

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,879

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare denying her ANFC and Food Stamp applications based on the petitioner's receipt of lump sum income. The issue is whether the petitioner's receipt of lottery winnings disqualifies her from ANFC and Food Stamp eligibility.

FINDINGS OF FACT

1. The petitioner was an ANFC and Food Stamp recipient in February of 1995, when she learned that she had won \$10,000 in the state lottery. She discussed her winnings with some friends who advised her that she would lose her welfare benefits if she had that much money. On the advice of her friends, the petitioner traded the \$10,000 for an automobile valued at about \$2,100, believing that the vehicle would be an exempt resource. She traded away the \$10,000 winnings solely because she believed it would affect her receipt of ANFC benefits.
2. The petitioner reported the \$10,000 lottery earnings to the Department and her disposal of the earnings later in that month. Based on that report, a notice was mailed to the petitioner on March 7, 1995, telling her that her ANFC needs would be removed from the grant effective April 1, 1995 due to the receipt of the lump sum and that she would not be eligible again until July of 1996. She was also told that she would be ineligible for Food Stamps for one year based upon a transfer of income for less than full value. The petitioner did not appeal those determinations.
3. On August 2, 1995, the petitioner reapplied for ANFC for herself and for Food Stamps. She was denied benefits in both programs for the same reason she was denied in March of 1995, namely that she had disqualifying lump sum income which had been transferred for less than fair market value solely to insure her eligibility for public assistance programs. The petitioner appeals this decision.

ORDER

The decision of the Department is affirmed.

## REASONS

The ANFC program has an allowable maximum resource level of \$1,000 per household. W.A.M. 2261. Under ANFC program regulations, "lump sum payments, including windfall payments, shall be counted as income" unless they fall under some kind of exclusion, none of which is applicable here. W.A.M. 2250.1. If the lump sum payment "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." W.A.M. 2250.1.

The petitioner does not argue that the Department's calculations with regard to the disqualification period of the \$10,000 lottery winning is incorrect. She argues rather that it was error to count the \$10,000 as income to her since she traded it for a car, which is an excludible resource. The petitioner may well be correct that her possession of the car would not in and of itself disqualify her from the receipt of ANFC benefits. See W.A.M. 2263.6. However, the petitioner's transfer itself must be scrutinized under both the ANFC and Food Stamp programs to see if it runs afoul of regulations prohibiting the transfer of resources.

The ANFC regulations explicitly prohibit transfer or assignment of property under the following circumstances:

Any individual who, or whose spouse, has voluntarily assigned or transferred property or income for the purpose of qualifying him/her for such assistance or for a larger amount than that to which he would otherwise be entitled is disqualified. Property affected includes any or all real or personal property [specifically defined in W.A.M. 2263 as including liquid assets] subject to consideration as total resources subject to limitation.

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Property transfers which occurred less than two years before the date of application for assistance shall not disqualify the individual if:

1. Apparent or stated reason(s) for transfer, supported by adequate facts, establishes that the transfer was not made solely to qualify for assistance (e.g., needed income, relief from excessive property costs and/or upkeep responsibilities, foreclosure imminent, etc.).
2. Applicant received fair market value and remaining proceeds are within resource limitations.
3. Applicant's equity in property at the time of transfer to a legally liable relative has been exhausted on applicant's/recipients's behalf. As demonstrated by expenditures the relative to equal such equity for any one or more of the following:
  - a. Medical care (physician, hospital, nursing home, medications, health insurance, etc.).
  - b. Funeral expenses of deceased spouse (including cemetery lot, perpetual care, marker and/or monument).

c. Property taxes, mortgage payments, property insurance.

d. Cost of maintaining applicant's home (shelter, including normal repairs but not extensive improvements, and cost of basic requirements of food, clothing, incidentals, fuel, utilities, etc., according to department standards).

e. Cost of maintaining applicant in the relative's home (shared household expense, room and board or custodial care, according to department standard).

If the applicant cannot establish eligibility by facts supporting use of his/her equity, he/she may qualify by having the property reconveyed to him/her for consideration as an available resource.

