

the money, and the worker told her to hold off because her ANFC grant might be closed. Despite this advice the petitioner went ahead and had the stove and refrigerator delivered a few days later.¹ The petitioner stated that she needed these appliances because her old ones were in disrepair; her old stove leaked gas and the refrigerator was defective and leaked water onto the floor.

A few days after receiving the lump sum the petitioner also purchased vinyl flooring to replace worn and disrepaired areas in her bathroom and kitchen. The total cost of this flooring was \$279.00. The petitioner did the installation herself. The petitioner also testified that she spent \$65.00 on wall compound to patch holes that were present in her living room ceiling.

Based on the uncontroverted and credible testimony of the petitioner, and considering the nature of the expenses themselves, it is found that these items were reasonable and necessary for the petitioner to provide herself and her family with safe and decent housing and basic appliances.

The petitioner also testified that she is involved in an ongoing dispute with a neighbor over land that the petitioner has used for years as a vegetable garden. The neighbor has fenced the area off and refuses to allow the petitioner access to it. The petitioner had retained an attorney and hired a surveyor to prove her claim. On

February 4, 1991, the petitioner used \$300.00 of her lump-sum to pay the surveyor a portion of a \$752.00 bill for his services. Around this time the petitioner also paid her attorney \$154.00 toward his bill.

The petitioner testified that she needs the garden space to continue to grow food for her family. However, there was no evidence that her failure to make the payments when she did would have jeopardized her success in the legal action against her neighbor. There was also no evidence that alternative space (including community garden plots) was unavailable to her for a vegetable garden.

The petitioner also spent \$69.00 on a combination light and ceiling fan fixture for her living room. Although the petitioner testified that there was no light in that room, the evidence does not establish that there was no reasonable, and cheaper, alternative to a fixture of this type.

On February 13, 1991, after the petitioner had made most if not all of the above expenditures, the Department formally notified her that she had been determined to be ineligible for ANFC benefits from January 1, 1991 through February 28, 1991. However, since the petitioner had already received or was about to receive the benefits for the entire period in question, the Department determined that she was liable for an "overpayment" of ANFC for this period.²

ORDER

The Department's decision is modified. The Department shall "offset" the amounts the petitioner spent on replacing her stove and refrigerator and on repairing her floors and ceilings--a total of \$1,488.00. The Department's decision not to allow an offset for the other items--the payment to the surveyor and the attorney, and the purchase of a light/fan fixture--is affirmed.

REASONS

W.A.M. § 2250.1 provides that lump-sum payments result in ineligibility for ANFC for the number of months determined by dividing the recipient's ANFC "need standard" into the amount of the lump-sum income. The regulation also provides, however:

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.

In several previous fair hearings the Board has held that in appropriate circumstances payments from lump-sums to maintain necessary basic needs, including transportation, render that portion of the lump-sum income "unavailable to

the family for circumstances beyond its control". Fair Hearings No. 9273, 9072, 8608, and 6891.

The expenses of the petitioner in this case--repairs to the home and replacement of defective appliances--are most akin to car maintenance. In Fair Hearing No. 9072, the Board held that an ANFC recipient who needed a car to look for work, and who could prove that she used it for that purpose, was entitled to "offset" a reasonable amount for the purchase of a car.

The hearing officer concludes that maintaining a safe and decent home is as essential to a family as having an automobile to look for work. At the hearing, uncontroverted evidence established that the repairs the petitioner made to her home and her replacement of defective appliances were both reasonable and necessary. Moreover, none of these items is included in the ANFC budget.³ See Fair Hearings No. 9273 and 10,010. The Department's decision not to "offset" these items from the petitioner's lump-sum in the calculation of her disqualification period is, therefore, reversed.

As for the other expenses paid by the petitioner--the surveyor's and attorney's fees and the light/fan fixture--the petitioner did not present sufficient evidence to establish the "necessity" of these payments. The Department's decision not to offset these payments is affirmed.

FOOTNOTES

¹There is some dispute as to when the petitioner first called the Department and what was said and to whom. Based on the Department's records, however, it is found that the Department did advise the petitioner not to spend the lump sum before the petitioner had the new appliances delivered. In light of the ultimate conclusion in this case, this finding is moot.

²In addition, \$58.00 of the overpayment--the "remainder" after dividing her monthly ANFC standard of need into the lump sum--was to be considered "income" in computing her March, 1991 benefit level.

³Maintenance of a home can be included in determining a household's "housing allowance". See W.A.M. § 2345.3. At the hearing, the Department represented that the petitioner already receives the maximum housing allowance based on other expenses she regularly incurs in maintaining her housing.

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