

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,625

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare that she is not eligible for ANFC prior to January 3, 1994. The issues are whether the petitioner should have been disqualified due to her ownership of an automobile and whether her subsequent eligibility was determined in a timely manner.

FINDINGS OF FACT

1. The petitioner is the mother of two children, one of whom has a serious congenital heart defect. She works part-time and, until September 29, 1993, also received a partial ANFC grant. Her grant was discontinued at her request because she was about to receive a lump sum insurance settlement payment.
2. On October 8, 1993, the petitioner received the lump sum in the amount of \$19,270.95. During the next twenty days, the petitioner spent all of the money on bills and purchases⁽¹⁾. One of the items purchased was an automobile for \$7,000.00. The petitioner decided to make that purchase because her child with the heart defect occasionally needs to travel long distances for medical treatment.
3. On October 28, 1993, the petitioner reapplied for ANFC and was interviewed pursuant to that application on November 5. It was determined at that time that the petitioner had \$523 in a savings account and a vehicle valued at \$7,000. The petitioner does not dispute those valuations.
4. On November 18, 1993, the Department mailed the petitioner a notification of denial of her ANFC application based on excess resources of \$4,023. That figure was arrived at by subtracting \$2,500 allowed for automobiles from the \$7,000 value of her car and adding in the \$523 from the savings account for a resource total of \$5,023.⁽²⁾ The petitioner is allowed to have \$1,000 in resources without penalty.
5. The petitioner discussed her denial with Department representatives and was advised that she might be able to avoid the disqualification if she were not the sole owner of the car. The petitioner, thereafter,

took steps to add her boyfriend's name to the title and reapplied on December 20, 1993.

6. The petitioner was given an interview date for December 28, which was cancelled due to the interviewer's unavailability (she had a family emergency) and was rescheduled to January 3, 1994. On January 3, the petitioner was interviewed and an immediate determination of eligibility was made by the Department to compensate for the cancellation of the prior appointment. The petitioner received her first ANFC payment that same day.

ORDER

The Department's decision that the petitioner was disqualified between October 28, 1993 and January 3, 1994 due to her ownership of an automobile is reversed. The matter is remanded to determine if the petitioner is otherwise eligible.

REASONS

In Fair Hearing No. 11,671, the Board determined that the automobile equity limit in the Department's regulations at W.A.M. § 2263.6 (based on the federal regulations at 45 C.F.R. § 233 (a)(3)(i)(B)(2)), is arbitrary and capricious because the Department has failed to demonstrate a connection between the equity amount chosen and the present value of vehicles. The Board relied in that case on Hazard v. Sullivan, M.D. Tenn., Docket No. 3.91-0193 (preliminary injunction issued January 1992). The Department has offered neither further evidence on this issue nor further evidence against the adoption of the Board's prior order in this case. Therefore, the Department's disqualification based upon the automobile must be reversed and the matter remanded to see if she is otherwise eligible.

As the petitioner may be found eligible based upon her October 28, 1993 application it is not technically necessary to determine if the second application was timely decided. However, the petitioner should be aware that the regulations do provide that eligibility begins "(when the worker actually approves an eligibility decision) or 30 days from (and including) the date of application, whichever is earlier." W.A.M. § 2226.1. It appears that the Department had until January 19, 1994, to authorize payment pursuant to her application but, in fact, acted two weeks earlier than the deadline to initiate payment.

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1. The petitioner has not been asked to verify how the sums were spent by the Department because she was disqualified on other grounds. Neither was she prepared to present evidence on that matter at the hearing since it did not form the basis for the adverse decision. If she is found to have been wrongfully disqualified, the Department has represented that it will have to review how her assets were disposed before her eligibility can be finally determined.
2. It is not clear why \$2,500 was deducted as the regulations allow for only a \$1,500 deduction for the equity value of the car. W.A.M. § 2263.6. However, that discrepancy does not affect the outcome of this case.