

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 10,173 &  
 ) 10,180  
Appeal of )

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare deducting from his lump-sum retroactive S.S.I. benefits the sum of \$2,201.86 to cover "interim" G.A. payments made to the petitioner and his household while his S.S.I. application was pending. The issue is whether the Department should have deducted only the petitioner's "prorated" portion of the G.A. he and his household received while his S.S.I. application was pending.

FINDINGS OF FACT

In lieu of an oral hearing the parties submitted the following written "Stipulation of Facts":

1. Claimant [petitioner] applied for Supplemental Security Income (SSI) benefits from the Social Security Administration on or about January 12, 1990.

2. [Petitioner] was found eligible for SSI benefits in or about October 1990. On a date yet to be ascertained in November 1990, a check for his retroactive SSI entitlement in the amount of \$3821.44 was received by the Department of Social Welfare (DSW).

3. On November 28, 1990, DSW forwarded to [petitioner] a balance of \$1619.58 and an explanation of DSW's deduction of the difference. A copy of the letter of explanation is annexed as Exhibit "1".

4. The DSW policy as to deduction of "interim assistance" from retroactive SSI awards appears at WAM 9

2600(D). It says that, "When the SSI grant does not include all members of the GA household, the deduction shall be for a prorated portion of the GA granted, to reflect only those included in the SSI grant."

5. The policy also says that, "The deduction shall be made for General Assistance issued during the period from the first day of eligibility for SSI to the date the initial SSI check is received by the department."

6. At all times relevant to this proceeding, [petitioner] and his four children resided with [name] and her three children.

7. The Department's computer records purport to show that [petitioner's] household and [name's] household received the following amounts of money from the GA program during the period 1/12/90 - 11/28/90:

	According to "Benefit History" Function		According to "Disbursement History" Function	
	[Petitioner]	[Name]	[Petitioner]	[Name]
Jan 12-31	\$ 991.23	\$ 951.64	\$ 961.00	\$ 763.00
Feb 1-2	1327.73	--	1020.00	--
March 1-31	147.23	--	--	--
April 1-30	147.23	--	--	--
May 1-31	147.23	--	--	--
June 1-30	147.23	--	--	--
July 1-31	147.23	--	--	--
Aug 1-31	147.23	40.00	--	40.00
Sept 1-30	147.23	315.00	--	315.00
Oct 1-31	147.23	--	--	--
Nov 1-28	592.53	--	\$ 479.00	--

"Benefit History" Function does not reveal the date a check was cut or the period of days for which it was issued; therefore these figures may not be accurate for the part of the month at issue.

8. It is the practice of the DSW Administrative Services Division, which handles the monetary transaction, to prorate only GA benefits for "personal needs," and never to prorate GA granted for shelter expenses.

The hearing officer and the board do not really understand paragraph 7, above. However, the parties'

memoranda make clear that the amount in dispute is the G.A. payments for "shelter" made to the petitioner and his household during the months his S.S.I. application was pending.

ORDER

The Department's decision is reversed, and the matter remanded to the Department to recalculate the petitioner's S.S.I lump sum deducting only the petitioner's prorated share of the G.A. shelter payments during the period in question.

REASONS

W.A.M. 9 2600 D provides as follows:

General Assistance shall be furnished with the understanding that when a recipient subsequently acquires benefits or resources in any amount from: an inheritance; cash prize; sale of property; retroactive lump sum Social Security; Veterans; or Railroad Retirement benefits; or court awards or settlements; he shall be required to make reimbursement for the amount of aid furnished during the previous two years.

The GA applicant or member of the GA household who is also an SSI applicant must sign a Recovery of General Assistance Agreement (DSW-230B) which authorizes SSA to send the initial check to this department so that the amount of General Assistance received can be deducted. The deduction will be made regardless of the amount of the initial SSI check. Any remainder due the SSI recipient shall be forwarded to him or her within 10 days. The deduction shall be made for General Assistance issued during the period from the first day of eligibility for SSI to the date the initial SSI check is received by the department.

When the SSI grant does not include all members of the GA household, the deduction shall be for a prorated portion of GA granted, to reflect only those included in the SSI grant. (Emphasis added.)

The issue in this case concerns the last paragraph of the above regulation. The Department's "practice" (see Stipulation of Facts, paragraph 8, supra) is to prorate only those G.A. benefits that are calculated according to household size--e.g., "personal needs"; but not those G.A. payments, like shelter, that are paid regardless of an applicant's household size. This "practice" was essentially upheld by the board in Fair Hearing No. 8615, decided on January 13, 1989.

The board is persuaded that Fair Hearing No. 8615 was wrongly decided. The regulation itself (supra) makes no distinction whatsoever as to the types and purposes of G.A. benefits that are paid pending an S.S.I. application. The "plain meaning" of § 2600D is that all G.A. paid during the pendency of an S.S.I. application shall be prorated--i.e., "assessed proportionately"<sup>1</sup>--based on the number of people in the S.S.I. applicant's G.A. household. The Department cannot as a matter of unwritten "policy" create what clearly amounts to an exception in the case of G.A. payments used to provide "shelter" to an S.S.I. applicant's household.<sup>2</sup> Fair Hearing No. 8615 notwithstanding, it must be concluded that such a policy is, indeed, contrary to the wording of § 2600D.

The Department's decision is reversed, and the matter remanded to the Department to calculate the petitioner's

lump-sum S.S.I. payment based on his prorated share of all the G.A. payments made to his household during the pendency of his S.S.I. application.

FOOTNOTES

<sup>1</sup>Websters Seventh New Collegiate Dictionary.

<sup>2</sup>See Burbo v. D.S.W., Vt. Supreme Ct., No. 90 - 569, 6-21-91 (mot. to reargue filed 7-8-91). Unlike in Burbo, in this case there is no argument that the plain meaning of the regulation in question leads to an "irrational" result. Id., Fair Hearing No. 9544.

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