

the Department discovered that this payment had been made, it determined that it should have been considered a "lump-sum" in the month it was received and that the petitioner should have been disqualified from ANFC for two months in accordance with the regulations concerning the treatment of lump-sum income (see infra). According to the Department, this resulted in an "overpayment" of \$1,166.00 in ANFC benefits to the petitioner for the period April 1 through May 31, 1992.

The petitioner maintains that because the payment she received was for child support that was in arrears, which she needed to pay past-due obligations of her own, it should not be considered "income" for the month (April, 1992) in which it was actually received. The Department's position is that not only should this payment be considered lump-sum income, but also, that because it was not reported in a timely manner, the petitioner should not be entitled to claim, ex post facto, that any of it was subject to the "offset" provisions of the lump-sum regulations, infra.

ORDER

The Department's decision is modified. The payment in question shall be treated as lump-sum income for April, 1992. However, the matter is remanded to the Department to consider whether all or part of the payment should have been considered "unavailable" to the petitioner for reasons "beyond her control".

REASONS

The Department's "lump-sum" regulation, W.A.M. § 2250.1 is reproduced as an appendix to this recommendation. Under this regulation, the receipt of child support arrearages is not excepted from consideration as a "lump-sum payment". The fact that it was an "arrearage" allegedly used by the petitioner to pay past due obligations is clearly relevant to the question of whether all or part of the payment was "unavailable to the family for circumstances beyond its control". However, it is not sufficient under the regulation to establish that the payment was not "lump sum income" to the petitioner in the month it was received. Many common types of lump-sum payments (e.g., retroactive Social Security benefits, personal injury settlements, etc.) are made after the fact and are, in effect, "arrearages". Before they are paid, however, they cannot be considered "existing assets" under § 2250.1 because until they are paid they are not "available to meet (the) need" of the household. See W.A.M. § 2260.

On the other hand, however, the Department has no basis under the above regulation to refuse to consider whether all or part of the payment was "unavailable to the petitioner's family circumstances for circumstances beyond its control".

Whether or not there is culpability on the petitioner's part in failing to report the receipt of the payment in a timely manner,¹ the above regulation clearly allows the

petitioner to "offset" from the determination of her ANFC disqualification any of the payment that was in fact "unavailable" to her.

Therefore, the matter is remanded to the Department to consider the petitioner's claim that it was necessary for her to spend all or part of the payment in question on past-due or pre-existing necessities. If the petitioner is not satisfied with the Department's ultimate decision, she has the right of further appeal to the board.²

FOOTNOTES

¹Under the ANFC rules regarding recoupment of overpayments, it is irrelevant who was at fault in causing the overpayment. W.A.M. § 2234.2.

²The Department should make available to petitioner's counsel its policies and prior board decisions interpreting paragraph (2) of the "offset" provisions under W.A.M. § 2250.1.

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