

Over the course of the next few months the Department's support enforcement unit attempted to obtain an agreement from the petitioner's husband regarding collection of ongoing child support and additional payments on his substantial arrearage.¹ On the date of a court hearing, in September, 1991, the Department, the petitioner, and the petitioner's husband signed a stipulation that formed the basis of an order from the Family Court regarding the petitioner's husband's ongoing support and arrearages.²

The petitioner testified that she had repeatedly expressed to the Department her concern about not having to repay the \$400.00 she had received from her husband in June.

She states that the child support specialist who was present in court that day told her it would be "taken care of". The petitioner understood this to mean that she would not have to repay this amount. She also testified that she would not have agreed to "compromise" the amount of her husband's arrearage had she known she would be held liable to repay to the Department the \$400.00 she had received in June.³

The Department's child support specialist testified that he did not make any "deal" with either the petitioner or the petitioner's husband regarding the \$400.00. He stated that he does not have authority to "waive" on behalf of the Department any ANFC overpayment,⁴ and that he did not do so in this case. The Court decree that both the

Department and the petitioner signed off on makes no mention of the \$400.00 the petitioner's husband paid to her in June.

Nonetheless, the petitioner states that she was "shocked" when, shortly after the Court hearing, she received a notice from the Department stating that she was liable to repay the \$400.00 "overpayment".

The hearing officer found both the petitioner and the Department's child support specialist to be sincere and credible. Both of them testified that the petitioner's husband was extremely uncooperative and demanding on the day of the Court hearing, that the negotiations were tense, and that the petitioner was under considerable stress. It appears likely that in the confusion that day the petitioner seriously misunderstood what she was signing--especially regarding her liability to repay to the Department child support payments she had previously received while she was on ANFC. It simply cannot be found, however, that the Department at any time agreed or knowingly led the petitioner to believe that she would not be liable for the \$400.00 overpayment.

ORDER

The Department's decision is affirmed.

REASONS

The ANFC regulations define "income" as "any cash payment or equivalent in kind which is actually available to the applicant or recipient . . . All income except that specifically excluded shall be evaluated to establish net

income available to meet need". W.A.M. ¶ 2250. In this case there is no question that in June, 1991, the petitioner received a \$400.00 child support payment directly from her husband, that the petitioner had assigned to the Department the rights to that support, and that the petitioner received a full ANFC payment for June that did not take into account her receipt of the \$400.00 child support payment. See W.A.M. ¶ 2239-2243. Clearly under the regulations, the \$400.00 child support payment for June constituted "income" to the petitioner that month.

Thus, it must be concluded that the petitioner was "overpaid" \$400.00 in ANFC for June, 1991. Regardless of who is at fault, the regulations clearly require that this overpayment be recouped from the petitioner's ongoing ANFC benefits. W.A.M. ¶ 2234.2.⁵ As noted above, on the basis of the evidence presented it cannot be concluded that the Department is equitably barred from recouping this overpayment.⁶

FOOTNOTES

¹The Department admits that the petitioner's case "fell through the cracks" and that for several months it was lax in pursuing support in the petitioner's behalf.

²The petitioner's attorney was not with her on the day of the court hearing, and did not sign the stipulation.

³It appears that the petitioner and the Department agreed to lower the judgement for arrears against the petitioner's husband by more than \$1,000.00.

⁴This is born out by the Department's regulations under which all decisions regarding ANFC eligibility and payment--including overpayments--are made by the petitioner's caseworker and the state office. See W.A.M. §§ 2200 - 2238. The Department's support enforcement unit is a separate entity and has no authority regarding casework decisions. See W.A.M. § 2273.4.

⁵Although it was not directly in dispute at the hearing, it cannot be concluded that the overpayment in this case was caused by an "administrative error" on the part of the Department. (This is significant in determining the rate of recoupment from the petitioner's ongoing ANFC grant.) At worst it was a misunderstanding, nothing intentional, on the petitioner's part that led to the overpayment.

⁶Even if it was found that the child support enforcement specialist specifically told the petitioner the Department would not recoup the \$400.00, it could not be concluded that the petitioner has established the requisite grounds for "equitable estoppel" of the Department's decision to recoup this amount. See Fisher v. Poole, 142 Vt. 162, 168 (1982); Burlington Fire Fighters et. al, v. City of Burlington, 149, Vt. 293 (1988); and Fair Hearing No. 10,792.

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