

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 10,472
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Appeal of)
)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare finding her ineligible for ANFC benefits from September through December, 1990. The issue is whether the Department should have allowed as an "offset" to a lump sum received by the petitioner in September 1990 expenditures for certain past due bills and the purchase of a car. There is also an issue as to the timeliness of the petitioner's appeal.

FINDINGS OF FACT

The petitioner lives with her two minor children. As of September, 1990, the petitioner received ANFC benefits for herself and her two children. In late September the petitioner received two lump sum checks from the Social Security Administration totaling \$3,488.00. On September 28, 1990, the Department notified the petitioner that, effective October 15, 1990, her ANFC grant would close until January 1, 1991, because of a disqualification period imposed pursuant to the Department's regulations (see infra) regarding lump sum income.¹ The petitioner did not appeal this decision.

On October 19, 1990, the petitioner re-applied for ANFC. On her application the petitioner indicated she had income of \$272.00 per month in Social Security, \$481.00 remaining from her lump sum, and that she had "prepaid" three months rent and utilities. The Department, by a notice dated October 22, 1990, denied the application because the petitioner was still in the period of disqualification due to her earlier receipt of the lump sum. The petitioner did not appeal this decision either.

On December 14, 1990, the petitioner again applied for ANFC. She stated she had spent her December Social Security payment and had only \$9.00 left in the bank from the lump sum. The Department, by notice dated December 20, 1990, denied this application because of the continuing lump sum disqualification. However, the Department granted the petitioner ANFC effective January 1, 1991, when her disqualification period ended.

The petitioner did not immediately appeal the Department's decision of December 20, 1990. However, on February 28, 1991, the Department sent the petitioner another notice stating that she had been overpaid \$986.00 in ANFC for September and the first half of October, 1990.² On March 14, 1991, the petitioner appealed this decision to the Human Services Board.

A hearing was convened on April 9, 1991, at which time the petitioner appeared with a non-legally-trained community services counselor. The petitioner indicated that she

didn't think she should have to repay the overpayment because she had run out of money in December prior to the time her disqualification period had ended. The hearing officer continued the matter to allow the petitioner to obtain legal representation to develop a claim that the lump-sum disqualification period should have been shortened.

The petitioner did so, and a hearing was held on June 4, 1991, which, along with subsequent written memoranda, elicited the basis of the findings and conclusions herein.

The evidence shows that upon receiving the lump sum in September, 1990, the petitioner promptly pre-paid her rent and utilities for three months (see supra) and paid a past due telephone bill to restore service that had been disconnected.³ The petitioner also purchased a 1980 Chevette for \$680.00. The car needed repairs to pass inspection, as well as insurance and registration. The petitioner, who did not drive, also applied for a drivers license. Uncontroverted evidence establishes that between September 24 and November 7, 1990, the petitioner paid a total of \$1,208.00 for the car's purchase, repairs, insurance, registration, and licensing.

Uncontroverted evidence also establishes that during the time in question the petitioner was struggling to overcome a long-standing problem of alcohol abuse. She testified that she needed the car to attend scheduled therapy sessions with a mental health agency and with A.A. Before she had a car, the petitioner would have to walk 15

minutes to drop her young children (ages one and three) at a baby-sitter, and then walk or take public transportation to her appointments. Some of her A.A. meetings were in the evening and transportation was not always available for this purpose. Prior to obtaining a car the petitioner found she was unable to keep her appointments on a regular and sustained basis. The petitioner stated that the purchase of the car enabled her to attend these sessions on a regular basis and, for the first time in her life, to make substantial progress toward rehabilitation. Even though she still does not have a license (only a learner's permit) the petitioner's baby-sitter uses the petitioner's car to pick up the children and drive the petitioner to and from her appointments.

The petitioner struck the hearing officer as an unusually candid and sincere individual. Her testimony regarding her need for the car was deemed credible. On the basis of this testimony it is found that having a car was a reasonable and necessary expense crucial to the petitioner receiving necessary medical services on a regular and sustained basis. Although alternative transportation may have been theoretically available to the petitioner, it is found that the petitioner's particular circumstances made her reliance on alternative transportation problematic. It is expressly found that the petitioner, through no "fault" of her own, could not and would not have obtained the services she needed on a regular and sustained basis if she

had had to rely solely on public transportation services (including DSW-funded Medicaid transportation services).

ORDER

The Department's decision of December 20, 1990, is modified. The petitioner is found eligible for ANFC as of December 14, 1990, by virtue of "offsetting" from the lump sum her expenses in obtaining a car necessary to avail herself of needed medical treatment. The Department's decision of February 28, 1991 regarding the overpayment of ANFC from September 1 thorough October 14, 1990 is affirmed.

REASONS

At this time, it does not appear that the petitioner challenges the Department's decision that she was overpaid ANFC from September 1 through October 15, 1990.⁴ The issue addressed by the parties is whether the Department should have found her eligible when she reapplied for ANFC on October 19 and/or December 14, 1990. To have been eligible for ANFC on either of those dates, the petitioner had to establish that the lump-sum payment she had received in September, 1990 was no longer "available" to her "for reasons beyond her control". W.A.M. § 2250.1.

In Fair Hearing No. 9629 (not appealed by the Department), the Board held that reasonable and necessary car expenses, including the purchase of a car, paid from a lump sum can render this portion of the lump sum "unavailable" within the meaning of § 2250.1 if the car was

necessary for employment. The same rule is held to apply if a car is needed to obtain necessary medical treatment.

