STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 11,900
	)	
Appeal of	)	

INTRODUCTION

The petitioners appeal a determination by the Department of Social Welfare terminating their ANFC benefits due to the receipt of lump sum income. The issue is whether some or all of the money received by the petitioners became unavailable to them for circumstances beyond their control.

FINDINGS OF FACT

1. On February 1, 1993, the petitioners, who are ANFC recipients on behalf of themselves and a teen-age daughter, received a $2,141.00 lump sum insurance settlement payment.

2. The payment was reported to the Department and the petitioners were advised as to the operation of the lump sum disqualification rule. They were also specifically advised that they could have certain amounts disregarded from the lump sum if they had spent some of it on eligible expenses. They were asked to bring a list of expenses they paid from the lump sum, which they did on February 24, 1993.

3. After reviewing the list of expenses, the Department determined that a total of $680.50 had been spent on eligible expenses and disregarded that amount. The excluded expenses included $577.00 spent for a used car and close to $100.00 on

an overdue telephone bill. The remaining expenses totaling over $1,500.00 were rejected.

4. On March 22, 1993, the Department mailed the petitioners a notice stating that their $882.00 per month ANFC payment would cease effective April 1, 1993, and that they would be disqualified until May 1, 1993, based on the remaining lump sum of $1,461.18. They were advised that they could reapply at that time, and during that month $303.00 in income would be attributed to them.

5. On March 24, 1993, the petitioners appealed the above determination. They do not claim any procedural errors on the part of the Department nor do they claim any errors in calculation. The petitioners' sole ground for appeal is their belief that the Department erroneously failed to exclude some of the expenditures they made from the lump sum.

6. The expenditures at issue are the following:

a. $50.00 for a pair of men's work boots needed because the husband's shoes had worn out;

b. $50.99 for baby clothes for the expected child of the petitioner's oldest daughter, who does not live with them;

c. $25.00 for fourteen T-shirts because the husband had nothing cool to wear;

d. $151.96 for four sets of bedsheets needed to replace worn out sheets;

e. $100.00 for sweatsuits worn by the wife because her other clothing is filled with holes;

f. $279.58 for underclothing for the wife and her seventeen-year-old daughter needed to replace worn out clothing;

g. $84.00 for six towel sets to replace worn out linens; and

h. $99.99 for a typewriter needed by a daughter who was going back to school.

7. The petitioners contend that they were unable to purchase any of the above items from their regular ANFC checks although they did not present any budgets or other specifics from which a conclusion could be drawn on that point.

ORDER

The Department's decision is affirmed.

REASONS

The Department's regulations provide that "lump sum payments, including windfall payments, shall be counted as income" unless excluded under certain enumerated exceptions, none of which is applicable in this case. See W.A.M. § 2250.1. The lump sum period of ineligibility is calculated as follows:

> 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.
>
> W.A.M. § 2250.1

The regulations go on to detail circumstances under which the period of ineligibility may be recalculated including the following:

> 2. The income received has become unavailable to the family for circumstances beyond its control. Such circumstances are limited to the following unless the Commissioner of Social Welfare of his or her designee determines that the recipient's circumstances are substantially similar to those described below:
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> a. death or incapacity of the principal wage earner.
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> b. loss of shelter due to fire or flood.
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> c. repairs to owner-occupied homes which are essential to the health and safety of the family.
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> d. repair or replacement of essential, major household appliances.
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> e. repair or purchase of one motor vehicle per ANFC assistance group, essential for employment, education, training or other day-to-day living necessities. Expenses may include purchase and use tax, inspection fee, insurance, and registration fees, but not day-to-day operating expenses.
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> f. payments attributable to current monthly housing expenses (as defined in W.A.M. 2245.3) which are in excess of the maximum monthly ANFC housing allowance. Advance payments (i.e. payments for expenses which will be incurred after the period of ineligibility has ended) toward excess monthly housing expenses are not allowed.
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> g. payment of expenses which meet the following criteria:

(1) The bills were overdue as of the date the lump sum income was received.

(2) The bills were the legal liability of the client or other member of the assistance group.

(3) The client provides documentation that the lump sum income was used to pay the bills.

Eligible expenses under "g" above are as follows and are restricted to those of the primary residence and would include any late charges described in payment agreements or allowed by Public Service Board rules.

a. overdue rent (including lot rent)

b. overdue mortgage payments (principal and interest)

c. overdue property taxes

d. overdue homeowner's insurance

e. overdue heating bills

f. overdue utility bills (e.g. electricity, gas, water, or sewage)

Other eligible expenses:

g. overdue telephone bills (basic monthly charge, applicable taxes, plus $5 per month in toll charges).

h. overdue child care expenses necessary for a member of the assistance group to maintain employment, with the following limitation. If the overdue expenses were incurred when the individual was receiving ANFC, only the unsubsidized amounts attributable to employment-related child care are considered eligible expenses.

i. overdue expenses for one motor vehicle per ANFC assistance group, essential for employment, education, training or other day-to-day living necessities. Expenses may include overdue bills for repairs, purchase and use tax, inspection fee, insurance, and registration fees, but not day-to-day operating expenses.

3. The family incurs and pays for medical expenses which offset the lump sum income.

W.A.M. э 2250.1

The petitioners herein are asking for the exclusion of clothing purchased for themselves and others outside of the household, bed and bath linens, and a typewriter. The petitioners rely for the exclusion on the Board's general ruling in Fair Hearing No. 10,299 decided in 1991, (relying on Fair Hearing Nos. 9273, 9072, 8606, and 6891) that "in appropriate circumstances payments from lump-sums to maintain necessary basic needs, including transportation, render that portion of the lump-sum income 'unavailable to the family for circumstances beyond its control'." The petitioner cites to no cases in which the Board has specifically ruled that clothing, bed or bath linens or typewriters can be excluded as necessary basic needs. The Board clearly indicated in the above cited Fair Hearing that items which are included in the ANFC budget would probably not be excludable under the lump sum rule. See page 5. Under even this prior Board ruling, then, the petitioner's clothing expenditures would probably not be excludable because clothing is factored into the ANFC allowance. See W.A.M. э 2244. It is also doubtful that the typewriter and bed and bath linen replacements would meet the "necessity" test.

However, it is important to point out that these "tests" were developed by the Board in the absence of specific language in the regulations defining "unavailable to the family for circumstances beyond its control". Since that time, the Department, in February of 1993, promulgated paragraph two of the regulation set out above. That regulation is specific as to what kinds of expenditures meet the definition of "unavailable to the family for circumstances beyond its control". Nowhere in the above list of eligible expenditures appear any of the items claimed by the petitioners as being erroneously excluded. The petitioners make no argument that any of their expenditures fit into or nearly fit into any of those categories (the latter so as to invoke the discretion of the Commissioner). Neither do the petitioners, who are represented by counsel, argue that the expenditures set forth by the Department in its regulations are internally inconsistent or in conflict with another law or statute.

As the petitioners have failed to show that their expenditures are excluded from the lump sum disqualification under the regulations or that the regulations are invalid, the Board is bound to affirm the Department's decision. 3 V.S.A. э 3091(d).

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