

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,119

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare finding her ineligible to receive ANFC benefits for eight months due to the receipt of a lump sum of money from an inheritance. The issue is whether the Department is estopped from imposing a disqualification period because of the petitioner's detrimental reliance on incorrect or incomplete information given to her at the time by her caseworker. If the petitioner does not prevail on that issue, the parties have agreed that it should be remanded for consideration of a second issue involving offset of expenses against the lump sum.

FINDINGS OF FACT

1. The facts in this matter are virtually undisputed. In December of 1993, the petitioner, who works part-time and also receives a partial ANFC benefit, was told by the estate administrator of her deceased aunt, that she was a beneficiary and would likely receive some money when the sole asset in the estate, the aunt's house, was sold and the estate was settled.
2. The petitioner told her eligibility specialist in late January of 1994, that she was likely to receive a sum in excess of the ANFC resource maximum sometime in the near future. She asked how it might affect her benefits and was told by him to notify the Department when she received the money, to keep receipts of how the money was spent and to contact him further to discuss it when she received the money. She mentioned this anticipated receipt at least one other time that winter or spring with the same response.
3. In early May of 1994, the petitioner visited the DSW office and talked with her eligibility specialist again about the lump sum that would be coming. She did not know the exact amount at that time but told him that the accounting was complete and that it was certainly several thousand dollars. She again expressed concern to him as to how it would affect her ANFC benefits and specifically asked him what she could do with the money and if she could still maintain her ANFC eligibility. The specialist again told her that she should let him know as soon as she got the money and document all the expenditures she made with the money. He also gave her a copy of W.A.M. § 2250.1, a copy of which is attached as

Exhibit One. The worker did not explain the regulations orally then or thereafter. The petitioner apparently misunderstood the regulations and thought she would be disqualified from receiving benefits only from the time she got the lump sum until she spent all of her money and that the money had to be spent on bills and living expenses. She did not ask for any further clarification of the regulations given to her.

4. On June 3, 1994, the petitioner received \$7,610.65 as her share of the inheritance. She called the Department and reported the receipt of the income, but her eligibility specialist was on vacation. Sometime before June 15, 1994, she actually spoke with her eligibility specialist on the telephone who asked her to provide documentation of the amount received and the amounts already spent. The petitioner provided that information promptly.
5. Between June 3 and July 11, 1994, the petitioner spent about \$4,333.65 of the inheritance on a number of items, including a security and propane deposit on a new apartment, car registration fees, car insurance, car repairs on her 1986 Toyota Tercel, repayment of a school loan, payment of credit card debt and purchase of some household furnishings including a bed, high chair and vacuum cleaner.⁽¹⁾
6. On June 29, 1994, the Department requested a proof of the distribution of the lump sum so that the petitioner's eligibility could be determined. The petitioner provided that documentation and was told on September 2, 1994, that only the security deposit and car registration amounts would be deducted from the lump sum. Further verification of those expenditures was also requested.
7. After receiving the verification, the Department mailed the petitioner a notice dated September 16, 1994, informing her that because of the receipt of the \$7,610.65 inheritance, her ANFC would close on October 1 and that she would not be eligible to receive ANFC until January of 1995 at which time \$856.65 in income would still be attributed to her from the lump sum. Subsequently on October 25, 1994, the petitioner was sent a corrected notice showing that only \$7,067.65 of the lump sum would be counted as available to her and that her \$259 per month ANFC grant would close on October 1, 1994, with a disqualification continuing until February of 1995, at which time \$736.65 of the lump sum would still be countable as income to her. She was also advised that she had been determined to have been overpaid benefits from June through September of 1994.
8. By the time she received the October 1, closure notice, the petitioner had spent all but \$1,000 of the inheritance and decided to appeal her future disqualification and to opt for continuing benefits. She contacted legal aid and was told for the first time that, in addition to spending her lump sum on certain items, she also had the option of voluntarily closing her ANFC case before the receipt of the money and applying later when the money was gone. The petitioner did not get that information from her eligibility specialist at any time. In fact, the Department represented that its eligibility workers are not instructed to discuss that option with future lump sum recipients.
9. The petitioner would have voluntarily closed her case beginning with the month in which she received the lump sum had she known that option was available to her and would have reapplied at a later date when she no longer had money to support herself. At the time of the hearing at the end of October, 1994, the petitioner had spent the entire lump sum.

