

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,544

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision of the Department of

Social Welfare refusing to lift longstanding requirements imposed upon her to pay her rent through vendored payments and to appear at the office personally to receive her ANFC checks.

FINDINGS OF FACT

1. The petitioner, who is the single parent of three minor children, has been receiving ANFC assistance for many years. In 1986, in order to stop an eviction proceeding, the petitioner agreed to allow the Department to vendor her rent payments. She no longer lives in that public housing project but has moved into private housing where her current rent is \$525 per month. The Department continues to vendor that amount out of her \$697 monthly check directly to the landlord.
2. Recently the petitioner asked that control of her rent money be returned to her. During her conversation with her worker, she mentioned that others in her apartment building were only paying \$300 for the same apartment and that she intended to take the discrepancy up with her landlord. Her worker interpreted this as an intent not to pay the entire rent and refused to take her off rent vendor payments.
3. In the Fall of 1990, the petitioner reported the non-receipt of Food Stamp coupons on at least two occasions, including the non-receipt of a packet sent registered mail for which she allegedly signed. Prior to 1991, she also reported difficulty receiving ANFC checks. The Department told her in early 1991 to start picking up her Food Stamp coupons and ANFC checks at the district office. She has been doing that for the past four years.
4. The petitioner asked that her Food Stamp coupons be mailed to her and that request was granted. She

asked that her ANFC checks also be mailed to her but that request was denied. No explanation was offered by the Department for the variation in that response.

5. The petitioner does not want to pick up her check at the office anymore because she says it consumes almost a whole day, twice per month. The checks are not available at a predictable time and she must wait while friends are outside with a car to take her food shopping. She says she has not had a chance to prove that she can handle her own money in years and that she wants to learn to manage her money herself because she hopes she will soon have a job and more income. She also says that her checks were often stolen before because of rampant theft at the housing project mailboxes and that she no longer has the problem because she is now in a private apartment with a locked mailbox.

6. The Department has no information at present which would lead it to believe that she is currently mismanaging her money or owes any money to anyone. In the nine years intervening since she was originally placed on vendored payments, the Department has neither offered her nor recommended money management counseling to the petitioner.

ORDER

The Department's decisions are reversed.

REASONS

The regulations governing protective payments do not specifically state how long they shall be used. However they do provide, in pertinent part, that:

Protective payments are management of assistance by a third party outside of the assistance group to meet the needs of a dependent child and the relatives or caretaker with whom the child is living. This is necessary when payment of assistance to the caretaker would be contrary to the welfare of the child, or when such payments are required as a sanction as indicated below. Protective payments are used as follows:

1. Protective payments are used as a temporary measure when difficulty in money management jeopardizes the welfare of the children and when the caretaker has the capacity to learn to manage his/her funds in a way to assure proper care of the children. This capacity can be presumed unless there is evidence to the contrary.

The assistance check is made payable to a protective payee who is interested in, or concerned with, the welfare of the family. If an acceptable protective payee cannot be found, a substitute form of protective payment known as Controlled Vendor Payments (CVP) is used (See Procedures Manual Protective Payments).

Families determined to have money management problems should be referred to money management counseling, if available in the community.

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W.A.M. 2235

The regulations further set out criteria for

determining money mismanagement as follows:

The District Director will evaluate evidence of money mismanagement, determine whether the recipient demonstrates the capacity to overcome these problems, and decide whether or not, based on these factors, a protective payment plan is warranted.

A. A determination of money mismanagement shall be made if one of the two following criteria is met:

1. A presumption of money mismanagement which threatens the health or safety of the child shall be made when an applicant's or recipient's rent payments are, at any given time, in arrears in an amount equivalent to two months or more of the incurred rent. Any rent which was incurred but not paid to the current landlord over the previous 12 months and which remains unpaid shall be taken into consideration in determining whether the equivalent of two month's rent has been reached. Rent will be considered overdue for any month when it remains unpaid ten days past the due date.
2. Money mismanagement also exists where the health and safety of the children are jeopardized by the inability of the caretaker to meet basic financial obligations on a regular basis. Such obligations include, but are not limited to, the following:
 - a. rent, tax or mortgage payments;
 - b. utility or service payments, such as those which provide heat, water and electricity;
 - c. the provision of adequate food and clothing.

