

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,342

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare terminating her ANFC benefits due to the receipt of lump sum income. The issue is whether the Department is estopped from applying the lump sum rule against the petitioner due to its alleged failure to supply the petitioner with information regarding the operation of the lump sum rule.

FINDINGS OF FACT

1. In 1991, the petitioner who (along with her husband and two children) is an ANFC recipient was involved in a car accident. In June of that year she told her welfare caseworker that she was thinking of suing over the accident. The caseworker advised the petitioner to let the Department know if she expected to receive any money as a result of the accident. The petitioner did not ask the caseworker how the receipt of money might affect her benefits.
2. The petitioner did retain an attorney to pursue compensation for her injuries. In June of 1992, her caseworker, during the course of a routine review, asked if she had received any money from the lawsuit and was told by the petitioner that the matter was in the process of settlement negotiations and could take years to resolve. The caseworker noted in the file that the petitioner was "waiting to see if they would settle" and again advised her to notify the Department of the outcome of the suit. At that time, and at every review, the petitioner was required to read and sign a notice advising her to report changes, including the receipt of lump sum insurance settlements, within ten days of receipt to the Department. At that time the petitioner did not ask how the receipt of such money would affect her benefits and the caseworker did not offer such information.
3. Some time later, a new caseworker was assigned to the petitioner's case. The new caseworker and the petitioner never had any conversation about her potential insurance recovery. The caseworker, in fact, was not aware of the possibility of the lump sum recovery because her review of the file only went back

to the prior routine review (which took place sometime after June of 1992) in which the lump sum possibility was not mentioned.

4. If she had been aware of such a recovery, the caseworker testified that she would have advised the petitioner to let her know when she was sure of an amount so that she could advise the petitioner as to how her benefits would be affected. The caseworker further testified that she would not have advised the petitioner as to her right to decline ANFC and avoid the operation of the lump sum rule because it is against Departmental policy to do so. She also stated that she would have referred the petitioner to a private attorney or to legal aid to discuss what further legal rights she might have with regard to the money.

5. In August of 1994, the petitioner learned from her attorney that a settlement had been reached which would provide her with a considerable sum of money. The petitioner asked the attorney for advice as to how the insurance settlement would affect her public benefits. The petitioner understood her attorney's advice to be that Medicaid had a lien on the settlement and would automatically collect from her lump sum for amounts it had paid out for medical care. The petitioner also believes she was advised that the lump sum payment represented pain and suffering reimbursement and was not reportable income for ANFC benefits. She also recalls being told by her attorney that no income that she spent could be counted against her for welfare eligibility.

6. On or about September 21, 1994, the petitioner received a check for \$15,471.88 representing the net amount of the settlement after medical and legal claims were paid off. Acting on the advice of her attorney, she did not report the receipt of the lump sum income to the Department and proceeded to spend the money as quickly as possible.

7. In mid-October of 1994, the Department of Social Welfare was notified by the Medicaid division that the petitioner may have received a lump sum insurance settlement. The petitioner was contacted for verification of the amount of the lump sum which she provided by October 21, 1994.

8. It appears from the petitioner's bank statement that by the third week of October (when she provided the verification that she had received the lump sum), the petitioner had spent all but a few hundred dollars of the original \$15,000. Her caseworker advised the petitioner about the lump sum rule and expressed frustration that she had not reported the income before it was spent.

9. At that point, the petitioner presented evidence to the Department of how she had expended the money, asking that the bulk of the lump sum be discarded because she was compelled to spend it on necessities and it was not available to pay her future ordinary household expenses. For the next two months, the petitioner continued to receive her ANFC grant while the Department considered her request and reviewed the information. Ultimately, the Department agreed to exclude \$5,064.90 (primarily incurred for the purchase, repair, insurance on and registration of a truck used in the petitioner's business) from inclusion in the petitioner's countable lump sum income.

10. The petitioner had also asked that two other expenditures be excluded from the lump sum which the Department declined to approve. The first was \$4,000 paid to her mother in partial settlement of a loan made nine years ago so that her husband might hire an attorney. The loan was not evidenced by a writing and the petitioner's mother had not legally compelled her to pay it back in any way, although the petitioner felt a moral obligation to repay it. The second expense was the cost of constructing a barn, approximately \$800, used to house llamas which the petitioner has raised as a self-employment

enterprise for almost ten years but from which she has yet to make any money.

11. The petitioner received a number of notices and corrected notices beginning December 17, 1994, advising her that her ANFC benefits would terminate on January 1, 1995, due to the receipt of excess lump sum income and that her disqualification would continue until May of 1995. She was also advised that she was found to have been overpaid ANFC benefits based on her receipt of lump sum income from September of 1994 through December of 1994.⁽¹⁾

ORDER

The decision of the Department is affirmed.

