

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 9072
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare finding her ineligible for ANFC from February, 1989, through part of May, 1989, due to her receipt of a lump-sum workman's compensation settlement. The issue is whether all or part of the lump-sum payment can be considered "unavailable to the family for reason beyond their control".

FINDINGS OF FACT

The petitioner lives with her son and is a recipient of ANFC. On or about February 1, 1989, the petitioner received a lump-sum workman's compensation settlement of \$2673.15, which she reported to the Department in a timely manner. From this amount, the Department deducted \$380.00, which the petitioner paid in attorney and medical fees associated with her settlement. Based on its regulations (see infra), the Department divided the remainder of the settlement (\$2293.15) by the amount of the "basic needs standard" applicable to the petitioner (\$704), thus determining the petitioner's disqualification from ANFC for a period of three months, plus "countable income" (\$181.15) that would be factored into the petitioner's benefit computation for the first subsequent

month of ANFC eligibility. On or about February 15, 1989, the Department notified the petitioner that she would be ineligible for ANFC for the months of February through April, 1989, and that her May, 1989, ANFC payment would be reduced by the amount remaining after the lump-sum had been divided by the monthly standard of need.¹

The petitioner testified that shortly after she received the lump-sum payment, she paid \$1100 in cash to her mother for present, future, and past-due rent. The petitioner lives in a trailer owned by her mother. Her mother owns the land and pays a mortgage on the trailer itself. The petitioner has an agreement with her mother to pay \$265 a month in rent. However, for some time, the petitioner had found herself unable to pay the full \$265 and had been paying her mother only \$200 a month. Thus, according to the petitioner, a sizable "arrearage" had accrued.

The petitioner maintains that out of the \$1100 she gave her mother, \$530 was for February and March rent, and \$570 was toward "back rent" she owed her mother. There is no indication, however, that the petitioner had anything but a moral obligation to pay her mother the "arrearages" in question. It appears from the petitioner's testimony that her mother had for years tolerated the petitioner paying less than the full rent amount. There is no credible

evidence, nor can it be assumed (see infra), that the petitioner was in any jeopardy whatsoever of losing her housing if she didn't pay off this "arrearage".

The petitioner testified that she also made payments for fuel and electricity bills out of her lump-sum. However, from the evidence presented (copies of cancelled checks), it is found that only \$45 of these payments were past-due at the time she made them.

Similarly, although the petitioner claims she made two car payments of \$146.25 each that were "past due", the petitioner's records show only one payment--and there is no credible evidence that it was, in fact, past-due.

The petitioner also made the following payments with her lump-sum check: \$160 toward an installment loan, \$104 for a vacuum cleaner, and \$235 for school clothes for her son. It cannot be found, however, that any of these payments were for past-due bills or that they were made out of actual necessity. The loan was incurred by the petitioner to send her son to a private school. There is no evidence that the loan is secured or that her son's ability to attend school would have been jeopardized if the petitioner had not made the loan payments in question. The vacuum cleaner was purchased by the petitioner purportedly to reduce the dust in her home because her son suffers from asthma. The petitioner submitted no evidence, however, that a vacuum cleaner was an item of medical necessity (or that a physician had even advised the purchase of one). Similarly,

there was no evidence that the petitioner's son was in particular need of school clothes, or that, even if he was, there was no alternative for the petitioner except the purchase of new clothing at that particular time and in the amount spent.

ORDER

The Department's decision is modified. The Department shall "offset" from the amount of the petitioner's lump-sum payment the amount (\$45) the petitioner paid for her past due electric bill. The matter is remanded to the Department to determine the petitioner's ANFC payment for May, 1989, in accord with this modification.

REASONS

Ordinarily, when an individual receives a lump-sum payment her household becomes ineligible for ANFC for the number of months obtained by dividing the household's monthly "standard of need" (which is set by regulations--see W.A.M. § 2245.2) into the total amount of the lump-sum. W.A.M. § 2250.1. However, the same regulation allows the department to "offset" amounts against the lump-sum in the following three instances:

- 1) An event occurs which, had the family been receiving assistance, would have changed the amount paid;
- 2) The income received has become unavailable to the family for reasons beyond their control;
- 3) The family incurs and pays for medical expenses which offset the lump-sum income.

