

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 10,745
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for ANFC. The issue is whether a lump sum insurance settlement she received some months before is "unavailable" to her and her family for "reasons beyond their control" within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner lives with her husband and their two children. Prior to May, 1991, they were recipients of ANFC benefits. In May, 1991, the petitioner received a total of \$16,240.00 as settlement of a personal injury claim resulting from injuries she had received (in 1987) when she fell leaving work. From this amount the petitioner used \$5,122.16 to pay past due utility bills, mortgage, taxes, and medical bills. The Department allowed this amount (pursuant to its "Procedures"--see infra) as an "offset" from the total lump sum in calculating the petitioner's ANFC ineligibility period. Using the remaining amount of the lump sum (about \$11,118.00) the Department determined that the petitioner would be ineligible to receive ANFC from May 1, 1991 through January

31, 1992, and for part of February, 1992. (See infra.)

The petitioner reapplied for ANFC in September, 1991, alleging that she had exhausted the entire lump sum payment.

There does not appear to be any issue as to the petitioner's need for ANFC. (The Department has granted the family G.A. benefits based on their lack of income and resources.)

The issue in this case concerns the petitioner's purchase, from her lump sum, of a car--a 1986 Chevrolet Cavalier. The total cost of the car (including, taxes, fees, insurance, etc.) was \$4,212.00. The petitioner maintains that she bought the car primarily to enable her to attend school.¹

The petitioner testified that because of her injuries she is unable to perform the strenuous work she did in the past.² Through Vocational Rehabilitation the petitioner, in September, 1991, enrolled in a "career development program" to learn office skills. The petitioner attends the program five mornings a week. She states that she relies on the car to get her there regularly. The program is located at least a mile away from her home. She states she cannot walk that far because of her injuries. The petitioner expects that the program will last two years. Her goal is to obtain employment in an office setting.

As discussed below, the petitioner in this matter bears

the burden of proving that the money she spent on the car was an expense so necessary as to render that portion of the lump sum "unavailable" to her for reasons "beyond her control". The gravamen of her claim is medical--she states she needs a car because she is unable to walk to school because of the residual effects of her injuries. However, though given ample opportunity to do so, the petitioner produced no medical or other competent corroborating evidence that she is physically incapable of walking a mile each way to school. Her testimony in this regard was deemed less than persuasive.

Also, deemed deficient was evidence relating to the lack of alternative transportation. The petitioner did not allege that she had even tried to obtain alternative transportation to school. There is also the matter of the cost of the car itself. The petitioner produced no evidence that it was necessary to spend over \$4,000.00 on a car whose primary purpose was to travel about a mile back and forth five days a week.³

Because of these deficiencies of proof it cannot be found that, considering the petitioner's circumstances, buying this car was a reasonable and necessary expense beyond the petitioner's control.

ORDER

The Department's decision is affirmed.

REASONS

W.A.M. § 2250.1 provides that when a recipient receives a lump sum payment the family is ineligible to receive ANFC "for the number of full months derived by dividing this total income by the need standard applicable to the family.

Any remaining income will be applied to the first month of eligibility after the disqualification period".

Section 2250.1 further provides:

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.

The issue in this case involves the interpretation of subparagraph 2, above, As noted above, the Department (under its "Procedures) considers that the payment of certain past due obligations related to housing and medical needs renders that portion of the lump sum "unavailable" to the family within the meaning of the above regulations.⁴ In several past cases, however, the board has interpreted the above regulation to also allow as an "offset" to a lump sum the subsequent purchase of items, including cars, that are

found to be reasonable and necessary for the family's health or welfare. The burden of proof in this regard, however, is on the petitioner.

In Fair Hearing No. 9273 (which the Department did not appeal) the board held that \$711.00 for car repairs paid out of a lump sum could be "offset" against the lump sum where "the petitioner put forth persuasive evidence" that she was an elderly disabled woman who had to travel three or four miles to shop and go to frequent medical appointments and had no alternative transportation available to her.

In Fair Hearing No. 9629 (which the Department also did not appeal) the board held that a used car purchased for \$2,000.00 by the petitioner after she had received a lump sum, which was used to look for work as a teacher, also met the criteria of reasonableness and necessity. In that case, however, it was found that the petitioner lived in an isolated area far from public transportation and any potential sources of work.

In Fair Hearing No. 10,472 (reversed by the Secretary and appealed by the petitioner to the Vermont Supreme Court⁵) the board held that the petitioner's expenditure of \$1,208.00 toward the purchase of a car was both reasonable and necessary where the petitioner established that she could not reasonably be expected to obtain necessary medical treatment (substance abuse counseling) if she did not have a car. In that case it was found that the petitioner was an "unusually candid and sincere individual" who had presented

compelling evidence as to her particular need for transportation and the lack of any reasonable alternatives.

When, however, a petitioner has not presented evidence sufficient to establish a compelling need for an item (including, in some cases, a car) purchased after receipt of a lump sum, the board has held there can be no "offset" to the period of ANFC eligibility under § 2250.1(2). See e.g., Fair Hearings No. 10,299,⁶ 10,010, 9673, 9264, 9072, and 8608. In the instant case it is arguable whether the petitioner has sufficiently established that it is even "necessary" for her to be taking the courses for which she allegedly needs the car. Assuming arguendo, however, that taking these courses is, in fact, necessary for the petitioner, it must nonetheless be concluded that the petitioner has not sufficiently established that the purchase of a \$4,000.00 car was necessary for her to accomplish that end. There is no medical or other credible evidence that the petitioner cannot walk a mile each way five days a week. Even if there was, however, it does not appear that the petitioner ever seriously considered, much less explored, reasonable alternatives for transportation to school (e.g., taxis, friends, classmates, or help through Vocational Rehabilitation). For these reasons, the Department's decision not to offset the price of the car from the petitioner's lump sum and to deny the petitioner's reapplication for ANFC should be affirmed.

FOOTNOTES

¹The petitioner cursorily mentioned that she also used the car to transport her children to medical appointments. However, there was no credible showing that her children had any unusual medical needs or that alternative transportation was not readily available for this purpose.

²At the time of her injury (1987) the petitioner was working as a nurses aid.

³The petitioner said she could not afford to take a taxi to school every day. However, it is doubtful that daily cab fare for two years of study would equal the amount she spent on the car.

⁴These "Procedures" appear to have been implemented as a response to rulings by the board in Fair Hearings No. 6891 and 9072. As a legal matter, however, the Department's "Procedures" lack the force of law and are not binding on the board. 3 V.S.A. §§ 845 and 3091(d).

⁵See 3 V.S.A. § 3091(h).

⁶In Fair Hearing No. 10,299 (also reversed by the Secretary and appealed by the petitioner to the Supreme Court--see footnote 5, supra) the board did allow the petitioner to offset those expenses deemed necessary to maintain a safe and healthful home.

⁷In this case, however, it should be clear that the board need not, and the hearing officer does not, reach the legal issue of the "necessity" of vocational training, per se, or whether and to what extent factual "proof" in this regard is required.

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