

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 9541  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare terminating her ANFC benefits. The issue is whether the proceeds from lump-sum income received by the petitioner are unavailable to her for reasons beyond her control according to the pertinent regulations.

FINDINGS OF FACT

1. In August of 1989, the petitioner, who was an ANFC recipient, was employed by Vermont Career Opportunities Program [VCOP] through the state's Reach-Up program. She traveled from her home in Barre to Montpelier each day in a car she borrowed from her mother. Although the car belonged to her mother, the petitioner made installment loan and insurance payments on the car.

2. On August 5, 1989, the petitioner was involved in an accident in which she was injured and her mother's car was damaged. She continued to get to work, thereafter, through transportation provided by a friend.

3. In the third week of August, the petitioner who was then in her third month of pregnancy, decided to quit her job because she believed she might have some obstetric problems

due to the accident. It was her hope that she would return to work in February, 1990, after her baby was born.

4. On August 25, 1989, the petitioner was paid \$3,969.29 in settlement of an insurance claim she had in connection with the car accident.

5. The petitioner did not report nor discuss the payment with the Department, although as recently as May 31, 1989 she signed a statement indicating that she understood that she had to report any "lump sum payment (income tax refund, insurance settlement, etc.)" (emphasis added) to the Department within 10 days of receipt. The petitioner signed similar statements on at least two prior occasions and was verbally informed to report changes in income and resources on a regular basis during reviews. At no time did she indicate that she did not understand her obligation to report to the Department. The petitioner, who is a high school graduate and can both read and write, admits that she signed the statements after reading them but did not realize or remember that she had to report insurance payments. For purposes of this hearing, it is not necessary to determine what the petitioner's reasons and motives were for not reporting the income, and no finding is so made. However, it is found that the Department informed the petitioner of her obligation to report the lump sum settlement in a timely and meaningful manner. The Department did not discuss the actual operation of the lump sum rule with the petitioner

until late October, 1989, when her receipt of the income was discovered.

6. On October 25, 1989, the petitioner purchased a 1984 Ford Tempo for \$2,652.00 (including taxes, registration and title). On that same date she paid \$348.00 for auto insurance. Both of these sums came from the insurance payment.

7. On October 26, 1989, her worker became aware, from another source, that the petitioner received the insurance settlement and he wrote her a note asking her to come by the office no later than November 10, 1989 to confirm the amount received and to review her eligibility. A couple of days later, the petitioner brought in evidence of the settlement and was informed of the operation of the lump sum rule and told that her ANFC benefits would stop. On November 17, 1989, the petitioner was mailed a letter informing her that her \$498.00 grant would be closed on November 30, 1989 through May 31, 1990, due to the receipt of the lump sum. The notice also advised her that the closed period might be changed due to certain circumstances, including the unavailability of the money for circumstances beyond her control.

8. At the time the petitioner purchased the car, the friend who had provided transportation for her was unable to continue to do so. The petitioner was not then working but used the car to take her daughter and herself to medical appointments and for shopping trips. The car was also used

to take the child to the emergency room at Central Vermont Hospital on several occasions due to ear infections.

9. The petitioner lives in an apartment a little over one-mile from downtown Barre. Her mother, who owned the car used by the petitioner for work, lives nearby and had the car repaired as of September 5, 1989. The mother herself has no license and does not use the car. The petitioner did not know if the car might be available to her for doctor's and shopping trips. Neither did the petitioner know what public transportation or taxi service might be available to her for these purposes.

10. The petitioner alleges that she could not walk the mile or so to shops downtown during October of 1989 and is still unable to due to unspecified medical problems relating to her accident and pregnancy. However, she presented no doctor's statement or other medical evidence in support of her claim and no finding of her inability to walk reasonable distances can be made.

ORDER

The Department's decision is affirmed.

REASONS

The ANFC lump-sum regulations 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. 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.

This regulation reflects a policy of having persons who receive lump 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 was disqualified from receiving ANFC benefits under this policy for six months based on the \$3,969.29 she received.

The petitioner takes issue with the Department's disqualification period for two reasons.<sup>1</sup> First, the petitioner urges that the Department should be totally estopped from invoking the lump-sum rule against her because she was never informed about the operation of that rule before spending her money. Second, the petitioner argues that the department should have deducted the expenditures made from her lump-sum settlement for the car because those expenditures made portions of her lump sum unavailable for circumstances beyond the petitioner's control.

The petitioner's first argument is totally without

merit. The evidence shows that the petitioner knew or should have known of her obligation to promptly report the receipt of an insurance settlement (or any lump sum) to the Department. At the time income is reported, it is the Department's policy to discuss any effect the receipt of that money might have on benefits. While that policy may not be an effective means of making a timely communication to all clients<sup>2</sup>, it clearly would have been effective as to this petitioner, as she did not spend her lump sum until two months after its receipt. Had she reported timely the receipt of the income she would have been told about the existence of the lump sum rule and its effect on her long before she spent the money. See Fair Hearing No. 8342.

Since the petitioner cannot show that the Department even had an opportunity to give her misleading or erroneous information because of her own failure to report her circumstances, nor that a great injustice will be done if the Department takes its proposed action, no estoppel will lie. See Burlington Fire Fighter's Association, et al., v. City of Burlington, 149 Vt. 293 (1988), Fisher v. Poole, 142 Vt. 162 (1982) and Fair Hearing No. 9273.

The petitioner's second argument involves offsetting her lump sum income. Ordinarily, as stated above, 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, 8608, 9072, and 9273, the Board has examined the requirements of the above "offset" provisions. In those cases it held that subparagraph 2 of section 2250.1 (supra), the only one at issue both here and in the above cited Fair Hearings, establishes a two-part test: 1) unavailability, and 2) due to circumstances beyond the control of the family.

The Board has held that amounts spent with regard to the purchase, repair and operation of a motor vehicle are beyond a family's control when "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. 8606, p. 7, Fair Hearing No. 9273

In this case, the petitioner was not employed when she bought her car and was at least four-five months away from contemplating any return to work. The petitioner needed transportation primarily to provide for her basic need to shop and get medical treatment for herself and her child.<sup>3</sup>

The issue is whether the petitioner showed that she needed to own a car herself in order to obtain that transportation.

It must be concluded that she did not.

The petitioner's testimony showed that she made no attempt to investigate the existence of other transportation alternatives to buying her own car, particularly public transportation or taxis. In addition, the evidence indicates that the petitioner was very likely in a good position to borrow an unused and operable vehicle from her mother which she had been using regularly prior to her accident. While it is extremely convenient to have a car of one's own (and the petitioner can hardly be said to have acted extravagantly in purchasing this used vehicle), it cannot, nevertheless, be found that owning that vehicle was essential for the petitioner to meet her basic needs. As the petitioner has failed to meet the necessity test, funds expended on the car cannot be found to be unavailable to her for reasons beyond her control.

FOOTNOTES

<sup>1</sup>The petitioner's position was gleaned solely from her oral reference to the issues raised in another hearing (Fair Hearing No. 9273). Although the petitioner repeatedly requested an extension to put in a memorandum of law, none was forthcoming for over five months. Finally a deadline was imposed on the petitioner which was missed without explanation.

<sup>2</sup>The Department's policy still poses a problem for those who spend their lump sum initially on receipt but timely report receipt to the Department within ten days.

<sup>3</sup>It was not entirely clear that the petitioner could not walk to shopping or medical appointments. However, for

purposes of this decision it will be assumed that the distances were too far to expect her to walk.

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