

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,428

)

Appeal of )

)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for ANFC benefits. This issue is whether the petitioner has resources in excess of the program maximum based on her ownership of a vehicle.

FINDINGS OF FACT

The facts of this matter are essentially undisputed and are as follows:

1. The petitioner's husband had an accident on the job in June of 1989. He had surgery on his back and suffered some permanent nerve damage to his legs. On October 15, 1992, as part of the settlement of his workers' compensation claim, the insurance company purchased a used vehicle for the petitioner's husband which featured an automatic transmission, as he could no longer use a standard one.
2. The car purchased in 1992 was a 1990 Ford Taurus with 27,000 miles on it. The petitioner and her husband both use the car for personal errands, including grocery shopping, visits to the doctor and transportation for themselves and their two small children.
3. After the petitioner's husband's workers' compensation ended, he felt he still could not work and applied for Social Security benefits but was denied. That denial is on appeal. In October of 1993, the petitioner applied for ANFC benefits but was denied because she had excess resources.
4. The petitioner's resources consist of the car, which has an average loan value of \$4,100.00, a \$500.00 certificate of deposit in the name of a child and \$172.06 in checkings and savings accounts. The Department adjusted the \$4,100.00 by subtracting the \$1,500.00 in equity allowed in a vehicle and determined that the family's total resources were \$3,272.06. As the maximum allowable resource in ANFC is \$1,000.00, the petitioner and her family were determined to be \$2,272.06 over income for that program. The family does receive Medicaid and Food Stamps.

5. The family has had no income since the husband's workers' compensation ran out on October 22, 1993. They have gotten by since that time on loans from relatives which now amount to over \$2,000.00.

### ORDER

The Department's decision is reversed.

### REASONS

The ANFC resource maximum is \$1,000.00 per household. W.A.M. § 2261, 42 U.S.C. § 602(7)(B). In determining the value of a household's resources the "equity value" of up to only \$1,500.00 for one vehicle used as a primary source of transportation is excluded from consideration. W.A.M. § 2263.6, 45 C.F.R. § 233(a)(3)(i)(B)(2). A vehicle worth more than \$2,500.00 would place the petitioner over the maximum under the above regulations.

Prior to 1981, in determining the resources of an ANFC family there was no limit to the equity value that a family could have in one vehicle. In 1981, as part of a huge "package" of federal laws designed to reduce federal spending (the Omnibus Budget and Reconciliation Act ["OBRA"], Pub. L. 97-85) several federal AFDC statutes were amended, including the provision that a family's equity interest in one vehicle would be excluded from the computation of its resources only "as does not exceed such amount as the Secretary (of Health and Human Services) may prescribe". 42 V.S.A. § 602(7)(B)(i). The Secretary of HHS then proceeded to set that amount at \$1,500.00. See 45 C.F.R. § 233.20(a)(3)(i)(B)(2). This same amount was duly incorporated into the Department's Vermont ANFC regulations. See W.A.M. § 2263.6.

In setting the \$1,500.00 equity limit in 1981, HHS relied on a 1979 survey of food stamp recipients to determine a "reasonable and supportable" maximum. 47 Fed. Reg. at 5657. In Hazard v. Sullivan, M.D. Tenn., Docket No. 3.91-0193 (July 21, 1993) it was held that the agency's failure over the past twelve years to adjust the \$1,500.00 vehicle equity limit to allow for inflation has rendered the regulation "a tool for denying applications, instead of the tool for protecting self-sufficiency--by allowing receipt of benefits an possession of an automobile--that it originally was intended to be". Id. at p. 6.

The Board agrees with the Hazard Court's analysis of the issue, as it did in Fair Hearing No. 11,671, and it concurs with that Court's holding:

(T)here is no longer a rational connection between the facts originally supporting the automobile exclusion regulation and the regulation as it operates today. The original purpose of the regulation--to be set at such a level as to allow recipients to retain possession of a car--has become so detached from actual effect--indeed, the regulation today regularly leads to denial in and of itself because it is so low--as to make the current regulation arbitrary and capricious and not in accordance with law.

