

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,937

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare to recover General Assistance (GA) payments made to the petitioner from a retroactive award of SSI to the petitioner that was sent to the Department by the Social Security Administration (SSA). The issue is whether a "Recovery of Assistance Agreement" signed by the petitioner had expired under its own terms and within the meaning of the pertinent regulations before SSA issued the payment in question.

FINDINGS OF FACT

The petitioner applied for SSI on July 27, 1990, and December 10, 1991. While these applications were pending or under appeal the petitioner received ongoing GA payments from the Department. On February 28, 1992, the Department had the petitioner sign a "Recovery of Assistance Agreement" whereby she agreed that the Department could deduct from any retroactive SSI benefits paid to her an amount equal to the amount of GA paid to her for the same period of time, and authorizing SSA to send her initial retroactive SSI check directly to the Department in order to make such a reimbursement. The Agreement included the following provision:

. . . this authorization is effective for one (1) year from the date I sign it and that it will cease to have effect at the end of one (1) year from the date I sign it

It appears that sometime in February, 1993, SSA determined that the petitioner was eligible for \$6,522.22 in retroactive SSI for the period October, 1990, through March, 1993, and that beginning in April, 1993, the petitioner would begin receiving monthly SSI benefits. The Department introduced an Affidavit from a district SSA employee that "the information necessary to process (petitioner's) initial SSI payment" was "entered into the computer" in SSA's district office on February 25, 1993. From there, according to the Affidavit, the information ran to a "host computer" in Baltimore, Maryland, which then notified the Treasury Department to issue the appropriate check.

SSA computer records submitted by the parties appear to show that the petitioner's payments were issued March 2, 1993. Department documents indicate that the Department received "notice" from SSA of the petitioner's SSI eligibility on March 5, 1993. The Department received the checks (totalling \$6,522.22) from SSA on March 8, 1993. Because it had paid to the petitioner more in GA for the period than the amount of the checks the Department reimbursed itself the entire amount of the checks, and so notified the petitioner.

REASONS

The Department's decision is reversed, and the Department shall pay to the petitioner the \$6,522.22 it withheld from the petitioner's initial SSI payment.

REASONS

The Department argues that SSA "released" the money in question on February 25, 1993, and that, therefore, the Agreement should be considered effective even though the Department did not receive the payment and reimburse itself until March 8, 1993. This argument is contrary to the evidence in the case, the language of the Agreement itself, and the pertinent regulations.

First of all, the evidence establishes only that SSA made the administrative decision to pay the petitioner on February 25, 1993. According to documents submitted by the Department, there was no "payment made" (or money "released") by SSA until March 2, 1993, at the earliest.

Secondly, even if it could be concluded that the money was "released" by SSA on February 25, 1993, the Agreement in question was between the petitioner and the Department, not SSA. The federal regulations provide that such agreements terminate according to the language of the agreements themselves. See 20 C.F.R. §§ 416.1906(c) and 1908. This Agreement expired on February 28, 1993. As of that date neither the petitioner nor the Department knew anything of the petitioner's SSI eligibility, and neither had received any information regarding payments from SSA. The Agreement contains no language, either express or implied, that authorized the Department to reimburse itself after February 28, 1993, regardless of when SSA "released" the petitioner's SSI payment.

Finally, the federal SSI regulations include the following provision:

We may withhold your SSI benefit payment and send it to the State to repay the State for the interim assistance it gave you, if--

...

(b) Your authorization is in effect at the time we make the SSI benefit payment.

20 C.F.R. § 416.1904 (emphasis added).

In its arguments the Department cites language in the SSI administrative "POMS" manual that an authorization to withhold SSI is in effect until "SSA releases the retroactive payment on a claim". Id. § 02003.010(A)(2)(a), (emphasis added). Even if could be concluded that what SSA did in this case on February 25, 1993, constituted a "release" of the payment in question, this language is inconsistent with

the federal regulation (supra) and the Agreement itself, both of which clearly refer only to SSA "making" the payment--not "releasing" it.

As noted above, the evidence in this matter indicates that SSA "made payment" of the petitioner's SSI on March 2, 1993, at the earliest. The Agreement, by its express terms, was simply not in effect on that date--it had expired at least two days earlier.⁽¹⁾ Under the regulations, neither SSA nor the Department had any authority to withhold the petitioners initial SSI payment after February 28, 1993. In view of the foregoing the Department's decision is reversed, and the Department shall pay to the petitioner the amount it withheld from her initial SSI payment on March 8, 1993.

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1. The Board will interpret the one year timetable in the "Recovery of Assistance Argument" strictly and the Department will have to promulgate procedures to monitor its right to recovery within the one year period, or change the one year period if permitted by law.