STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 9273
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals her disqualification from receiving essential person benefits due to her receipt of a lump-sum inheritance in June of 1989. The issue is whether the Department is estopped from applying the rule to the petitioner and, if not, whether portions of the lump-sum payment spent by the petitioner can be considered unavailable to the petitioner for reasons beyond her control.

FINDINGS OF FACT

1. Prior to June of 1989, the petitioner, an older disabled woman, who receives benefits through the Social Security Administration, also received an "Essential Person" benefit from the Department of Social Welfare of $235 per month for her husband who cares for her. She has received these benefits since 1983.

2. In mid-May of 1989, the petitioner learned that she would soon receive an inheritance of about $3,000 and she contacted the Department of Social Welfare to notify her worker of that fact and to find out if she could keep that money in the Bank without losing her "Essential Person" benefits.

3. The petitioner was told by her worker that she could have up to $3,000 in the bank and could spend the money on anything essential and still keep her benefits.[1]

4. The petitioner actually received a check for $2,956.61 on June 1 and brought a copy of the check to the welfare department soon thereafter, where her case had been assigned to a new worker. Because the new worker was unfamiliar with he Essential Person program she did not discuss the effect the lump-sum inheritance would have on the petitioner's benefits with her at that time. There is no evidence as to what remarks, if any, may have been made by the new worker to the petitioner at that time regarding her uncertainty as to the operation of the program.

5. The petitioner's case was also periodically reviewed in June, and a notice was generated June 14 telling her that her grant "would remain at $111.00 and would be reviewed in December 1989". That June 14 notice was in error because the worker was unfamiliar with the Essential Person program. She later consulted with her supervisor to determine how to handle the lump sum. The petitioner called to question the reduced amount on the notice and was told on the phone that the notice was an error and that in a day or two she would receive a corrected notice which would detail a four month disqualification as a result of the receipt of the lump sum. It was during that conversation that the petitioner first learned of the real disqualifying effect of her lump-sum inheritance.

6. On June 16, 1989, the new worker sent a notice to the petitioner closing her grant effective June 30, 1989, due to the receipt of the lump-sum payment. The notice stated that the petitioner's disqualification would continue until December 1, 1989, and informed her, in pertinent part, that the disqualification period could be shortened if the money was no longer available to her for reasons beyond her control or she used it for medical expenses. The notice is attached and incorporated by reference in its entirety. (See Attachment A)

7. The department subsequently told the petitioner that, due to a miscalculation, her disqualification would end November 1, 1989, instead of December 1, 1989.

8. During the first two weeks of June, the petitioner spent a considerable amount of her inheritance as follows:

a. $305.68 on June 6, 1989, for brakes, starter and strut repairs needed on a car.

b. $50.00 on June 8, 1989 to replace a cracked car windshield.

c. $355.00 on June 9, 1989, for a cemetery lot.

d. $131.00 on June 12, 1989, on an eye examination for glaucoma and cataracts which had not been performed in several years.

e. $60.00, June 16, 1989, toward a $750.00 loan received from a friend to buy furniture.

f. $42.80 on June 13, 1989 for groceries.

g. $204.48 on June 7, 9, 10 and 12, 1989, for clothing, a bedspread and a toaster.

9. With the exception of the eye tests and the mechanical and body work on the car, the petitioner would

not have made the other purchases had she known of the loss of her Essential Person benefits.

10. Subsequent to notification of her lump-sum disqualification, the petitioner made the following additional expenditures:

a. $84.86 on June 20, 1989, to have the car repaired due to a stalling problem that made the car inoperable.

b. $121.39 on July 13, 1989, for painting supplies and $200.00 on July 27, 1989, for labor to repair and paint a rusting car body.

c. $127.00 on July 17, 1989, for a dentist bill and $20.00 for another July dental bill.

11. The car repairs made June 6, 1989 ($305.68) and June 20, 1989 ($84.86) were necessary to keep the car operating. The paint and body repair work was necessary in order to meet state inspection standards with regard to auto body integrity as this older car was plagued with rust. The windshield repair was not essential for the safe operation of the car.

12. The petitioner is an older, woman who suffers from fractured discs, neck spasms and susceptibility to pneumonia. She cannot walk for long periods of time. She lives 2 - 2 1/2 miles from her doctor's office and has frequent appointments there. The closest grocery store to her rural home is 4 miles. She has no alternative public or private transportation available to her.

13. On August 9, 1989, the Department notified the petitioner that the cemetery lot of $355, the $131.00 eye

exam and $147 for doctor's appointments would be deducted from her lump-sum amount, thereby reducing her disqualification to 3, instead of 4 months.

