

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,847

)

Appeal of )

)

INTRODUCTION

The petitioners appeal a decision of the Department of Social Welfare denying their application for ANFC benefits based on their receipt of a lump sum insurance settlement payment.

FINDINGS OF FACT

1. The petitioners are a husband and wife who were ANFC recipients in April of this year. While they were recipients of ANFC, they received a lump sum insurance settlement payment which they did not report to the Department. The Department did learn from the Medicaid division that the petitioners had received a settlement and that part of it had been used to reimburse the Medicaid division. The petitioners were asked to verify the amount of their lump sum and when they failed to do so, they received a notice dated May 16, 1995, that effective June 1, 1995, their \$616 benefit would be closed due to their failure to cooperate in verifying the amount of the income received. They did not appeal that termination.
2. On August 3, 1995, the petitioners, claiming that they had exhausted the proceeds of the lump sum, reapplied for ANFC. They were denied on August 31, 1995, in a written notice which informed them that the Department believed based on information from the Medicaid division that they had received \$16,862.59 as their portion of the lump sum settlement. They were also informed that the receipt of that money disqualified them from receiving benefits until July of 1996, and that they had also been overpaid from April 1, 1995 through May 31, 1995 due to the receipt of the lump sum. The notice further informed the petitioners that the period of ineligibility could be changed if they provided the Department with information showing that any part of the money they received was no longer available for their use for reasons beyond their control. A list of examples of the latter was also set forth in the notice.
3. The petitioners dispute that they received \$16,862.59 and provided a bank statement showing that they deposited only \$13,927.29 into their account on April 10, 1995, and that \$13,582.29 of that amount

was withdrawn on April 14, 1995. They had no further proof of what they had received. The petitioners explained the discrepancy by saying that they went to the Bank with their lawyer on April 10 and deposited the above amount after starting an account. They believe their lawyer cheated them out of the extra \$3,000. However, that assertion by the petitioners is not credible in light of evidence produced by the Department as set forth in paragraph 4.

4. The Department presented a copy of the check made out to the petitioners by their attorney dated April 7, 1995 for the amount of \$16,925.32 which showed an endorsement on the back by both petitioners and a bank stamp showing it was cashed that same day (April 7). The Department further provided a written statement by the petitioners' attorney (obtained with their permission) which states as follows:

Pursuant to your request, the following is a breakdown of the settlement with the [Name] Store in Bennington which was consumated (sic) in April of this year.

Items of expense (includes mileage, Court

entry fee, fee for records and copy of

deposition \$ 342.27

Legal Fees (1/3) 10,000.00

Lien of State of Vermont (Medicade)(sic) 2,732.41

Net to Client \$16,925.32

\$30,000.00

The case was settled for \$30,000.00 (see enclosed release).

My trip to the [Name] Bank was so that the [petitioners] could cash their check as they were not known here. At that time, they mentioned that they would invest some of the settlement and use some of the funds to pay bills.

My check register will confirm this fact although the bookkeeper is out today.

I was not present at the Bank when [petitioners] negotiated the settlement checks. I did not take any money from them at the Bank. What fees I have is setforth herein.

I believe you have copies of the [petitioners'] check and State of Vermont medicade (sic) lien in your file.

5. From the above evidence it is found that the petitioners received a check in the amount of \$16,925.32 in settlement of their claim which they negotiated on April 7, 1995 in the presence of their lawyer. On April 10, 1995, they deposited \$13,927.29 of that amount in a checking account at that same bank.

6. Following their ANFC application, the petitioners requested that expenditures for the following items be disallowed from the total of their lump sum as money no longer available to them for reasons beyond their control:

- a. \$4,215 paid to the petitioners' grandmother for money borrowed and nineteen days' of babysitting performed in 1991 and 1992 while the petitioner, Mr. C., was sick, as evidenced by a statement signed by the recipient. The babysitting costs were not incurred to allow either petitioner to work.
- b. \$3,786 repaid to the petitioners' mother for various sums loaned to pay living expenses, as evidenced by a statement signed by the recipient.
- c. \$359 paid for a freezer which they hoped to use to save food grown in their garden, as evidenced by a receipt from a furniture store dated April 13, 1995.
- d. \$350 repaid to a friend for "money borrowed", as evidenced by a statement signed by the recipient.
- e. \$700 paid for a 1979 automobile purchased on April 20, 1995, as evidenced by a statement from the seller.
- f. \$70 for auto parts for the car, as evidenced by a receipt from an auto parts store.
- g. \$100 paid on an overdue electricity account dated July 20, 1995, which was paid to restore disconnected service. The bills provided by the petitioners showed that the unpaid bill was for electricity used in either May or June of 1995.

