

an anonymous "unsigned note" that the petitioner, one of the worker's ANFC clients, was about to get a \$10,000.00 insurance settlement. The worker sent the petitioner a notice asking the petitioner if this was so and to furnish the Department with information about it.

On September 29, 1992, the petitioner called her worker and informed her that she was, indeed, expecting such a settlement but that it hadn't come through yet. At that time the petitioner asked the worker what she should do regarding her ANFC when she received the money. The worker told her only to notify the Department when it came in and to keep track of how she spent it.

Over the next month and a half the petitioner called her worker several times to discuss what she could do with the settlement when it came in. She specifically asked the worker if she could spend the money without it affecting her ANFC grant. Although the petitioner pressed the worker for specific information the worker repeatedly told her only that she should keep receipts of where she spent the money and to let the Department know when she had less than \$1,000.00--the Department's resource maximum--remaining.

The petitioner received the settlement in early November, 1992, in the amount of \$8,586.00. Upon receiving it she again spoke with her worker by phone and requested information on how she could spend it. Again, the worker's only advice was to keep track of her receipts.

On November 13, 1992, the worker sent the petitioner a notice⁷ that included the following:

ANFC:

Effective December 1, 1992, you are no longer eligible for ANFC benefits of \$799.00 per month. This means you will not receive ANFC for the period beginning December 1, 1992.

Your resources are \$8,000.00 more than the Department standards allow for a household of your size. (W.A.M. § 2260-2269)

This notice contained no mention whatsoever of a lump-sum disqualification period. Moreover, the regulations cited (W.A.M. § 2260-2269) in the notice pertain only to the treatment of resources. The regulation in which the lump-sum disqualification period is set forth is at W.A.M. § 2250.1--in the income section.

On November 15, 1992, after receiving the above notice and her regular semi-monthly ANFC check, the petitioner again called her worker to report on how she was spending the money.

The worker told the petitioner to bring in her receipts and that she, the worker, would then determine if the petitioner would be disqualified from ANFC.

The worker admitted at the hearing that despite being repeatedly asked by the petitioner what types of expenditures from the lump sum would not adversely affect her ANFC the worker "wasn't specific" with the petitioner regarding the

⁷Reference to and discussion of this notice did not appear in the prior Recommendation in this matter.

regulations except to tell the petitioner that "back bills" were among the items that could be deducted. The worker admitted that the "emphasis" in her advice to the petitioner was for the petitioner to keep track of her expenditures-- not on telling the petitioner what types of expenditures were allowable. She testified that she told the petitioner only that there was a "possibility" of being disqualified from ANFC, but that she wouldn't know until she saw the petitioner's receipts. The worker also admitted that at no time did she tell the petitioner that as a general rule under the regulations (see infra) the receipt of a lump sum disqualifies a recipient from receiving ANFC for a period determined by dividing the recipient's monthly standard of need into the amount of the lump sum and that, therefore, the petitioner should save her lump sum money to live on.⁸

By early December, 1992, the petitioner had spent virtually all of the lump sum. She had purchased a car, paid past and current utility bills, and bought a washing machine, a refrigerator, and a woodstove. A small amount was spent on Christmas gifts and on restaurant meals while visiting her mother in the hospital. The remainder was spent on groceries and minor household repairs and maintenance. The petitioner testified, quite credibly, that her worker led her to believe

⁸Under the regulations (see infra) the disqualification period is to be imposed immediately. Recipients can then petition the Department to shorten the disqualification period, depending on how they spent their lump-sum.

that as long as she didn't "blow" the money on frivolous expenses her ANFC grant would not be adversely affected, assuming that she had less than \$1,000.00--the ANFC resource maximum--remaining.

The petitioner followed her worker's advice and reported all her expenditures to the Department in a timely manner. Therefore, she was shocked when the Department notified her for the first time on December 18, 1993, that it had, in effect, "allowed" only about \$5,000.00 of her expenditures,⁹ and that the remainder (about \$3,570.00) would be used to calculate a disqualification period from ANFC--which the Department determined to be for more than three months (the entire months of November, 1992, through January, 1993, and part of February, 1993).¹⁰

Based on the testimony of the petitioner and the petitioner's worker it is found that not only did the worker in this case fail to inform the petitioner of even the most basic fundamentals of the lump sum rules, but also, contrary to what she should have known would be in the petitioner's

⁹The Department allowed deductions, inter alia, for the purchase of the car and for some past due utility bills.

¹⁰Because of this delay in the department's decision (see infra), and because the petitioner then promptly requested this hearing, the disqualification period was not actually imposed, and the petitioner has continued to receive her ANFC benefits in an uninterrupted manner. However, should she not have prevailed in her appeal she would have been subject to recoupment of an "overpayment" of these three-plus months of benefits from her ongoing ANFC (at a rate of 10% of her monthly benefit payment).

best interests, she actually encouraged the petitioner to spend the lump sum.

