going into detail (which he would be glad to do if requested by either the board or the department), the hearing officer wishes to register his oft-privately-expressed misgivings on the wisdom and legality of this posture by the department in fair hearings. At best, in the hearing officer's view, it is a slothful and cowardly administrative practice. At worst, however, it may well constitute a violation of equal protection and an unethical abuse of the fair hearing process. The hearing officer cautions the department and its attorneys to carefully consider the full legal and ethical ramifications of this policy before it arises in a future fair hearing.