In its Memorandum defending its position in Fair Hearing No. 11,671 (no brief was filed in this case), the Department argued only that because the Hazard decision is not binding on Vermont, the Board is bound by its statute, 3 V.S.A. § 3091(d), to affirm the Department's decision in this case. This argument is curious because, to the Board's memory, the Department has never raised it before, even though over the years the Board has considered and decided several cases (including at least two relatively recent ones that went to the Vermont Supreme Court) in which its authority to determine whether a federal regulation was in conflict with a federal statute was unquestioned. (See Sheldrick et al. v. DSW, Dkt.

Nos. 90-301, 90-302, and 92-070 [May 1, 1992]; and St. Amour et al. v. DSW, 158 Vt. 77 [May, 1992].  
 (1) The Board doubts that the Department has now truly and reflectively committed itself to argue, in such a cursory and uninformed manner, a point it appears to have conceded for the last twenty years (2) (and which has never troubled the Vermont Supreme Court in its several reviews of Board decisions during that time, see supra, e.g.).

At any rate, 3 V.S.A. § 3091(d) provides, in pertinent part:

The board shall consider, and shall have the authority to reverse or modify, decisions of the agency based on rules which the board determines to be in conflict with state or federal law." (3)

(Emphasis added. See also, Fair Hearing No. 10.) In this case (as was also the case in Sheldrick and St. Amour, supra) the Board is considering nothing more than what it is arguably required by law in every case to determine--whether a state and/or federal "rule" (4) is consistent with "state or federal law". Simply because no court in this jurisdiction may yet have addressed whether a particular state/federal regulation is in conflict with federal law does not preclude the Board under § 3091(d) from considering this issue in the first instance. And certainly, in reaching its decision on such a question in the absence of any court ruling in this jurisdiction to the contrary, nothing in the Board's statutes or rules precludes it from relying on (or rejecting!) the reasoning of a court in another jurisdiction that has been faced with the identical issue. (5)

As it did in Fair Hearing No. 11,671, the Board concludes that the Hazard decision provides a compelling legal basis to rule that the motor vehicle equity limitation contained in the federal and state regulations (45 C.F.R. § 233.20(a)(3)(i)(B)(2) and W.A.M. § 2263.6) is arbitrary and capricious and, thus, in conflict with federal law. For this reason the Department's decision in this matter is reversed.

The petitioner should note that under 3 V.S.A. § 3091(b)(1) the Secretary has the option to reverse the Board's decision in an ANFC case if it implicates the validity of an agency rule. The Secretary did reverse the Board on Fair Hearing No. 11,671 and may very well do so again. The petitioner will then be put in the position of appealing to the Supreme Court to obtain benefits. It is the Board's understanding that Vermont Legal Aid has placed this same legal issue before the federal court and that a decision is pending. The petitioner may wish to contact that organization to discuss her future avenues of relief, if any exist.

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1. In both of these cases the Court, after lengthy and detailed analyses, reversed the board's decisions that a federal/state regulation was in conflict with a federal statute. However, the Court did not determine, and the Department did not argue, that the board did not have the authority to consider the issue in the first instance.

2. The Human Services Board was created in 1973.

3. Moreover, 3 V.S.A. § 3091(h)(1) provides, in pertinent part:

"Notwithstanding subsections (d) and (f) of this section, the secretary shall review all board decision and

orders concerning ANFC, ANFC-EA and Medicaid. The secretary shall adopt a board decision or order, except that the secretary may reverse or modify a board decision or order if:

...

(B) the decision or order implicates the validity or applicability of any agency policy or rule.

...

(Emphasis added.) This section would make little sense and would be totally unnecessary if the Board did not have the "jurisdiction" in the first place to consider the validity of a particular agency regulation.

4. For ANFC, food stamps, and medicaid, virtually all the Department's state regulations are based on federal counterparts.
5. Indeed, this is an advantage the Board did not have in considering the Sheldrick and St. Amour cases (see supra).