14. On August 11, 1989, the Commissioner in a review letter notified the petitioner that a $278.00 reduction in her lump-sum based on medical expenses (the $131 eye exam and the $147.00 in dental bills) would be made but that the cemetery expense would not be excluded, an apparent partial reversal of their prior position. The petitioner's period of disqualification was calculated using a $662.30 monthly standard of need figure.

ORDER

The department's decision is modified to further "offset" from the amount of the petitioner's lump sum payment, the $711.93 spent on essential car repairs. The matter is remanded to the department to determine the petitioner's period of disqualification in accord with this decision.

REASONS

The "essential person" program pays benefits to aged, disabled or blind individuals to enable those persons to be cared for by their spouse or another person who "furnishes specific care and/or services which the aged, blind or disabled person (or couple) cannot perform himself but deems essential for him to stay in his present living arrangement and which would need to be provided otherwise if the essential person were not living in the household." W.A.M. ϶ 2751. The program is totally state funded but treats the receipt of income, including lump-sum income, as does the joint federally state-funded ANFC program. W.A.M. ϶ 2756. The ANFC lump-sum regulations, which are incorporated by the "essential person" program require, in pertinent part, as follows:

> 2250.1 Lump Sum Income
>
> The applicant or recipient of ANFC is responsible for notifying the Department promptly upon receipt of any lump sum payment of earned or unearned income.
>
> Lump sum payments, including windfall payments, shall be counted as income unless excluded under an exception cited below.[2] Lump sum payments, including windfall payments, which have been set aside in a trust fund and which are excluded in accordance with ANFC policy relating to "Trust Funds" shall not be counted as income. . .
>
> Lump sum payments which are not excluded should be added together with all other non-ANFC income received by the assistance group during the month. When the total less applicable disregards exceeds the standard of need for that family, the family will be ineligible for ANFC for the number of full months derived by dividing this total income by the need standard applicable to the family. Any remaining income will be applied to the first month of eligibility after the disqualification period.
>
> The period of ineligibility due to a lump sum benefit may be recalculated if:
>
> 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 circumstances beyond its control. Such circumstances include, but are not limited to, death or incapacity of the principal wage earner, or the loss of shelter due to fire or flood.
>
> 3. The family incurs and pays for medical expenses which offset the lump sum income.

This regulation reflects a policy of having persons who receive large sums of income meet their regular household expenses through budgeting that lump sum over a certain period of time, in lieu of assistance payments.

The petitioner received a $235.00 per month grant through the program to enable her husband to stay at home and assist her with her many personal care and medical needs. The receipt of the $2,956.61 inheritance on June 1, 1989, brought the lump sum disqualification rule into play resulting in the petitioner's disqualification for a number of months. The department arrived at the final disqualification period by deducting medical expenses which the family incurred and paid for out of the lump sum and dividing the remainder by the essential person need standard for the family.

The petitioner takes issue with the department's disqualification period for two reasons. First, the petitioner urges that the department should be totally estopped from invoking the lump-sum rule against her because incorrect information given her by the department caused her to spend the lump-sum she received rather than budget it for the coming months and/or did not advise her as to how she could avoid the lump sum rule all together. In the alternative, the petitioner argues that the department should have deducted several other expenditures made from her lump-sum inheritance before the disqualification was calculated because those expenditures made portions of her lump sum unavailable for circumstances beyond the petitioner's control.

1. The Estoppel Argument

"Equitable estoppel" is a doctrine that has long been recognized and used by Courts, including the Vermont Supreme

Court, to prevent a party from asserting his or her rights against another party who reasonably and in good faith relied upon the first party's representations to his or her detriment. See Fisher v. Poole, 142 Vt. 162 (1982). The Vermont Supreme Court has also said that equitable estoppel will only lie where the person invoking the doctrine has met his or her burden of establishing four essential elements:

> First, the party to be estopped must know the facts; second, the party being estopped must intend that his conduct shall be acted upon or the acts must be such that the party asserting the estoppel has a right to believe it is so intended; third, the latter must be ignorant of the true facts; and finally, the party asserting the estoppel must rely on the conduct of the party to be estopped to his detriment. Id, at 168.

Even where the four essential elements are shown, most Courts have been extremely reluctant as a policy matter to use the doctrine to estop the actions of governmental entities who seek to enforce their own rules and regulations and otherwise carry out their statutory obligations. See e.g. Schweiker v. Hansen, 450 US 785 (1981). The Vermont Supreme Court has adopted a very restrictive attitude toward the use of equitable estoppel against a governmental agency:

> . . . the use of the doctrine of equitable estoppel against the government is rare and should be allowed only in extraordinary circumstances. In re McDonalds Corp., 146 Vt. 380, 383, 505 A.2d 1202, 1203-04 (1985).

