

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 9129
)
Appeal of)

INTRODUCTION

The petitioner appeals a declaratory ruling of the Department of Social Welfare that creation of an irrevocable trust in her daughter's name would violate the Department's rule against transfer of resources for the ANFC program.

FINDINGS OF FACT

The parties have agreed by stipulation to the following findings of fact:

ORDER

The decision of the Department is reversed.

REASONS

Persons applying for or receiving ANFC benefits are limited by eligibility regulations in the amount of resources they have available for their use. See generally W.A.M. § 2260. The regulations further proscribe the divestiture of property in order to contravene the resource limitations. The language specifically states in pertinent part:

Any individual who, or whose spouse, has voluntarily assigned or transferred property or income for the purpose of qualifying him for such assistance

or for a larger amount than that to which he would otherwise be entitled is disqualified. Property affected includes any or all real or personal property subject to consideration as total resources subject to limitation.

Property transfers which occurred more than two years before the date of application for assistance shall not affect eligibility; this time interval affords reasonable presumption that such transfer was not made contrary to regulation.

Property transfers which occurred less than two years before the date of application for assistance shall not disqualify the individual if:

1. Apparent or stated reason(s) for transfer, supported by adequate facts, establishes that the transfer was not made solely to qualify for assistance (e.g., needed income, relief from excessive property costs and/or upkeep responsibilities, foreclosure imminent, etc.)

. . . W.A.M. § 2261.1

The issue here then is whether there are adequate facts to find that the petitioner's desire to establish an irrevocable trust for her daughter is being done solely to qualify the family for ANFC. The facts clearly show that not to be the case.

The relevant facts here can be briefly summarized. In 1984, the petitioner's three-year old daughter received

\$10,000 as damages for an injury she received. The child's parents were told by their lawyer to set up an account in their name in trust for the child and to only use that money to benefit their daughter. When the parents later divorced the mother took sole charge of the account and as a last resort used some of the child's money to support the family for two months until she could get public assistance. She controlled the disbursement of the account but was required to get approval yearly from the probate court. Because her control was not legally restricted, the Department found that the resource was available to her. Although she had used the account, the petitioner did not think it was "morally" available to her and thus she transferred control to the probate court. Now money could only come out with pre-authorization. In another period of desperation, the petitioner asked for and was able to obtain money for moving from the probate court. Because the money seemed to be readily retrievable for the needs of the child and her ANFC group, it was initially determined to be available to her even though the petitioner did not believe she should or could get the money. Subsequently, a new probate judge put stricter controls on the money and make it virtually unavailable to the child to meet her everyday living expenses with the money. The petitioner was refused when she asked for money for household goods even though it was obvious she needed them.

What the petitioner is attempting to do with the trust

instrument is merely to formalize the original purpose of the trust account by taking a step which should have been taken at the time the money was awarded to the child. It has been clear from the start, that the intent has been to preserve that account for the exclusive special benefit and use of the child and that it was never intended that the funds should relieve her parents of their obligation to provide for her everyday basic needs. Until recently, the expected benefit from this account has not been articulated.

However, the petitioner's stated intent that the money be held for the child until she is eighteen for the purpose of getting an education is reasonable and consistent with the prior articulated general desire to preserve the money for her benefit. That intent also is in harmony with the probate court's view of the strict judiciary obligation owed to the child. In fact, the current probate court's attitude is so stringent that the "transfer" of the account funds into a trust can hardly be considered to make the funds less available than they are now.

The Department argues that the petitioner's prior use of these funds for household expenses, evidences an intent that the money in the account be available for the child and her family whenever a need arises. That analysis is based upon a very selective view of the facts which is totally unpersuasive. To be sure, the petitioner did use some \$2,400 of the account money to support her family in 1987. However, there is no evidence that any money was removed

from the accounts in 1984, 1985, 1986, or any time since 1987. Given the fact that after her husband's departure in April of 1987, the petitioner was left for several months with no means to support herself and her children (and was denied ANFC for four of those months), it is a wonder that she did not consume the entire \$10,000 that year to pay for her basic needs.

In addition, since September of 1987, the petitioner has been living on ANFC--a program which by its own admission meets less than 70 percent of the needs of the recipients--and there is no evidence that she has used her daughter's account to fulfill the unmet need which, at least until January of 1989, she could readily have done through application to the probate court.¹ The entire picture presented by the facts shows a remarkable restraint with regard to using the funds in the account in the face of great adversity. That restraint is entirely consistent with the petitioner's stated intent of preserving the money (as far as humanly possible) for her daughter's future use.

The petitioner's attempts over the last two years to relinquish her control over the money in her daughter's account and to articulate a specific purpose for preserving the funds can most fairly be characterized as a clarification of her original intentions. Although her eligibility denials for ANFC have undoubtedly influenced her to propose a change in the way that her daughter's money is held, there is absolutely no evidence that the proposed

change represents a departure from the petitioner's long held belief as to the use of those funds or are proposed solely to qualify her for assistance. Rather it must be found that the proposed trust clarifies the petitioner's intent when she established the account that those funds not be used to meet her child's current living expenses but rather be preserved for some special needs of that child only.

As the showing of an intent other than a mere desire to meet eligibility requirements is sufficient to overcome the two year disqualification, it is found that the proposed placement of the daughter's account into the irrevocable trust does not violate the regulations prohibiting transfers. W.A.M. § 2261.1(1), and Fair Hearing No. 6310.

FOOTNOTES

¹The evidence in the prior hearing showed in fact that the petitioner needed money and clothing for her daughter and did not try to get it out of the account.

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