

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,081

)

Appeal of)

)

)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare finding him ineligible for ANFC benefits because of his receipt of a lump sum personal injury settlement. The issues are whether the Department is estopped from applying the lump sum rules in the petitioner's case and, if not, whether money the petitioner spent from the lump sum to purchase and equip a camper trailer is "unavailable" to him "for reasons beyond his control".

FINDINGS OF FACT

The petitioner was injured in a car accident in February, 1990. He and his son are recipients of ANFC benefits and medicaid. In February, 1993, the attorney who represented the petitioner at the time (not the same attorney who represents him in the instant matter) informed the Department's medicaid division of a settlement of the petitioner's claims stemming from the accident and reimbursed the Department (pursuant to regulations that are not at issue in this matter) \$2,245.00 for medical treatment that had been paid by medicaid during the pendency of the petitioner's liability claim. The petitioner testified that he received his portion of the settlement, \$9,500.00 (out of a total of \$20,000.00, after attorneys fees and costs, including the above medicaid reimbursement, had been deducted), on either February 8 or 9, 1993. There is no evidence that either the petitioner or his attorney notified the Department of the settlement prior to February, 1993. The petitioner testified that his attorney knew he was receiving ANFC at the time.

Immediately after receiving the above-mentioned reimbursement from the petitioner's attorney the Department's medicaid division notified the petitioner's ANFC caseworker, who on February 16, 1993, sent the petitioner a notice asking him to furnish information regarding the amount of the lump sum that he had received, the date of its receipt, and "where the money has gone". The petitioner immediately contacted his worker and provided her with some information as to how he had spent some of the money.

Apparently, however, the petitioner was unable to immediately verify the amount of the lump sum he had received. On March 1, 1993, the worker sent him another notice requesting that the petitioner meet with her to provide more information. Shortly thereafter the petitioner met with the worker and told her that he was looking to buy a house trailer because he was dissatisfied with the rental house he was living in. The worker told the petitioner she would let him know how this would affect his ANFC grant.

From the Department's case records it appears that the petitioner still did not complete the verification process until well into April, 1993. The only written verification introduced into evidence of the fact that the petitioner's share of the lump sum was \$9,500.00 was on a note from his attorney dated April 13, 1993, and date-stamped by the Department as received that same day.

In the meantime, however, before hearing from the Department as to how it would affect his ANFC grant, the petitioner, in mid-March, 1993, entered into a purchase and sale agreement for a mobile home and the lot upon which it was situated. At that time he also applied for a bank loan to purchase this property, paying the lender a non-refundable "loan initiation fee" of \$309.00.

On April 16, 1993, the Department mailed the petitioner a notice disqualifying him from ANFC until November 1, 1993, because of his receipt of the lump sum settlement in February. On the notice the Department indicated that it had deducted from the \$9,500.00 total lump sum \$1,234.17 for "car expenses" spent by the petitioner since his receipt of the lump sum. At that time, however, the petitioner understood that the Department was not going to allow him to deduct the cost of purchasing the mobile home. The notice also included a form-listing of examples of circumstances and expenses that could result in the period of ANFC closure being changed. The petitioner testified that his mobile home loan application was rejected because of the loss of his ANFC. Thus, the deal to purchase the mobile home fell through.

After receiving the above notice from the Department, and after the mobile home deal had fallen through, the petitioner, on May 22, 1993, without any further attempt to contact or inform the Department, purchased a used camper trailer for \$3,899.25, cash. At the hearing he introduced evidence of also spending an additional \$440.00 to register, fix up, and move into the camper, which he parked in his parent's driveway, where it remains. The petitioner testified that the camper is in good shape and that he intends to continue living in it until the winter.

The reasons given by the petitioner at the hearing for purchasing the camper were vague and unconvincing. Although he testified that the rental house where he was living had electrical and water problems, the petitioner admitted he never complained to local housing authorities about the problems and he produced no compelling evidence that the house was, in fact, uninhabitable. As for why he could not simply rent another place, especially upon receiving almost \$10,000.00, the petitioner unelucidatingly stated that he was "tired of moving".

There was also no evidence or argument that the petitioner, at any time (including the present), could not simply sell the camper and use the money on basic needs, including permanent housing.

ORDER

The Department's decision is affirmed.

REASONS

The regulations governing the treatment of lump sum income are reproduced below:

Turning first to the petitioner's argument that the Department is estopped from imposing any period of disqualification from ANFC, the petitioner maintains that the Department was "on notice" that he was receiving a lump sum settlement when his attorney reimbursed the Department's medicaid division for the medicaid benefits that had paid on the petitioner's behalf during the pendency of his personal injury claim. Assuming arguendo that the Department has a legal duty to inform recipients who it knows are about to receive a lump sum that under the regulations they can minimize the loss of their ANFC benefits by voluntarily closing their grants a month or more before they receive their lump sum and then reapplying for benefits after the lump sum is spent, the petitioner's argument in this regard fails for lack of factual support.

As noted above, it cannot be found that the Department knew or should have known about his receipt of the lump sum before the month (February, 1993) in which it was received. Thus, even if it could be determined that the petitioner, despite being represented by an attorney, was as a matter of law "ignorant of the true facts", no estoppel can lie against the Department because it did not "know the facts" in time

to affect any alternative action by the petitioner that could have lessened the impact on his ANFC benefits. See Stevens v. D.S.W., Vt. Supreme Ct. Dkt. No. 91-227 (Dec. 11, 1992).

It certainly appears that the petitioner was the victim of a lack of diligent legal representation at that time regarding the impact of his settlement on his ANFC grant. However, absent evidence that the Department knew or should have known sufficiently in advance that the petitioner was about to receive a lump sum settlement, there are no grounds to estop the Department from applying the lump sum regulations, supra, to the petitioner's circumstances.

Thus, the issue becomes whether under those regulations part of the lump sum--in particular, the money the petitioner spent to purchase and equip his camper--can be considered "unavailable to the family for circumstances beyond its control." It is clear that the above regulation contemplates a reduction of the disqualification period in circumstances in which a family is unexpectedly and unpreventably forced to secure alternative housing. Again, however, the petitioner's claim in this regard fails for lack of sufficient evidence.

As noted above, it cannot be found that the house where the petitioner was living prior to buying the camper was uninhabitable. Even if it was, however, the petitioner clearly had a far less costly and infinitely more sensible solution to his dilemma than spending almost \$4,500.00 to purchase a camper that he and his son would be unable to live in on a year around basis--especially when he already knew that he was ineligible for ANFC for another six months. Even now, it appears that the petitioner can sell the camper and use the money to purchase basic needs until November, when he would again become eligible for ANFC.⁽¹⁾

Even if it could be argued that the Department should have allowed him a deduction from the lump sum to purchase the mobile home (the petitioner does not so argue, however), this would not provide the petitioner with sufficient legal grounds at this point to argue that his subsequent purchase of a camper was a reasonable and unavoidable response to any housing problem he may have been having at the time. As noted above, given the fact that the petitioner, by selling the camper, can recoup at least part of the money he spent on it, and use it to secure alternative housing and buy other basic needs, it cannot be concluded that this money is presently "unavailable" to him within the meaning of the above regulations.

For all the above reasons, the Department's decision in this matter is affirmed.

###

1. If the petitioner does not sell the camper, and does not continue living in it, it would probably constitute an available "resource" under the regulations, and may, depending on its value, continue to disqualify the petitioner from ANFC even after his lump sum ineligibility period has expired. See W.A.M. § 2260.