

1986, for several months. The petitioner appealed that decision.

2. The petitioner obtained the services of a legal aid lawyer who apparently negotiated a settlement of the appeal with the Department which commuted the imposition of a period of disqualification to a finding of an overpayment for the months they had erroneously been paid ANFC, a sum of about \$4,500.00. The appeal was withdrawn and in February of 1987, the Department began to recoup the \$4,500.00 through a 10% reduction of the petitioner's ANFC grant.

3. The 10% monthly recoupment continued until December of 1989, when the family's grant was put into the name of the children's father, who is a Social Security recipient. Because of the new name on the grant, the computer ceased recoupment and the family began receiving a full grant which continued until November 1990.

4. In November of 1990, the petitioner asked that her grant be placed back in her name. On November 7, 1990 she was notified that the name change had taken place and that beginning December 1, 1990, the recoupment of the \$4,106.00 remaining balance on her prior overpayment would resume by reducing her grant \$28.00 per month from \$380.00 to \$352.00.

5. The petitioner appealed that decision asking that the recoupment cease because she could not afford to lose the \$28.00 per month and because she should not have been found to be overpaid because the overpayment occurred

through no fault of her own. She contends that had she been properly notified of the effect of the lump sum, she would not have spent the money. At present she has several problems to deal with at her home including no water on her land and a driveway in need of repair.

ORDER

The Department's decision to resume recoupment is affirmed.

REASONS

The petitioner's attack on the underlying finding that she was overpaid \$4,500.00 is, in essence, an attempt to reopen a decision which was appealed and settled some four years ago with the assistance of counsel. The petitioner does not allege mistake, fraud, coercion, new evidence or any of the usual grounds which might legally justify relief from a prior agreement. Rather her basis for this request is that she might be able to interpose a better legal defense or negotiate a better settlement than she did at that time. Even if the petitioner were successful in doing so, which is unlikely,¹ her desire to "try it again" is not sufficient ground to reopen her former settlement.

While the petitioner is, of course, free to file a new appeal on the issue, she is bound, as is every applicant and recipient, by time limits for making such appeals:

Appeals from decisions by the Department of Social Welfare shall not be considered by the board unless the appellant has either mailed a request for a fair hearing or clearly indicated that he wished to present his case to a higher authority within 90 days from the

date when his grievance arose.

Human Services Board,
Fair Hearing Rule No. 1

In 1986, that rule read virtually the same except that the time period to appeal was only thirty days. The Board has held in the past that an appeal beyond the limits (thirty days in 1986, ninety days now) is not timely and must be dismissed unless the appellant can show that for some reason (either his incapacity or the Department's failure to communicate) he or she was unaware that the grievance existed at the time it actually arose. See Fair Hearing No. 8198. In this case, the petitioner's appeal in 1986 and subsequent settlement of the appeal show that she understood back in late 1986, that she had a grievance against the Department with regard to its allegations that she had been overpaid. Given that fact, an appeal made four years after her grievance arose on the underlying issue of overpayment cannot be found to be timely, and the Board, following its own rules, must dismiss the appeal. Fair Hearing No. 8105

The decision of the amount to be recouped from each grant, as opposed to the underlying overpayment, is a decision which can be appealed from month to month as each month's deduction is a separate action by the Department. The Department is required to recover amounts which were overpaid through its own error (W.A.M. § 2234.2) and can recover an amount which leaves the family at least 95% of

the public assistance amount for a family of the same composition (W.A.M. § 2234.2).² The petitioner did not allege, and it cannot be found, that the Department is mistaken in its calculation of the amount to be recouped in its last notice. (November 7, 1990) Therefore, it must be concluded that the Department's determination to reactivate recoupment at the rate of \$28.00 per month is the correct amount.

FOOTNOTES

¹Petitioners who have interposed estoppel arguments in lump sum cases have in general met with little success before the Board. However, some have gained relief by having unusual and necessary expenditures which could not be reconverted to cash deducted from their lump sum. More recently, it has been suggested that the problem of the "innocent" lump-sum recipient be dealt with in just the manner the petitioners themselves negotiated, that is, being charged with an overpayment instead of disqualified from benefits. See e.g. Fair Hearings No. 9072, 9264, 9273, 9407, 9458, and 9516

²A recent challenge to the percentage rate recoverable was made by a petitioner represented by Attorney Stephen Norman of Vermont Legal Aid, Inc. in Burlington. See Fair Hearing No. 9544. The petitioner alleged that the Department was required to consider her financial circumstances before recouping and could set the rate of recoupment at less than the regulatory percentage rate considering her circumstances. That argument was rejected by the Board and is now on appeal to the Vermont Supreme Court. If the petitioner wants more information on that appeal she may contact Mr. Norman.

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