In Fair Hearing Nos. 6891 and 8608 the Board examined the requirements of the above "offset" provisions. In those cases it held that subparagraph 2 of § 2250.1 (supra), the only one at issue both here and in the above cited Fair Hearings, established a two-part test: 1) unavailability, and 2) due to circumstances beyond the control of the family. Regarding the first part of the test, the Board ruled that payments by an individual from a lump-sum to satisfy pre-existing legal obligations rendered that portion of the lump-sum "unavailable" to the individual within the meaning of § 2250.1(2) (supra).

Regarding the second part of the test (i.e., whether the unavailability was "beyond the control of the family"), the Board in those Fair Hearings held the determining factor to be "whether or not it was necessary to the petitioner to incur and pay for these bills". In the instant case there can be little question that it was "necessary" for the petitioner to pay her past-due electric bill in order to maintain that utility. As the Board held in Fair Hearing No. 8608, housing and utilities are considered basic necessities per se. In the absence of evidence to the contrary it can reasonably be assumed that individuals who are behind in their house and utility payments risk losing or not being able to obtain these items." Id., at pp 5-7.

However, unlike in Fair Hearing No. 8608, credible evidence does not establish, nor can it "reasonably be assumed", that the petitioner faced any risk whatsoever of

losing her housing if she did not pay her mother the alleged "arrearages" in her rent. Since it cannot be found that it was "necessary" for the petitioner to make this payment, it cannot be concluded that this amount (\$570) was "unavailable to the family for reasons beyond their control" according to § 2250.1(2), supra.

As for the other expenses claimed by the petitioner-- i.e., the fuel bill, the remainder of the electric bill, the car and loan payments, the school clothes, and the vacuum cleaner--the evidence does not establish that any of them was past due. Thus, the first part of the above-described "test" has not been met for these expenses. All but the purchase of the vacuum cleaner constituted recurring expenses that the petitioner had paid regularly in the past out of her monthly income.² Since her "income" for the period of her ANFC disqualification actually exceeded her monthly income prior to her receipt of the lump-sum,³ the purpose of the lump-sum rule⁴ would be frustrated if she were allowed to claim the payment of recurring obligations as money "unavailable" to her during the period of her ANFC disqualification. The rationale of the Board in Fair Hearings No. 6891 and 8608 in allowing payment of certain expenses to be considered "unavailable income" under § 2250.1(2) was predicated on the fact that the expenses claimed in those cases were for past-due legal obligations. This, simply, is not the case with the expenses identified

in this paragraph. Moreover, as noted above, the evidence did not establish that it was "necessary" for the petitioner to make any of these payments out of her lump-sum--whether or not they were past-due.

For all the above reasons, the Department's decision is modified to allow the petitioner to "offset" the amount (\$45) of her past-due electric bill from her lump-sum payment in the calculation of her period of ineligibility for ANFC. In all other respects, the Department's decision is affirmed.

FOOTNOTES

¹The petitioner argued that the notice did not adequately apprise her of her rights and responsibilities under the lump-sum rule. However, even if this were true, the Board would hesitate to order the Department to pay benefits to the petitioner that would immediately be recoupable by the Department as a "department error". See W.A.M. § 2234.2. For the record, the hearing officer was not convinced that the petitioner, in fact, did not understand the circumstances of her disqualification. Thus, he deemed it unnecessary to make any further findings and conclusions regarding this issue.

²The vacuum cleaner, though not a recurring expense for the petitioner, was not found to be a "necessity" (see supra). Thus, it does not qualify as an offset either under paragraph 2 or as a "medical expense" under paragraph 3 of § 2250.1, supra.

³Since the lump-sum disqualification period is determined by dividing the amount of the lump-sum by the ANFC need standard, rather than by the ANFC payment standard (ANFC in Vermont pays roughly only 2/3 of actual "need"--see W.A.M. § 2245.24), a lump-sum recipient actually has more "income" during the period of ineligibility than she would if she received only ANFC.

⁴In Fair Hearing No. 8608, the Board noted that "the 'rationale' of the regulation appears to be that an ANFC family should not benefit in any way from 'windfall' lump-

sum income." See Id., footnote 4, p. 8. In Fair Hearings No. 6891 and 8608 the Board, in effect, held that the payment of necessary past due obligations was not a "windfall" in any reasonable sense. The Board cannot, however, extend that reasoning to allow the payment of current obligations and expenses unless extreme "necessity" is demonstrated.

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