If the failure to pay bills is threatening the loss of shelter or necessary services, this condition is sufficient to justify authorization of protective payments.

A determination that protective payments are necessary may be made if a pattern of nonpayment of rent, either alone or in combination with nonpayment of other basic financial obligations, is established.

A determination of money mismanagement may not be based solely upon the fact that bills are not paid on a timely basis. For purposes of this section, a bill shall be considered paid on a timely basis if paid within ten days of its due date. However, when either the provider issues a second bill for a new service (e.g. a bill for a separate oil delivery), or the bill for a succeeding time period becomes due (e.g., the next month's rent), the issue shall no longer be that of timely payment. The issue shall be whether nonpayment of bills is threatening the loss of services, thereby jeopardizing the welfare of the children.

W.A.M. 2235

The above regulation contemplates that vendor payments will be made in cases of money mismanagement as a "temporary

measure" and that some education of the recipient with regard to how money should be managed should

take place.⁽¹⁾

"Temporary" is not defined in the regulations but it is unlikely that anyone's definition of that term would include a situation which would continue for nine years. There is no evidence that any attempt was made to educate the petitioner as to the management of money or that it was even suggested to her that she might receive such counseling. Rather it appears that the petitioner was put on vendor payments and her situation was ignored for years and likely would continue for be ignored had the petitioner not brought it to the Department's attention.

The petitioner's vendor payments should have been reviewed and released long ago.⁽²⁾ The only way she could continue on vendor payments at this point is by a showing of current money mismanagement. There is not a scintilla of evidence which would indicate that the petitioner is having difficulty in managing her money at present. She is not behind in her rent nor is the health or safety of her children jeopardized by her nonpayment of utilities or failure to provide food and clothing for her children. Her worker's fear that she might stop paying her rent is simply not sufficient under the regulations to demonstrate money mismanagement. See Fair Hearing No. 12,209. The petitioner, therefore, must be allowed to manage her money herself. If she has difficulty in the future, the Department can review the situation at that time and assess the propriety of vendors in that circumstance.

The second question here is whether the petitioner can be required to pick up her check at the District Office instead of having it mailed to her. There is little on this matter in the regulations. However, the Department's procedures indicate that state office ANFC checks are mailed in the ordinary course of events:

Most checks issued by the Treasurer's Office are printed in Montpelier and mailed from Administrative Services in Waterbury. Address changes can be made no later than specified on the calendar in the Deadline Section of the ACCESS Manual (or the approval date for checks that are issued on a daily run). Checks cannot be pulled from the run prior to mailing.

P-2131E

After her failure to receive several checks, the petitioner was told that she had to pick up her checks from the office. There is nothing which prevents the Department from proposing such a solution to a recipient. However, if she fails to agree, there is nothing in the regulations which would allow the Department to unilaterally change the method of distribution used by written policy for one recipient. There are regulations and procedures set forth for dealing with claims for stolen and lost checks but they do not mention the district check pick-up method as a way of dealing with these types of claims. See W.A.M.

P-2131C.

Since the Department's action is not supported by regulation or policy and the petitioner does not agree to it, the usual method of check distribution (through mailing) must be resumed for the petitioner. If she makes future claims for non-receipt of ANFC benefits, the checks can be reviewed for replacement and, if necessary, referred for fraud investigation as set forth in the above cited regulations and procedures.

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1. The Procedures Manual further states that after the first three months, recipients "may be given additional money to handle as a method of teaching money management and to test their ability to handle funds." P-2230 B.
2. See Foster v. DSW, 135 Vt. 376 (1977), where the Supreme Court, in reviewing a predecessor regulation, held that vendor payments were required to have a temporary aspect.