W.A.M. 2261.1

The petitioner in this matter transferred a countable resource, her lottery winnings, for far less than fair market value for the sole purpose of qualifying for ANFC assistance. She has made no allegations that the transfer was for any other reason. Therefore, the Department's decision to continue to disqualify her when she reapplied five months later was correct. The Department has chosen to treat the petitioner's situation as if she had retained the lottery winnings, which treatment disqualifies her through July of 1996. This treatment is favorable to the petitioner as the Department could have treated the lottery trade as an outright transfer with an accompanying two year disqualification until March of 1997.

The petitioner has the same problem in the Food Stamp program. The maximum allowable resources in the Food Stamp program is \$2,000 per household. F.S.M. 273.8(b). All income must be counted in the Food Stamp program unless specifically excluded, as lottery winnings are not. The regulations specifically prohibit the transfer of resources as follows:

#### Transfer of Resources

1. At the time of application, households shall be asked to provide information regarding any resources which any household member . . . had transferred within the three-month period immediately preceding the date of application. Households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamp benefits shall be disqualified from participation in the program for up to one year from the date of the discovery of the transfer. This disqualification period shall be applied if the resources are transferred knowingly in the three-month period prior to application or if they are transferred knowingly after the household is determined eligible for benefits. An example of the latter would be assets which the household acquires after being certified and which are then transferred to prevent the household from exceeding the maximum resource limit.

2. Eligibility for the program will not be affected by the following transfers:

i. Resources which would not otherwise affect eligibility, for example, resources consisting of excluded personal property such as furniture or of money that, when added to other nonexempt household resources, totaled less at the time of the transfer than the allowable resource limits;

ii Resources which are sold or traded at, or near, fair market value;

iii Resources which are transferred between members of the same household (including ineligible aliens or disqualified persons whose resources are being considered available to the household); and

iv Resources which are transferred for reasons other than qualifying or attempting to qualify for food stamp benefits, for example, a parent placing funds into an educational trust fund described in paragraph (e)(9) of this section.

3. In the event the State agency establishes that an applicant household knowingly transferred resources for the purpose of qualifying or attempting to qualify for food stamp benefits, the household shall be sent a notice of denial explaining the reason for and length of the disqualification. The period of disqualification shall begin in the month of application. If the household is participating at the time of the discovery of the transfer, a notice of adverse action explaining the reason for and length of the disqualification shall be sent. The period of disqualification shall be made effective with the first allotment to be issued after the notice of adverse action period has expired, unless the household has requested a fair hearing and continued benefits.

4. The length of the disqualification period shall be based on the amount by which nonexempt transferred resources, when added to other countable resources, exceeds the allowable resource limits. For example, if a one-person household with \$1,750 in a bank transferred ownership of a car worth \$5,000, \$250 of that transfer would be considered because the first \$4,500 of the car's value was exempt and an additional \$250 of the transferred asset would have been applied toward the \$2,000 resource limit. . .

[If] the amount in excess of the resources limit [is] \$5,000 or more, [the] period of disqualification [is] 12 mo.

F.S.M. 273.8(i)

The petitioner traded her lottery winnings for something worth \$7,900 less for the purpose of retaining her eligibility for Food Stamp benefits. As the entire amount of her lottery winnings was countable, it must be found that she transferred at least \$5,900 in excess of the \$2,000 resource limit. As such, she must be disqualified for the full 12 months under the above regulation. She neither cites nor alleges any exception which would remove this disqualification. She will not have the transfer disqualification removed until April of 1996.

The petitioner must realize by now that she would have been better advised to have sought the counsel of her worker or a legal aid lawyer about the effect of her \$10,000 lottery winning on her eligibility. If she had retained the \$10,000 she could have paid and deducted a variety of necessary expenses to reduce the lump sum disqualification period for ANFC. She could have resumed eligibility for Food Stamps as soon as her resource level fell below \$2,000. There may have been other steps she could have taken as well which would not have resulted in the kind of long-term disqualification she now faces. Unfortunately for the petitioner, her reliance upon the advice of her friends has put her in a position from which she now has no retreat. The decisions of the Department are mandated by its regulations and must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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