ORDER

The Department's decision finding that the petitioner is disqualified from receiving benefits from June 1993 until February of 1995 is reversed. The matter is remanded to determine the petitioner's eligibility for benefits for the months at issue as if the petitioner were a new applicant and not a current recipient of benefits.

REASONS

This matter is not one of first impression before the Board. On November 15, 1993, the Board held that "when an individual specifically asks the Department's advice in anticipation of his or her receipt of a lump sum, the Department has an affirmative duty to inform that individual of all of his or her options under the regulations--including voluntary closure and reapplication." F.H. No. 11,745, pp. 13-14.⁽²⁾ A copy of that decision is attached hereto as Exhibit Two. That decision was neither rejected nor appealed by the Department. Yet the Department has made it clear that it does not instruct its workers to give this information to persons who ask for it and that the worker in this case did not provide the information to the petitioner. The Department's duty to inform flows from the federal regulation which requires ANFC participating states to insure that "applicants and all individuals who inquire about the program shall be informed about the eligibility requirements and their rights and obligations under the program." 45 C.F.R. § 206.10(a)(2). The Vermont Supreme Court has interpreted that regulation as placing on the Department of Social Welfare, "an affirmative duty to advise applicants specifically of their rights under ANFC." Lavigne v. Department of Social Welfare, 139 Vt. 114, 118 (1980).

The Department now, as before, attempts to avoid that obligation by characterizing the case closure option as a course of advice, and not as information. However, that attempted distinction was also raised by the Department in Stevens v. Department of Social Welfare, 159 Vt. 408 (1992) and rejected by the Supreme Court under a similar duty to advise recipients of rights in the Medicaid program. In that case, the eligibility specialist advised the petitioner not to spend any of her resources until her eligibility for Medicaid was determined. The specialist did not inform the petitioner that she could take certain actions (using her resources to pay medical bills) to preserve her coverage for the months prior to her application. The Court characterized such action as advice to "take a single course of action" and as a failure of the Department in its "obligation under federal law to fully inform the applicant of her rights and obligations." Id. at 415.

The situation in this matter could not be more analogous. The petitioner informed the Department in January of 1994, almost five months before her receipt of the lump sum, that the money was coming and repeatedly asked the Department what her options were. Instead of being told what options were available to her,⁽³⁾ the petitioner was advised to take one course of action--wait until she got the money and to keep a record of her expenditures. The petitioner was never informed in any timely manner that she had any other options in spite of repeated requests for information. Without that information, the petitioner was in no position to assess the situation and decide which course to take. As such, it must be concluded that the Department failed in its statutory obligations under 45 C.F.R. § 206.10(a)(2). The fact that the Department may find it unpleasant or even "schizophrenic" to give recipients information which might cost the Department money, does not relieve it of the obligation to fully inform recipients of their rights.⁽⁴⁾

As the Department has failed in its duty to inform the petitioner of her rights, the Board must now take up the petitioner's request to estop the Department from imposing its lump sum disqualification rules on her.⁽⁵⁾ The Supreme Court has held that a government agency "may be estopped where the four

elements of estoppel are present and the injustice that would result from a failure to uphold an estoppel is of sufficient magnitude to justify any effect upon public policy that would result from raising estoppel." Stevens, at 419.

Turning first to the issue of public policy, the harm to the petitioner must be weighed against the burden on the Department. The petitioner at present has none of the lump sum left to her. If the regulations were strictly followed and her benefits were cut off following the hearing, she would have no further income (other than her part-time work income which is small enough to make her ANFC eligible) to live on through most of February 1995. In addition, she would likely be determined to have been overpaid some \$2,000 (June through December 1994) or so in ANFC payments and if she is found eligible for ANFC benefits at some time in the future, she would be required to repay from her check every month at the rate of 10 percent of her monthly grant, which is already less than two-thirds of what the Department has determined that the family needs to live on. The hardship to the family is palpable.

