

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,459
)
Appeal of)

INTRODUCTION

The petitioners appeal a decision by the Department of Social Welfare terminating their ANFC benefit based on the inclusion of Social Security benefits in the family income which had previously been excluded.

FINDINGS OF FACT

1. The petitioners are a husband and wife who have two minor children. The husband is a totally disabled man who requires the companionship and assistance of his wife on a continual basis. He has been disabled since 1980 and the family has received ANFC benefits since 1985.

2. Prior to the change at issue, the petitioner received Social Security benefits of \$504.00 per month and a SSI/AABD check for \$2.99 per month. His family received \$252.00 in Social Security benefits as dependents of the petitioner. The family also received \$289.96 in ANFC benefits. They were eligible for such benefits because the husband's income of \$506.99 was not included in the calculation because he was also an SSI/AABD recipient.

3. During the last legislative session, funds which went towards the \$2.99 received by the petitioner and paid through the Social Security Administration as SSI/AABD

payments were eliminated. On June 4, 1992, the petitioner's worker received a social welfare bulletin indicating that there would be a cut in the SSI/AABD benefits. She discussed the change with the petitioners on July 20 and informed them that they might lose the \$2.99 SSI/AABD payment resulting in a need to include the husband's income in calculations.

4. On August 10, 1992, the petitioners reported that they had received a notice from the Social Security Administration informing them that \$31.00 per month would now be deducted from their Social Security for Medicaid and that they would no longer get an AABD payment.

5. On August 20, 1992, the welfare caseworker received a social welfare bulletin implementing the reduction in payments in the AABD program passed by the legislature. The bulletin stated that the reduction was to be effective as soon as implementation could be accomplished by the federal government which was to occur at the earliest on September 1, 1992.

6. Because the petitioner no longer received SSI/AABD benefits, the Department determined that the petitioner's entire Social Security income (before any deductions) had to be included as family income in calculating ANFC benefits. It was determined, therefore, that the family had \$756.00 in income. As the maximum payment for a four person family with the petitioner's shelter expenses is \$622.10, it was

concluded by the Department that the family was no longer eligible for ANFC.

7. On Friday, August 21, 1992, which the worker considered the "adverse action deadline", a hand-made notice was mailed to the petitioners stating that their ANFC benefits of \$299.00 per month would be closed effective August 31, 1992 "because you no longer receive SSI/AABD, your income from Social Security must be counted." That notice was not received by the petitioners until at least Monday, August 24, 1992.

8. On August 24, 1992 the petitioner was mailed a second computer notice from the main office informing him that the ANFC benefits would be terminated as of August 31, 1992 because their "income is more that the Department allows for a family of your size and expenses." The petitioners were also notified that their food stamps would increase from \$111.00 to \$242.00 based on their loss of income.

9. The petitioner appealed the Department's decision on August 28, 1992 and received continuing benefits. The petitioners' ground for appeal is based on the series of changes set in motion by the legislature's action which resulted in a \$154.99 reduction in their actual income when their circumstances have not changed. (That amount reflects the difference between the \$252.00 ANFC and the \$31.00 Medicare payments). The petitioner's family is on a tight

budget and cannot pay all their expenses on \$998.00 per month (\$756.99 social security and \$242.00 in food stamps). In addition to the usual household expenses, the petitioners have an older daughter who suffers from Lyme's disease and visiting and caring for her creates an additional expense. Their home, which they are buying through a government loan program, is also in need of a roof. In addition, the husband has to have a special diet due to an ulcer which increases the food bill. The petitioners protest that they are not extravagant and own only a modest home and a pickup truck which they fear they will lose without the restoration of their former ANFC payment.

ORDER

The Department's decision is affirmed.

REASONS

The petitioners, who represented themselves in this matter, have focused on the fact that benefits to them have been cut, even though their circumstances have not changed, and challenge the irrationality of the scheme which led to that action. The hearing officer's attention, however, was more drawn, at least initially, to the short time between the mailing of the August 24 notice (the only notice initially put into evidence) and the action cutting the benefits. That issue was raised sua sponte in a memorandum to the parties, after which the Department moved to admit a second notice, mailed August 21, 1992, which motion was

granted by the hearing officer over the objection of the petitioners.

The Department's regulations require that "[a]pplicants for and recipients of ANFC shall be furnished, prior to implementation of any decision affecting their receipt of such aid or benefits, a written notice which . . . must be mailed no less than 10 days prior to the effective date of the proposed action." W.A.M. § 2228 The Department's regulation reflects the definition of "timely" for required advance notices found in the federal regulations at 45 C.F.R. § 205.10(a)(4)(i)(A). Since the Department ultimately presented evidence that it did mail a notice to the petitioner on August 21, 1992, just ten days before the effective date of August 31, 1992, it must be concluded that the Department has technically sent a timely notice in this case. Even so, an action sending a termination notice on the last possible day which fell at the end of the week so as to deprive the petitioners of several more days of actual notice, hardly falls within the spirit of the policies behind the advance notice requirement. See Fair Hearing No. 11,012 for a full discussion of those policies. The unfairness of that action is somewhat mitigated in this instance by the fact that the worker had been in regular contact with the petitioners and had warned them some time earlier on an oral basis of the likely cutoff of their benefits.

The issue next arises as to whether the action terminating the petitioners' ANFC benefits was required by the regulations. The petitioners do not dispute the accuracy of the figures used by the Department in calculating their eligibility, nor do they dispute the accuracy of the calculations themselves. The petitioners solely dispute the inclusion of the husband's Social Security benefits in those calculations since their situation has in fact worsened by new enactments depriving him of \$2.99 in AABD benefits and requiring that he pick up his own share of the Medicaid premium, resulting in a net income loss of \$33.99 to the family.

The Department's regulations require that "[a]ll income except that specifically excluded shall be evaluated to establish net income available to meet need." W.A.M. § 2250

Among income specifically excluded by the regulations is "[a]ny income received by a recipient of SSI/AABD living in the ANFC household." W.A.M. § 2255.1 (2). Social Security benefits themselves are not specifically excluded under any regulation. In fact, those benefits are specifically included under the further definition of includible unearned income at W.A.M. § 2252 (A).

When the husband in this household received \$2.99 in AABD payments, under the above regulation at W.A.M. § 2255.1 (2), none of his income could be included in the ANFC

calculations, regardless of its source. Therefore, the husband's Social Security income was not counted. When the legislature took that AABD money away from the husband, he was no longer an AABD recipient and, thus, his income was subject to inclusion in the ANFC calculations. At that time his Social Security income, which had been excluded, became specifically includible in the ANFC eligibility calculations. The actions taken by the Department are in accord with these regulations and, therefore, must be upheld even though the result for this family is approximately a \$300 per month loss in income. (Approximately \$121.00 of that income has been made up through an increase in Food Stamp benefits.) 3 V.S.A. § 3091(d)

Although the action terminating this family's ANFC is legal, there is no adequate explanation which can be offered to them as to why it makes sense to cut their benefits when their income has gone down. Suffice it to say that the benefits payment system is an imperfect creation with many rules, some of which unintentionally create results which appear arbitrary and which do not consider the individual needs of recipients.

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