



aware of the lump sum payment to the claimant until on or about January 19, 1990.

4. By written notice dated February 2, 1990 (copy attached as Exhibit B), the Department informed the claimant that her ANFC grant would close on February 15, 1990, due to the receipt of the \$13,425.00.

5. The claimant then requested a fair hearing.

6. The Department then revised its decision and informed the claimant in writing (copy attached as Exhibit C) that, at present, it would exclude the home equity component of the lump sum (\$10,950) from consideration, but the remaining amount (\$2,475) was still subjected her to disqualification from ANFC, based on the lump sum rules.

7. The claimant is presently studying nursing in Hanover, New Hampshire and will complete her degree in July, 1990.

8. Among the claimant's purchases of personal property after the receipt of the lump sum was an automobile which she uses to commute to school. Prior to purchasing this car, the claimant relied on other students for rides to school.

9. The claimant's expenditures of the lump sum money between December 23, 1989, and January 18, 1990, included:

A.	12/24/89	automobile	\$800.00
B.	01/17/90	automobile insurance	100.00
C.	12/89	license and registration	24.00

D.	1/08/90	electric utilities (back bill)	77.72
E.	1/17/89	heating oil (back bill)	95.51
F.	1/17/89	telephone (towards back bill of \$350.03)	200.00
G.	1/17/89	attorneys fees (towards back back bill of \$1,700.)	100.00
H.	12/23/89 - 1/17/89	clothes, Christmas gifts, household supplies	440.61

ORDER

The Department's decision is modified. The Department shall "offset" from the amount of the petitioner's \$2,475.00 lump-sum payment, the amount (\$273.23) the petitioner paid for her past electric, heating oil and attorneys fees bills.

REASONS

Ordinarily, when an individual receives a lump-sum income payment<sup>1</sup> her household become 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 and 9072 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 incur and pay her electric and oil bills.<sup>2</sup> It is also reasonable to believe that the petitioner had to incur legal expenses in connection with her divorce action. As the moneys spent on these bills are for pre-existing legal obligations which were necessarily incurred and paid for, it must be found

that they are excluded under W.A.M. § 2250.1(2) above.

The Board, in the past, has been willing to exclude amounts paid for past due telephone bills when phone service is shown to be a "necessity" for the family. However, phone service has never been considered to be per se, a necessity. See Fair Hearing No. 9612. In this case, the petitioner put forth no evidence that directly shows or from which it can be inferred that she needs a telephone. Therefore, there is no basis upon which to determine that amounts used to pay for that bill should be excluded.

Similarly, amounts incurred in connection with the purchase of a car can be excluded under W.A.M. § 2250.1(2) if the petitioner demonstrates that the car was needed to provide transportation to seek, obtain or maintain employment or to attend medical appointments or the like. See Fair Hearing Nos. 9273 and 9629. Again, the petitioner has put forth no evidence from which it could be inferred that she needed to buy a car to get to nursing school.<sup>3</sup> She apparently had been getting rides to school for the five months before she bought the car and there was no evidence presented that she could not continue to do so. Given her limited resources and apparent other means of transportation, it cannot be inferred that it was necessary or prudent to spend close to half of her maintenance payment (which payment was calculated by the Court to last through the completion of her schooling in July of 1990) on a car,

registration and insurance. Therefore, it cannot be concluded that the \$924.00 spent on the car and related expenses should be excluded as unavailable to her for reasons beyond her control.

Finally, the amounts spent on clothes, gifts and household supplies are ordinary recurring household expenses and are the kinds of expenditures which recipients are expected to pay out of their monthly income whether it is from ANFC or lump sum payments. Such expenditures cannot be used to reduce the amounts considered available to the family under the lump sum rule.

FOOTNOTES

<sup>1</sup>The petitioner does not urge that the maintenance portion of her lump-sum payment is "income" as that term is defined in state and federal law.

<sup>2</sup>It is assumed that in all these actions where the petitioner claims "back" bills, that those bills do not represent a current expense. The lump-sum regulations by their very nature contemplate that current ordinary expenses will be covered by the lump-sum.

<sup>3</sup>A question also raised by these facts is whether going to school in the petitioner's case was necessary to obtaining employment. It appears from the record that she had been employed prior to her schooling. However, it is not unreasonable to assume that her schooling would lead her to better employment, and which would encourage the prevention of dependency and self-reliance, (which are goals of the welfare program, see W.A.M. § 2340), this question could be answered in the affirmative. However, the resolution of this issue is not necessary as other grounds determine the outcome her.

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