REASONS

The lump sum regulation at issue in this matter provides, in pertinent part, as follows:

The applicant or recipient of ANFC is responsible for notifying the Department promptly upon receipt of any lump sum payment of earned or unearned income.

Lump sum payment, including windfall payment, shall be counted as income unless excluded under an exception below.

...

Additional exceptions to the above regulations are:

...

2) Insurance payments or similar third party payments, if received for payment of medical bills or funeral costs and used for those purposes, must be excluded . . .

Lump sum payments which are not excluded should be added together with all other non-ANFC income received by the assistance group during the month. When the total less applicable disregards exceeds the standard of need for that family, the family will be ineligible for ANFC for the number of full months derived by dividing this total income by the need standard applicable to the family. Any remaining income will be applied to the first month of eligibility after the disqualification period.

The period of ineligibility due to a lump sum benefit may be recalculated if:

...

2. The income received has become unavailable to the family for circumstances beyond its control. Such circumstances are limited to the following unless the Commissioner of Social Welfare or his or her designee determines that the recipient's circumstances are substantially similar to those described below:

...

e. repair or purchase of one motor vehicle per ANFC assistance group, essential for employment, education, training or other day-to-day living necessities. Expenses may include purchase and use tax, inspection fee, insurance, and registration fees, but not day-to-day operating expenses.

...

g. payment of expenses which meet the following criteria:

- (1) The bills were overdue as of the date the lump sum income was received.
- (2) The bills were the legal liability of the client or other member of the assistance group.
- (3) The client provides documentation that the lump sum income was used to pay the bills.

Eligible expenses under "g" above are as follows and are restricted to those of the primary residence and would include any late charges described in payment agreements or allowed by Public Service Board rules.

- a. overdue rent (including lot rent)
- b. overdue mortgage payments (principal and interest)
- c. overdue property taxes
- d. overdue homeowner's insurance
- e. overdue heating bills
- f. overdue utility bills (e.g. electricity, gas, water, or sewage)
- g. overdue telephone bills (basic monthly charge, applicable taxes, plus \$5 per month in toll charges)
- h. overdue child care expenses...
- i. overdue expenses for one motor vehicle per ANFC assistance group, essential for employment, education, training or other day-to-day living necessities. Expenses may include overdue bills for repairs, purchase and use tax, inspection fee, insurance, and registration fees, but not day-to-day operating expenses.

W.A.M. 2250.1

The petitioner seeks to avoid the operation of this rule altogether on an estoppel theory. In the alternative, she wishes to have the overpayment recalculated based on her alleged unavoidable loss of control of the part of the money based on repayment of the loan to her mother and construction of the llama barn. The estoppel issue will be analyzed first.

The petitioner's estoppel argument is predicated upon the Board's decisions in Fair Hearings No. 11,745 and 13,119 in which the Department was estopped from denying ANFC eligibility to two petitioners who informed the Department that lump sums would be received, specifically asked what actions they should take, were advised only by the Department to provide notification of the amounts when they were received, and who timely notified the Department of receipt of the sums. In those decisions 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." (pp. 13-14, Fair Hearing No. 11,745 and pp. 5-6, Fair Hearing No. 13, 119.) In both of those decisions, the Board analyzed that breach of duty under the elements of estoppel set forth in Stevens v. Department of Social Welfare, 159 Vt. 408 (1992) and concluded that the Department should be estopped from imposing the requirement of the lump sum rule on the petitioners.

The facts in this case are considerably different from those in the above two cases. The petitioner here did not specifically ask the Department for advice in anticipation of the receipt of lump sum income. In fact, one troublesome aspect of this matter is the likelihood that the Department was not even aware that a lump sum was coming due to the petitioner's failure to keep the Department advised, over a fairly lengthy period of time, as to the status of her lawsuit.⁽²⁾ The evidence shows that the only time she mentioned that she was involved in a legal action was over two years ago when she indicated to her caseworker that it might be years before anything occurred. Even more troubling, and quite different from the facts in the above two cases, is the petitioner's failure to notify the Department of the actual receipt of the money in spite of clear instructions to do so.

These actions on the part of the petitioner are relevant not only to meeting the estoppel test itself but also to the propriety of granting equitable relief. Such equitable relief traditionally requires that the person seeking it have "clean hands" herself, that is, not be liable for any malfeasance or misfeasance which might have contributed to her predicament. Shell Oil Co. v. Jolley, 130 Vt. 482 (1972).