> The government may be bound by an equitable estoppel in the same manner as a private party [only] when the elements requisite to such an estoppel against a private party are present and . . . the injustice which would result from a failure to uphold an estoppel is of sufficient dimensions to justify any effect upon public interest or policy which would result from the raising of an estoppel.

Id. at 383, 505 A.2d at 1204 (quoting Chaplis v. County of Monterey, 97 Cal. App. 3d 249, 258, 158 Cal. Rptr. 395, 400 (1979).

Burlington Fire Fighters Association, et al v. City of Burlington, 149 Vt. 293, 299 (1988).

The Vermont Supreme Court has, thus, said that equitable estoppel against the government is not looked on favorably and will not be invoked unless the party requesting estoppel can both prove the existence of the traditional four elements of estoppel and that the injustice involved is so great that it outweighs the public interest in seeing the government carry out its usual obligations.

The evidence presented by the petitioner in this matter falls far short of meeting this stringent test. It is not clear, based on the facts, that the petitioner can even meet the traditional four element test for estoppel of a private party. Even were that so, it certainly cannot be concluded that the petitioner has shown a grave injustice which outweighs the enforcement of the state's policy with regard to the treatment of lump sum income by those it assists.

Given those facts, a dispute exists between the parties as to what information the worker should have given the petitioner. The petitioner urges that the worker should have told the petitioner how to avoid the lump sum disqualification rule. The department's response is that it was the worker's obligation to explain the operation of the lump sum rule. It has previously been held by the board that, in general, petitioners must be told the importance of promptly reporting income and that, in lump-sum cases, must be told specifically how the disqualification would operate and how it might be shortened. See Fair Hearing No. 8342. The petitioner argues that a word from the worker before she received the lump sum about the difference between income and resources could have alerted her to the fact that she could have withdrawn from the program before she received the lump sum, and have reapplied after its receipt when it would then become a resource. She would then lose only one month of benefits instead of four. The petitioner states that this full information is mandated by a Vermont Supreme Court ruling holding "that the department has an affirmative duty to advise applicants specifically of their rights under ANFC." Lavigne v. DSW, 139 Vt. 114, 118 (1980).

Doubtless, the duty to affirmatively advise recipients about their rights under the ANFC program discussed in Lavigne, supra, extends to other programs administered by DSW as well, including the essential person program. However, a distinction must be drawn between a duty to advise recipients as to eligibility criteria and the availability of exceptions, exclusions or deductions when determining eligibility and a duty to advise them as to the existence of "loopholes" by which they can avoid the operation of the law altogether. The latter requires the worker not only to give full and complete information but also to analyze and make tactical decisions on behalf of the client given his or her particular situation. The Board does not feel that Lavigne requires that of a department employee. In addition, it cannot be said that the regulations governing lump-sum income for Essential Person benefits reflect a policy of offering an alternative to disqualification. The policy clearly expects persons who receive large sums of money while on assistance to use that money to replace governmental assistance when possible. The fact that advocates have (legally) exploited the unfortunate discrepancies between the income and resource sections of the essential persons regulations to avoid the disqualification, does not create a new class of exception to the policy which the Department is affirmatively required to discuss with recipients. (Perhaps it does point out a reason to change the department's regulations in order to treat persons who are really in the same situation equally, and to avoid this end run around the regulations by those with able counsel.) Therefore, it must be concluded that the information the Department is required to give out is a full explanation of the operation of its lump sum rule, including exceptions and exclusions.

Even assuming that the worker knew the petitioner was getting a lump sum payment and had erroneously advised her as to its effect in her benefits, the second element of estoppel--that the petitioner had a right to believe that the information given to her before she received the check was intended by the department to guide her conduct--has not been persuasively shown. When the worker originally erroneously advised the petitioner of the effect of her receipt of lump sum income, he was not reacting to the petitioner's actual receipt of income, but rather was informally advising her as to what he felt might happen when she got and reported the check. The petitioner was still required to bring in her check when the time came and have it evaluated in terms of her eligibility. She was simultaneously being reviewed for her eligibility, a fact of which she was also aware. In addition, when the new worker was actually handed the check by the petitioner, she made no statement which would confirm the prior worker's statement. There is no evidence that the petitioner asked her to confirm the information she had received previously from her old worker prior to her actual receipt of the money. In light of these facts, it is difficult to conclude that the petitioner had a right to believe that the department's last word on the treatment of her lump sum income had been received. It appears, rather, that the petitioner "jumped the gun" a bit when she decided to take her actions when she knew or should have known that it was likely she would receive some further communication from her new worker evaluating her future eligibility based both on the review and the lump sum.