At the outset, however, the Department in this case challenges the board's jurisdiction, as a matter of timeliness, to consider any appeal by the petitioner regarding the length of her ANFC lump-sum disqualification period. The Department correctly notes that the petitioner's appeal was filed five-and-a-half months following the Department's initial decision imposing the lump-sum penalty. Clearly, this is beyond the 90-day limit of an appeal of that decision. See Fair Hearing Rule No. 1.

It must also be concluded that the Department's October 22, 1990, denial of the petitioner's October 19, 1990, application for ANFC is beyond the Board's consideration either pursuant to the petitioner's March 14, 1991, appeal or as an "underpayment". The Department denied the petitioner's October 19, 1990 application by a notice dated October 22, 1990. The petitioner does not dispute that her appeal dated March 14, 1991 was well beyond 90 days following this decision. Based on her October 19, 1990 application, however, the petitioner claims an "underpayment" of ANFC under W.A.M. § 2234.1 for November and December, 1990, that, she maintains, the Board should now redress.

W.A.M. § 2234.1 provides, in pertinent part:

Department errors which resulted in the underpayment of assistance shall be promptly corrected retroactively under the following conditions:

1. When the information was available to the Department at the time the error occurred to enable authorization of the correct amount. . .

(Emphasis added.)

When the petitioner re-applied for ANFC in October, 1990, she indicated on her application income (from Social Security) of \$272.00 per month and \$481.00 remaining from her September lump-sum payment. She also indicated that she had "pre-paid" rent and utilities for three months. Given these facts, it cannot be found that the Department was in "error" by not concluding at that time that the lump sum would be "unavailable" to the petitioner anytime in the near future. To have done so, the Department would have had to disregard the petitioner's actual expenses and, in effect, "deem" the lump sum unavailable to her solely on the basis of the petitioner's projected "standard of need". It is concluded that this is well in excess of the Department's obligations under W.A.M. § 2250.1.

At the time, the petitioner did not allege that the lump-sum was in fact "unavailable" to her to meet "basic needs" prior to the time she reapplied for ANFC on December 14, 1990 nor did the evidence adduced at and subsequent to the hearing demonstrate that this was the case. Absent any contact from the petitioner between October 19 and December 14, 1990, the Department cannot now be charged with having had "information. . . available" prior to December 14, 1990 that any of its prior decisions were in "error". Thus, it

cannot be concluded that the "underpayment" provisions of W.A.M. § 2234.1(1)(supra) are met regarding any nonpayment of ANFC benefits to the petitioner prior to December 14, 1990.

However, the Department's decision of December 20, 1990, denying the petitioner's December 14, ANFC application, occurred less than 90 days prior to the petitioner's March 14, 1991, appeal. Even though the petitioner filed her appeal in response to a subsequent notice from the Department regarding recoupment of an overpayment, there is no reason as a matter of law or fundamental fairness that the board cannot at this time consider the Department's decision of December 20, 1990-- especially since the petitioner (unrepresented at the time) orally articulated a "grievance" concerning this decision at her first hearing.

Under the regulations, a recipient can apply to the Department at any time during the period of ineligibility for a "recalculation" of a lump sum disqualification. See W.A.M. § 2250.1. In effect, this is what the petitioner was asking the Department to do when she re-applied for ANFC on October 19 and December 14, 1990. It is concluded that under the board's rules her appeal of the denial of the Department's December 14, 1990, application is timely.

As discussed above, it is found that the \$1,208.00 the petitioner spent to purchase a car and make it road-ready was an expense reasonable and necessary to obtain needed

medical services. As of December 14, 1990, the date of the petitioner's re-application for ANFC, the petitioner had spent the entire lump sum and was without any other resources. The Department should have "offset" the amount spent on the car from the petitioner's remaining disqualification period and granted her ANFC benefits as of that date.⁶ The Department's decision is modified accordingly.

FOOTNOTES

¹Under the Department's regulations and policy the disqualification period actually begins in the calendar month in which the recipient receives the lump-sum. In the petitioner's case this would have been September 1, 1990. However, the Department could not administratively effectuate any discontinuation of benefits earlier than October 15, 1990. Therefore, the petitioner continued to receive her ANFC benefits from September 1 through October 14, 1990. This period of time became the basis of the Department's subsequent notice of an overpayment to the petitioner (see infra).

²See footnote 1, supra.

³The petitioner had difficulty verifying the exact amount she paid to restore her disconnected telephone service. However, inasmuch as the petitioner's car expenses are found to qualify as an offset to the petitioner's lump sum and are more than sufficient to establish her eligibility for ANFC during the limited period in question, precise findings regarding the petitioner's payment of her past-due telephone bill are unnecessary.

⁴It is not known if the Department's "procedure" would be to retroactively pay the petitioner the amount of ANFC she was entitled to from December 14 - 31, 1990 and begin to recoup the entire overpayment (\$986.00) from the petitioner's ongoing ANFC benefits; or if the Department would subtract the amount of ANFC now owed to the petitioner from the petitioner's overpayment liability and recoup the lesser amount. It is assumed, however, that the parties can arrive at a mutually-satisfactory resolution of this detail, and the board does not deem it necessary to address it

further in this order.

⁵See footnote 3, supra.

⁶In the absence of an "underpayment" under W.A.M. § 2234.1, neither the Department nor the Board would have a basis under the regulations to find the petitioner eligible for ANFC prior to the actual date of her December, 1990 re-application. See W.A.M. § 2208.

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