

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,701

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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 grant based upon her receipt of lump sum income. The issue is whether the lump sum should be excluded because it represented the settlement of a legal claim belonging to the petitioner's minor daughter which was placed into trust by the petitioner after its receipt.

FINDINGS OF FACT

1. The petitioner is the head of an ANFC household which also includes her two minor children (a third child lives elsewhere). The petitioner's daughter was apparently one of several children who was molested by a man against whom one of the victims, a cousin of the petitioner's daughter, filed a civil lawsuit. The petitioner did not have an attorney in this matter and was not even certain that her daughter was a party to the suit.
2. In early May of 1994, the petitioner found out that the lawsuit was about to be settled and that the man involved was offering settlements to several of the victims, including the petitioner's daughter, of \$5,000 each. The petitioner agreed to accept the offer and had at least one conversation with the plaintiff (her niece) and the plaintiff's lawyer regarding the petitioner's need to sign papers releasing the perpetrator from further liability. During those conversations the petitioner told her niece that she planned to set aside the money for her daughter to use for her education and did not feel it was appropriate to use that money for family expenses.
3. In mid-May of 1994, the petitioner received a check for \$5,000 issued by the niece's attorney from his client funds account, dated May 9, 1995. The check was made out to the petitioner's daughter and was not restricted in any way.
4. The petitioner did not tell anyone at the Department of Social Welfare that she anticipated receiving a large sum of money. She did, however, report the receipt of the check to the Department of Welfare shortly after it was received but before it was cashed. The Department made a copy of the check. The

petitioner told the Departmental worker that she believed the check was restricted to use for her child's college. The petitioner was asked to provide documentation of such a restriction but could provide none. She told her worker that she intended to hire an attorney and put the check in a trust for her daughter. The petitioner was informed that she should not spend the check until a ruling could be made on whether it was countable. She was specifically informed that the check might have to be used to cover her daughter's and other family members' living expenses.

5. On June 1, 1995, the Department notified the petitioner in writing that she was found ineligible for ANFC benefits retroactive to May 1, 1995, due to her receipt of the \$5,000 payment and that her disqualification would continue through September 1, 1995. She was also notified that her period of ineligibility could be changed under certain circumstances which are not at issue here. The notice advised her that she would need to use the money to meet her living expenses during this time and that she should reapply in September for a new calculation of her benefits.

6. After receiving this notification, the petitioner appealed the ruling and received continuing benefits. She consulted with an attorney who helped her to set up an irrevocable educational trust for her daughter on June 28, 1995, which she presented at the hearing. The trust recites that the petitioner placed \$5,000 in the trust account and that the funds and interest generated therefrom could only be used for educational costs and expenses until the daughter was eighteen years of age, at which time it would be paid over to her daughter free from trust. The petitioner was named as trustee of the trust.

7. It is found that the daughter's \$5,000 settlement payment was placed in this trust solely to provide for her education during her minority and that it was not established for the purpose of obtaining eligibility for ANFC benefits.

### ORDER

The decision of the Department is affirmed.

### REASONS

In May of 1994, the petitioner's daughter, who is a member of her ANFC assistance group, received a one-time settlement payment in the form of an unrestricted check for \$5,000. The funds represented by that check meet the definition of a resource described in the ANFC regulations "as any assets, other than income, which an applicant ANFC assistance group has available to meet need." W.A.M. 2260 That same regulation requires "the total equity value of all resources" to be assessed for value in determining eligibility and further requires that "any liquid asset which is received by a member of an ANFC assistance group during a period of receipt of ANFC benefits...shall be treated as Lump Sum Income" subject to those regulations. W.A.M. 2260.

Regulations promulgated by the Department of Social Welfare regarding treatment of lump sum income require that

Lump sum payments, including windfall payments, shall be counted as income unless excluded under an exception cited below...Lump sum payments, including windfall payments, which have been set aside in a trust fund and which are excluded in accordance with ANFC policy relating to "Trust Funds" shall not be counted as income.

...

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.

#### W.A.M. 2250.1

The regulations governing trust accounts state:

Evaluation of trust funds or trust accounts shall take into account the terms of the trust. The value of principal which can be made immediately available to the applicant/recipient and/or spouse shall be considered. The value of principal which cannot be made available shall be excluded; however, any special provisions for use of principal (such as payment of medical expenses, upkeep of property, etc.) shall be evaluated as a future or potential resource, including but not limited to recovery potential. It is also necessary to take into consideration the value and possible use of interest accruing from trust funds. Unless prohibited by terms of the trust, accrued interest shall be considered as income in the month received and a resource thereafter.

#### W.A.M. 2263.2

The evidence in this matter shows that in spite of the petitioner's hopes, wishes or intentions, the money she received and reported to the Department in May of 1994, was, in fact, unrestricted, belonged outright to her daughter, (a member of the assistance group), and could have been used to pay the ordinary living expenses of the family. Based upon the above definition of assets and the fact that the resource was a liquid asset, the lump sum rule appropriately came into play.

It certainly would have been to the petitioner's advantage to have discussed her daughter's potential for recovery with her DSW worker and an attorney before the money was paid. Undoubtedly, the trust could have been set up before the settlement was issued and the settlement paid directly into it. In that case, the money would never have come directly into the family's hands. Some evaluation may have been needed at that point under the transfer of funds<sup>(1)</sup> and trust rules but the harsh effect of the lump sum rule could have been avoided.

As unhappy as this result is, the facts cannot now be changed to pretend that the money had been placed into a trust for the daughter at the time it was reported to the Department. Some of the harshness of the rule has been mitigated by the fact that the family has continued to receive benefits pending this appeal and its disqualification will end during the month of September. It has been the Department's policy to treat payment of benefits made pending appeal during a period of lump sum disqualification as an overpayment and to recover overpaid amounts in small monthly amounts rather than to establish a new period of disqualification. If the petitioner reapplies in September, the trust she has since set up appears to be an excludible trust resource but will be formally evaluated at that time.

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1. The regulations do prohibit voluntary assignment or transfer of assets for the purpose of qualifying for ANFC assistance. However, transfers are allowed for other reasons. See W.A.M. 2261.1. The petitioner's sincere desire to preserve tort compensation paid to her minor daughter for a special purpose is certainly a good faith reason for a transfer.