Moreover, the worker actually made things even worse for the petitioner by delaying her decision regarding the petitioner's disqualification period for a full month--during which time she knew the petitioner was rapidly spending the entire lump sum. Had the Department promptly notified the petitioner of her disqualification period as soon as it was aware of her receipt of the lump sum (which was virtually immediately), it would have at least put the petitioner on notice at that time that spending the lump sum too soon could leave her without any income and resources--something she was not informed of until she received the December 18, 1992 notice of decision, after she had spent virtually all of the lump-sum.

Based on the petitioner's testimony it is found that if the Department had provided her with accurate and timely information regarding the lump sum rule the petitioner certainly would have taken whatever steps necessary to minimize the loss of her ANFC. This includes not only saving her lump sum to cover the loss of her ANFC, but also the perfectly legal and legitimate action (see infra)--the existence of which was also never brought to the petitioner's attention--of voluntarily removing herself from ANFC for the month in which she was to receive the lump sum (November, 1992), and reapplying in the first month in which she had less

than \$1,000.00 of it remaining (December, 1992).

ORDER

The Department's decision is modified. The petitioner is found ineligible for ANFC only for the month (November, 1992) in which she received the lump sum, and for no other months.

REASONS

The lump sum regulation in effect at that time (W.A.M. 2250.1) was limited to the following provisions regarding the calculation of the period of ANFC disqualification:¹¹

Lump sum payments which are not excluded should be added together with all other non-ANFC income received by the assistance group during the month. When the total less applicable disregards exceeds the standard of need for that family, the family will be ineligible for 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.

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.

In this case the petitioner does not allege that the

¹¹Effective February 1, 1993, the Department amended 2250.1 to include specific provisions as to which types of expenditures from a lump sum can support a recalculation of the disqualification period.

Department misapplied the above rules to the expenditures she made from her lump sum. Although the petitioner maintains (and the Department does not dispute) that none of her expenditures was frivolous, she concedes that \$3,571.00 of them, as determined by the Department, do not meet the above criteria (as being "beyond her control") for shortening the disqualification period. She argues, however, that she was misled by her worker into spending the entire lump sum before being told that she could be disqualified from ANFC for more than one month if she spent all but \$1,00.00 of the lump sum in a reasonable manner. Therefore, she maintains, the Department should be estopped from imposing any disqualification period beyond the one month in which she received and spent the lump sum.

The evidence in this matter (see supra) overwhelmingly supports the petitioner's allegations. Considering that the petitioner asked her worker repeatedly for specific information regarding whether and how she should spend her lump sum, and that the consequences of her being misinformed were so dire, it must be concluded that the worker's actions (or inactions) in this case were particularly egregious.¹² The

¹²The Department argues that because of the vagueness of the regulation in effect at that time, and because several human services board decisions had expanded its original interpretation, workers were confused and hesitant to venture advice. This is all the more reason, however, that the worker in this case should have specifically advised the petitioner not to spend her lump sum on anything other than those basic household necessities covered by her ANFC grant. However, it

issue is whether the legal requirements of equitable estoppel are met as a consequence of those actions.

It is a well-settled matter of law that the Department has "an affirmative duty" to advise applicants for and recipients of assistance "specifically of their rights under ANFC". Stevens v. D.S.W., Vt. Supreme Ct. Dkt. No. 91-227, p. 6 (Dec., 1992); Lavigne v. D.S.W., 139 Vt. 114 (1980). This is based on a federal regulation that provides, in part, that "all individuals who inquire about the (AFDC) program shall be informed about eligibility requirements and their rights and obligations under the program". 45 C.F.R. § 206.10(a)(2); Stevens, Id. Moreover, it has been held that the Department's duty is not only to inform individuals generally about program requirements, but to advise an individual who asks "to take a specific course of action" so that the individual has "the information necessary to make an informed decision". Stevens, Id. at pp 7-8. In Stevens it was also held that the Department "may be estopped where the four elements of estoppel are present and the injustice that would result from a failure to uphold an estoppel is of sufficient magnitude to justify any effect upon public policy that would result from raising estoppel". Id. at p. 13.

is not the intent of this decision to lay all the blame at the feet of this particular worker. It appears that the Department at this time was giving uncertain and confusing advice to its workers regarding how to handle lump-sum cases.