With regard to the third element, it can be concluded that the petitioner has shown she was ignorant of the actual regulations. With regard to the fourth element, the petitioner has proven that she spent money on some items she would have saved for living expenses based on the worker's statements. Her medical and car expenses, however, were so essential that the petitioner would have incurred and paid for those expenses regardless of what the department said, so it cannot be found that those expenses constitute part of her detrimental reliance. Although the petitioner appears to meet the final two tests, her failure to persuasively meet the second means that equitable estoppel cannot lie.

Even if the traditional estoppel test had been met in this instance, it cannot be found that the injustice done to the petitioner was so significant as to outweigh the department's interest in enforcing its income regulations, the second part of the Supreme Court's test. In this matter, there was no egregious conduct by the worker--at worst he simply made a mistake. He did not violate a rule or a regulation by refusing to take an application or perform some other action, or repeat his mistakes over and over again, (as in Fair Hearing No. 6908 in which the department repeatedly refused to take an application; and the dissent in Schweiker v. Hansen, supra where the regulation and rule violations were of great import in the weighing process.) Neither was there extraordinary harm to the petitioner. By her testimony, she spent approximately $843.28 before she got the written notice that she would not have spent otherwise. When that figure is added to the $305.68 she would have spent on her car anyway, and the $406.25 she subsequently spent on her car, ($1,555.21), the petitioner still had some $1,400.00 left. That $1,400.00 is still more than the entire sum (about $1,175.00) she would have received from the department is she had not been disqualified for the period at issue (5 months). Based on the above, it cannot be found that an injustice exists which outweighs the department's interest in enforcing its regulations. This, then, is not the extraordinary circumstance justifying the rare imposition of estoppel against the government.

2. Amounts Unavailable Beyond Her Control

As the petitioner cannot escape the operation of the rule, it must be determined whether her lump-sum amount has been properly adjusted to reflect amounts which are no longer available to her for reasons beyond her control. W.A.M. ∋ 2250.1, supra. Although the petitioner argues that all her expenditures were beyond her control because they were based on misinformation, it appears that the petitioner had the last chance to avoid acting on misinformation given to her by waiting for the eligibility notice from the department which followed one to two weeks or so after she reported her income. Even if that were not so, the petitioner put forth no evidence that the fungible items she purchased (clothing, bedspread, toaster, cemetery plot) could not be returned or reconverted to cash. (All of these items were purchased within 10 days of her receipt of the true information.) The real issue here is whether those expenditures which the petitioner reported as essential and unaffected by any information form the department--namely the car expenditures--are excludible as funds "unavailable to the family for reasons beyond their control." W.A.M. э 2250.1 as it is incorporated into W.A.M. э 2756.

The board has held that the regulatory test which requires both that money from the lump sum be unavailable and that the unavailability be beyond the petitioner's control, can be met by a factual showing that the amount at issue was spent to provide an item that is peculiarly essential to the petitioner's daily existence (e.g., extraordinary child care or transportation expenses) as opposed to an item deemed universally essential to all persons (food, clothing, shelter). See Fair Hearing Nos. 6891, 8608. Under that rule, the petitioner's expenditures for food, clothing, furniture (loan repayment), a cemetery plot and household items (bedspread and toaster) cannot be excluded from her lump sum payment.[3] The board has specifically determined that sums spent on repairs needed to keep a vehicle in operation are excludible if, "the car in question is necessary for a household member to become or remain employed or to meet some other basic need (e.g., transportation for medical treatment.)" Fair Hearing No. 8608, p. 7.

In this matter, the petitioner put forth persuasive evidence that her car is essential to providing transportation to her medical appointments and to purchase groceries. The petitioner is an older, disabled woman who lives three to four miles from the nearest grocery store and two to three miles from her doctor's offices. She cannot walk long distances due to her disability, has no alternative private or public transportation, and has frequent medical appointments. It must be concluded, therefore, that it is necessary for the petitioner to keep a car in operating condition.

In order to keep the petitioner's car operating and legally registered, the evidence shows that the repairs made on June 6 and June 8, and the body repair and painting made to combat rust on the body were necessary to keeping the car operating and were done with considerable economy. As the petitioner admitted that her cracked windshield did not pose a barrier to meeting the state vehicle inspection standards, that expense should be excluded. Because $711.93 was necessary to maintaining her vehicle in an operable condition and because that vehicle is essential to providing needed transportation to the petitioner, that sum should be excluded from the lump sum received by the petitioner and her period of disqualification should be recalculated to reflect that fact.

FOOTNOTES

[1] The Department represented that the worker originally involved had moved out of the state and was not able to appear at the hearing.

[2] None of the exceptions apply here.

[3]Had the petitioner lost all her clothing or furniture in a disaster, such as a fire or flood, and had to replace them all at once, the considerations would be different under the rule itself.

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