7. The Department notified the petitioners on August 3, 1995, that only the \$700 for the automobile and the \$70.05 for the auto repairs would be allowed. The overdue electrical bill was denied because the arrearage accrued after the petitioners had received the lump sum. The others were denied because they did not fit the definitions in the regulations of eligible expenses.

8. At the hearing, the petitioners brought all the evidence described in paragraph six above as well as a copy of the customer billing history for their electrical service. In addition to the July arrearage, that history showed that an arrearage of \$345.03 existed on April 7, 1995, resulting from unpaid service for the months of February and March of 1995, which was paid in full on April 10, 1995.

### ORDER

The Department's decision to deny the petitioners ANFC is affirmed but the amount of the countable lump sum payment is modified to show a figure of \$15,810.24 and their period of ineligibility is to be recalculated using that new figure.

### REASONS

Welfare Assistance Manual (W.A.M.) § 2250.1 includes the following provisions:

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:

1. An event occurs which, had the family been receiving assistance, would have changed the amount paid.

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:

a. death or incapacity of the principal wage earner.

b. loss of shelter due to fire or flood.

c. repairs to owner-occupied homes which are essential to the health and safety of the family.

d. repair or replacement of essential, major household appliances.

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.

f. payments attributable to current monthly housing expenses (as defined in WAM 2245.3) which are in excess of the maximum monthly ANFC housing allowance. Advance payments (i.e. payments for expenses which will be incurred after the period of ineligibility has ended) toward excess monthly housing expenses are not allowed.

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)

Other eligible expenses:

g. overdue telephone bills (basic monthly charge, applicable taxes, plus \$5 per month in toll charges)

h. overdue child care expenses necessary for a member of the assistance group to maintain employment, with the following limitation. If the overdue expenses were incurred when the individual was receiving ANFC, only the unsubsidized amounts attributable to employment-related child care are considered eligible 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.

3. The family incurs and pays for medical expenses which offset the lump sum income.

The petitioners claim that the Department had erroneously concluded that they had received some \$3,000 more than had actually been paid to them. The evidence clearly shows that the Department did use an incorrect figure,<sup>(1)</sup> but the figure used was \$62.73 less than it should have been, not \$3,000 more. From that amount, the Department properly deducted the costs associated with the purchase of the petitioners' motor vehicle under (2)(e) in the regulations above but properly denied the exclusion of the July 1995, electricity arrearage under (2)(g) above because the bill was not overdue as of the date the lump sum income was received (April 7, 1995). The purchase of the freezer, which is not an essential household appliance, and the loans to friends and relatives are not eligible expenses under the regulations.

The petitioners' summary of their electrical expenses, which they introduced to support their July overdue bill claim, did show that they had an overdue bill of \$345.03 from February and March of 1995 on the date they received the lump sum income (April 7), which bill was paid the same day they deposited a portion of their check into their new checking account (April 10). It is reasonable to presume from these facts that the lump sum income they received on the seventh of the month was used to pay that overdue bill three days later. That amount therefore is excludible as well.

When all the excludible amounts are added together (\$770.05 for the car and \$345.03 for the electricity) and deducted from the correct lump sum figure of \$16,925.32, a new countable figure of \$15,810.24 is obtained. That new figure will probably shorten their fifteen month ineligibility period by about one month but they have a right to a new calculation showing the exact disqualification period from the

Department. It is clear from the evidence, however, that the petitioners are currently in a properly calculated period of disqualification which commenced on April 1, 1995, and which was in effect in August of 1995, their month of ANFC application. Their application for benefits, therefore, was correctly denied and the Department's decision must be upheld by the Board, 3 V.S.A. § 3091(d) and Fair Hearing Rule 17.

# # #

1. The Department's figure was initially less than accurate because the petitioners themselves failed to verify the amount for the Department.