In this case, turning first to weighing the "injustice" to the petitioner against "public policy", the petitioner is facing a 10% reduction in her monthly ANFC grant--that at present under the regulations provides less than two thirds of what the Department has determined to be a household's "basic needs"--see W.A.M. § 2245.24--until a more-than-three-month "overpayment" is fully recouped (which the hearing officer estimates will take over two years). That this will place a severe strain on her family's already-tenuous financial situation appears beyond debate. On the other hand, as was the case in Stevens, if the Department is estopped, "this will promote the public interest, as well as compliance with federal mandates, of fully informing applicants, or other individuals who inquire, of the eligibility requirements". *Id.* at pp. 13-15. Therefore, like in Stevens, it must be concluded that the injustice to the petitioner if estoppel is barred outweighs any public interest in strictly applying the lump sum regulations.

The four essential elements of estoppel are: (1) the party to be estopped must know the facts; (2) the party to be estopped must intend that its conduct shall be acted upon or the acts must be such that the party asserting estoppel has a right to believe it is so intended; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must detrimentally rely on the conduct of

the party to be estopped. Stevens, Id. at p. 15; Burlington Fire Fighter's Ass'n v. City of Burlington, 149 Vt. 293, 299 (1988).

In applying these elements to the facts herein, first it is clear that the Department knew more than a month in advance that the petitioner was about to receive a lump sum and that she understandably wished to minimize the impact her receipt of the lump sum would have on her ANFC benefits. There is also no question that the Department knew, or should have known, that if the petitioner (or any other individual in the petitioner's situation) promptly spent the lump sum she risked being without any income and resources for an extended period of time and/or being liable for a sizeable overpayment. It was, therefore, clearly incumbent on the worker to inform the petitioner as fully and accurately as possible as to how the lump sum regulations worked.

Second, based on the repeated advice the worker gave to the petitioner (which was essentially limited to "keep your receipts and come back in as soon as you have less than \$1,000.00 left") it must be concluded that the petitioner had every reason to believe that if she promptly spent the lump sum on reasonable household needs her ANFC grant would not be adversely affected for more than one month.

Third, the evidence clearly establishes that the petitioner had virtually no knowledge on her own of the steps she could take to either avoid a disqualification altogether

or minimize the loss of her ANFC, or that she should save her lump sum to live on because her ANFC could be cut off for several months.¹³

And finally, there is no question that the petitioner relied to her detriment on her worker's advice when she promptly spent the entire lump sum on reasonable household expenses only to find that she was then disqualified from receiving ANFC for more than three months.

Thus, it must be concluded that the elements of estoppel are met. As a matter of equity the Department cannot penalize the petitioner more than the one month (November, 1992) that the petitioner actually had use of the lump sum to meet her basic needs.

Moreover, if the petitioner had been advised that she could have avoided a disqualification altogether by voluntarily terminating her ANFC for November, 1992 (the month she received the lump sum), and reapplying for benefits for December, 1992, after the "excess resources" she had in November had been spent, she would have done so. This case is unusual (at least in terms of lump sum cases that have been

¹³The petitioner was represented by an attorney only in obtaining the settlement itself, and she received no advice regarding her ANFC. Putting aside the question of whether this was negligence on the part of her attorney, it was certainly clear to the petitioner's worker that the petitioner had not received any legal advice regarding her ANFC. Thus, the fact that the petitioner was represented by an attorney in obtaining her settlement does not relieve the Department of its obligation to have provided adequate advice to the petitioner when she asked for it.

appealed to the Board) in that the Department knew two calendar months in advance that the petitioner was going to receive a lump sum, instead of the usual scenario when the receipt of a lump sum is reported to the Department only after the fact. The Board need not consider at this time whether the Department has an obligation in general to inform all applicants and recipients of ANFC of the option of voluntarily closing their grants in anticipation of receiving a lump sum.¹⁴

This decision holds only that when an individual specifically asks the Department's advice in anticipation of his or her receipt of a lump sum, the Department has an affirmative duty to inform that individual of all of his or her options under the regulations--including voluntary closure and reapplication.¹⁵ See Stevens, Id. at p. 7.

Therefore, the Department is estopped from disqualifying the petitioner from ANFC--or from holding her liable for any overpayment--for any month other than November, 1992. The Department's decision is modified accordingly.

¹⁴Under Gardenbring v. Jenkins, 108 S. Ct. 1306 (1988), it would appear that the Department is not obligated to do this.

¹⁵While the Department characterizes voluntary closure and reapplication as a "loophole", the legitimacy of such an action has reportedly been conceded by the federal agency (HHS) in litigation in at least two states (California and Ohio); and at least one state (Oklahoma) has reportedly agreed, as part of a litigation settlement, to provide specific counseling to recipients as to this "option". See Clearinghouse Review, Vol. 26, No. 3 (June, 1992).

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