

In March, 1991, the Department learned through a third-party "complaint" that the petitioner had, in February, 1991, received a sizeable settlement for her injuries. The caseworker contacted the petitioner and asked for verification of the amount of the settlement and how the petitioner had spent any of it.

The petitioner produced two documents from her attorneys showing that she had received a "total settlement" of \$19,280.49. Of this, however, \$780.49 had been paid the petitioner the year before as an "advance" by the insurance company.

The petitioner did not report the payment of this advance to the Department when it was made. The petitioner testified, however, that she never saw it--that it was used to pay medical bills. However, this has never been verified, either through bills from the medical provider or through a clear statement from the petitioner's attorneys. It is found, however, that this amount had been deducted from the "total settlement" the petitioner received in February, 1991. Therefore, it should not have been included in the Department's calculation of the petitioner's ANFC disqualification period (see infra).

In the documents they provided, the petitioner's attorneys listed several fees and expenses (mostly medical) that were also paid directly by them out of the settlement--a total of \$14,042.15. The Department has deducted these from the lump-sum. After deducting the \$780.49 advance (see

supra), this leaves a total of \$4,457.85 that was actually paid to the petitioner in February, 1991.²

The petitioner claims she immediately spent virtually all of this amount on other medical bills and past-due debts. The hearing officer finds, and the Department concedes, that a dentist bill of \$42.00 and a doctor bill of \$37.00--a total of \$79.00 were paid by the petitioner from the lump sum, and can be deducted from her disqualification period. Virtually all the other expenses claimed by the petitioner, however, are disputed.

The major expense claimed by the petitioner is a "loan repayment" of \$3,100.00 to her aunt. In support of this the petitioner introduced the following two letters, dated April 1 and April 5, 1991, respectively, purportedly written by her aunt:

4/1/91

To Whom it may concern,

I [name] took out a personal loan from Security-Pacific, for [petitioner]. \$2,500.00 with interest it was over \$3,100.00 with the agreement she would make monthly payments until loan was paid off where as shortly after [petitioner] was in an auto accident, and was unable to work, so she could not financially able to keep her agreement, so I personally paid the loan off with the stipulation that when she received her insurance settlement, when on receiving [petitioner] handed the checks to me. [Sic.]

* * *

4/5/91

To Whom it may concern,

This is reference to a loan. I took out in my name, for [petitioner].

I took the loan out around the fall of 1987. [Petitioner] needed the loan for security deposit and rent to move into her apartment on [name of road], furniture, deposit for gas, and gas, curtains, linens, appliances, etc. which able for to move in. [Sic.]

The problem with the above is that the Department's records (the petitioner has been a recipient of food stamps for several years) indicate the petitioner lived elsewhere in 1987, and that she only lived in the apartment referred to in the above letters for a few months in 1988. Moreover, the petitioner at that time reported to the Department that she only paid a weekly "room rent" of \$20.00 to another individual with whom she shared that apartment. At no time during the period in question did the petitioner claim the expenses referred to in the second letter (supra). When confronted with the above information at the hearing, the petitioner vaguely and unconvincingly stated that she had gotten the loan for the other individual with whom she was then living.

Based on the petitioner's testimony and the documentary evidence (supra), and on the petitioner's demeanor, the hearing officer cannot find that such a "loan" ever existed, much less that it was for what the petitioner claims; or that the petitioner ever repaid it.

Therefore, it cannot be found that any of the amount is "unavailable" to the petitioner for the reasons she alleges - or for any other reason.

Additional payments the petitioner alleges to have made out of the lump sum were for a past-due cable T.V. bill of

\$133.44, and payments to friends for transportation (\$30.00) and baby-sitting (\$200.00) during the time the petitioner was receiving medical treatment for her injuries. As to the latter two payments, the petitioner presented no credible evidence that these were legitimate "debts", or, even if they were, that there was any "necessity" in paying them. As for the cable T.V. bill, the petitioner presented no evidence of her "need" to maintain this service.

Finally, the petitioner presented evidence that she paid separate overdue bills for basic phone service and long-distance service of \$136.21 and \$369.75 respectively. The petitioner has a young child, but she presented no other evidence that having a phone is a necessity. It was not alleged that she or the child have any medical problems. It appears, however, that the Department, as a matter of "policy", allows an offset to a lump-sum basic monthly phone charges plus \$5.00 a month for long-distance service.

In finding against the petitioner regarding the bulk of her alleged expenses, the hearing officer was unswayed by the petitioner's testimony and by the "documentary" evidence she submitted. The petitioner's testimony was vague, contradictory, and generally not credible. It is found that the petitioner knew about her potential disqualification from ANFC when she received her settlement, and that she tried to keep the fact of its receipt from the Department. Once the Department discovered the settlement, it appears the petitioner essentially manufactured the so-called loan

repayment with her aunt. At worst, the petitioner acted deceitfully. At best, she was feckless in "repaying" the loan before she knew whether or not it would affect her receipt of ANFC. Either way, except as specifically noted above, it cannot be found that this money is "unavailable" to her "for reasons beyond her control".

ORDER

The Department's decision is modified. The \$780.49 advance to the petitioner shall not be counted as received by the petitioner in February, 1991. From a lump-sum of \$4,457.85, the Department shall offset the dentist bill of \$42.00, the doctor bill of \$37.00, and the petitioner's phone bills in accordance with the Department's policy. In all other respects, the Department's decision 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 this case, other than the medical and phone bills noted above, the petitioner presented no credible evidence that she spent any of the lump-sum on "necessities" for herself or her child. The petitioner's testimony and the other evidence regarding the "loan" from her aunt was especially suspect. Because the hearing officer finds that this money is not, in fact, "unavailable" to the petitioner, there is no need for any legal analysis of whether such a "loan repayment" would qualify under the regulations as being "beyond the control" of the petitioner (see supra).

The Department is, of course, entitled to explore further the circumstances surrounding the "advance" of \$780.49 the petitioner received the year before the February, 1991, settlement. If the petitioner cannot establish that this money was paid for medical expenses, the petitioner may well be liable further for an overpayment of benefits.³ At this point, however, since this advance was not received by the petitioner as part of the February, 1991, lump-sum payment, it cannot be included in the computation of her ANFC disqualification period.

With the modifications noted above, the Department's decision is affirmed.

FOOTNOTES

¹The hearing officer offered the petitioner the opportunity to get an attorney, but the petitioner stated

she had spoken with Vermont Legal Aid and had been advised she should represent herself at the hearing.

²It appears that a separate medical bill of \$229.36 was paid by the petitioner's attorneys out of their fee (which was \$5,400) and was not charged to or deducted from the amount paid to the petitioner.

³The Department can and should inquire directly of the petitioner's attorneys as to the circumstances surrounding the payment of this advance. The petitioner retains the right to a separate appeal of any adverse decision by the Department regarding this payment.

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