Further confusing the analysis in this case is the concession made by the Department that it would not have advised the petitioner that she could avoid the lump sum rule even if it had known of the lump sum and even if it had been asked about its consequences. Rather, the caseworker would have explained the regulation and would have advised the petitioner to consult legal aid or a private attorney. The Department's concession leads to the inescapable conclusion that had the Department known of the lump sum in this matter, it would have breached its duty to the petitioner.

Assuming arguendo for a moment that the Department has, in fact, breached its obligation to the petitioner, it must be concluded that the petitioner would still have great difficulty in meeting her burden with regard to the estoppel test established in Stevens, supra. The four essential elements of estoppel (relying on Burlington Fire Fighter's Ass'n v. City of Burlington, 149 Vt. 293 (1988)) set forth therein 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 facts 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. Finally, in matters which affect the public sector, a final question must be answered as to whether the injustice to the petitioner if estoppel is not invoked outweighs any public interest in strictly applying the lump sum regulations.

For purposes of this analysis, the first factor has been temporarily assumed--that the Department knew

or should have known that the petitioner was about to obtain a lump sum of money and did not tell her she could avoid the rule by terminating her benefits. If that is so, by virtue of the Department's duty to inform recipients of their rights, both parties could expect that action might be taken based upon that information, meeting the second requirement. Third, the petitioner clearly did not know the true facts in this matter--that she needed to terminate her benefits before receipt of the lump sum to avoid its effect. The fourth factor requires the petitioner to show that she detrimentally relied on the advice she did get from her caseworker. Showing this fourth factor presents a major problem for the petitioner.

In this case, the petitioner did not ask for any advice. However, the record clearly shows that she did get one piece of advice repeatedly--to inform the Department when she knew she would receive or did receive a specific amount. However, the facts here clearly show that the petitioner did not take that advice. Instead she took the advice offered her by the lawyer she engaged for the accident case which was not to report the lump sum income when she learned about it in August and to spend the money as rapidly as possible after its receipt.⁽³⁾ Her injuries were a direct result of taking the erroneous advice of her lawyer and not from taking the incomplete advice offered by the Department.⁽⁴⁾ As such the fourth element of estoppel, reliance upon the party to be estopped's advice, cannot be met.

As the petitioner cannot meet her burden under the estoppel criteria it is not necessary to decide the "clean hands" or breach of duty issues discussed above. The only remaining issue in this matter is whether the petitioner should have had her disqualification period shortened due to the unavailability of some of her resources spent to repay a loan to her mother and to build a llama barn.

The regulations set out by the Department (and cited above) are quite specific and detailed as to what kinds of payments can be eliminated from consideration as disqualifying lump sum income. The regulations emphasize that the circumstances are "limited" or "restricted" to the ones set out in the regulations. A close reading of those regulations shows that payment for bills, repairs or other past due expenses paid out of the lump sum money must be related to the recipient's medical or child care, primary residence or necessary vehicle. The two items now claimed by the petitioner do not fall under any these categories.

There is nothing in these regulations which excepts payments made for shelters provided to farm animals, even if they produce income. Neither is there any provision for repaying consumer debt or loans unless related to the above categories. The Commissioner can include, in her discretion, circumstances which she deems substantially similar to the above categories. The petitioner has not shown (and, indeed, has not even argued) that her requested exclusions are similar to any other above categories. Therefore, it cannot be found that the Commissioner abused her discretion in declining to include the shelter and the loan.

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1. The notices sent to the petitioner, including the "final" corrected notice dated February 2, 1995, do not reflect the fact that the Department agreed to only count \$10,406.98 as the available lump sum amount.

The petitioner did not raise that error in its appeal. It is assumed that the parties can agree on the disqualification period applicable based on the actual lump sum amount which is found to be attributable to the petitioner.

2. In Fair Hearing No. 12,081, the Board held that the petitioner's failure to notify the Department that

he was getting a lump sum prevented him from showing the elements necessary for estoppel.

3. ³Compare this petitioner's relationship with her attorney to that in Fair Hearing No. 11,745 in which the lump sum recipient neither sought nor was offered advice by her attorney with regard to her potential eligibility for ANFC.

4. ⁴This point is not a mere legal nicety. If the petitioner had done as the Department had advised her and reported in August that she would get a lump sum, the caseworker, according to the undisputed testimony, would have told her how the lump sum rule operates and would have advised her to talk with legal aid. At that juncture, the petitioner could have taken any number of courses. One could have been to take the Department's advice to consult a legal aid attorney where she would have learned that she could close her case and avoid the rule. Another could have been a decision not to spend the money but to have saved it to live on. While she also could have done what she did on her lawyer's specific advice--spent all the money at once--that possibility is just as speculative as the others.