The burden on the Department would be the payment of some \$1200 or so in benefits it would not have been required to pay if it had fully informed the petitioner of her rights. (That rough calculation assumes that the petitioner would have reapplied and been found eligible for benefits in October of 1994 when her resources were down to \$1000 through February of 1995, the end of her disqualification.) But an additional result of estoppel here is a positive one which would "promote the public interest, as well as compliance with federal mandates, of fully informing applicants, or other individuals who inquire of the eligibility requirements." Id. at 420. It must be concluded, therefore, that the injustice to the petitioner that would result if the doctrine of equitable estoppel were not applied against the Department outweighs the public interest in the strict application of regulations regarding lump sum disqualifications.

The four essential elements of estoppel are: (1) the party to be estopped must know the facts; (2) the party to be estopped must intend that its conduct shall be acted upon or the acts must be such that the party asserting estoppel has a right to believe it is so intended; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must detrimentally rely on the conduct of the party to be estopped. Id. at p. 421, Burlington Fire Fighter's Ass'n. v. City of Burlington, 149 Vt. 293,299 (1988).

In applying these elements to the facts herein, first it is clear that the Department knew almost five months in advance that the petitioner would receive a lump sum that would probably be sizable enough to subject her to the lump sum rule. The Department was also aware on at least three occasions prior to the receipt of the lump sum amount that the petitioner was looking for specific information about how that money would affect her ANFC benefits.

Second, based on the repeated advice of the eligibility worker, the petitioner waited to do anything until she actually received the money. There is no doubt that the Department knew and intended that the petitioner would act on that advice and that she had every reason to expect to rely on the advice given to her.

Third, the evidence clearly establishes that the petitioner was unaware that she could voluntarily close her case if she so chose and receive different treatment under the lump sum rules.⁽⁶⁾ She only learned that information from her attorney after she had received the money.

And finally, there is no question that the petitioner relied to her detriment on the eligibility specialist's advice when she continued to be an ANFC recipient at the time she received the lump sum. Because of

her recipient status, the Department's rules required that the entire sum (minus the amounts considered unavailable to her) be spread out over several months, resulting in a disqualification of over eight months. That disqualification could have been easily avoided, and the petitioner made it clear that she would have avoided it, if she had known, by seeking the closure option.

Thus, it must be concluded that the elements of estoppel are met and the Department should not be allowed to impose the lump sum disqualification rule on the petitioner. As a matter of equity, the petitioner can only be placed in the same position she would have been if she had received the complete information, if she is treated as having closed her case beginning in the month of June 1994 and as having reapplied at a later date when her funds were depleted. The matter must be remanded to the Department to determine on what date the petitioner could have been found eligible as a new applicant if she had reapplied for benefits after June 1994.

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1. Testimony was not taken from the petitioner on the reason for or necessity of these expenditures. That testimony will be taken on remand if the first issue is not resolved in her favor.
2. Because this decision involves a specific request for information by an ANFC recipient, the considerations inherent in Gardebring v. Jenkins, 485 U.S. 415, 108 S.Ct. 1306 (1988), which involved obligations and methods for classwide dissemination of information to all ANFC recipients regarding lump sums, are not implicated.
3. The options available to her were to close out her ANFC grant voluntarily before receipt of the income, live on the lump sum and reapply when the money was gone; to continue on ANFC benefits and spend the money on items allowed under W.A.M. § 2250.1 (Exhibit 1); or to stay on ANFC, spend the money any way she wanted and face the disqualification. Which option is preferable entirely depends upon the facts of each case, i.e. the amount of money to be received and the kind of outstanding expenses which an individual might incur.
4. Undoubtedly, the information withheld by the Department in Stevens, supra from the Medicaid recipient would also have cost it money in the payment of retroactive benefits. However, the Department did not raise (with evident prudence) fiscal loss as a reason for not giving out that information to the Medicaid recipient when arguing before the Supreme Court.
5. After the holding in Stevens, supra, the authority of the Board to hear claims based on equitable estoppel principles is well settled.
6. The rules provided to the petitioner in May, 1994, said nothing about the option of closing her case.