

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,885

)

Appeal of )

)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare terminating his ANFC benefits. The issue is whether the petitioner can be exempted from the provision in the regulations requiring recipients to agree to reimburse the Department for any ANFC paid pending the sale of non-exempt real property owned by a recipient.

FINDINGS OF FACT

The facts are not in dispute. The petitioner moved to Vermont from Hawaii in February, 1995. When he applied for ANFC the petitioner informed the Department that he owned a house in Hawaii that was worth in excess of \$200,000. The petitioner informed the Department that he had placed the house on the market and was making a good faith effort to sell it. Under the regulations (see *infra*) individuals who own non-exempt real property are allowed ANFC for at least six months if they are making a good faith effort to sell it. After that time, the property is considered a resource to the individual in determining continuing eligibility for ANFC.

At the time of his application the petitioner's caseworker was apparently unaware of or overlooked a provision in the regulations that had been enacted only a few months previously (see *infra*) that additionally requires individuals who own real property to agree to reimburse the Department from any proceeds of the sale of the property all ANFC paid to them during the time that the property is on the market. In August, 1995, the Department discovered its error and informed the petitioner that it would allow the petitioner another six months to sell the property provided that the petitioner could verify that it was still on the market and would agree to reimburse the Department for any ANFC paid after August [\(1\)](#) if the property was sold.

The petitioner suffers from an asthma condition. He alleges that he left Hawaii because of environmental irritants to his condition. He maintains that because of this he should be granted a "medical waiver" from the requirement that he agree to reimburse the Department ANFC paid to him if the house is sold.

ORDER

The Department's decision is affirmed.

### REASONS

Welfare Assistance Manual (WAM) § 2262, amended effective November 1, 1994, includes the following provisions:

The value of the applicant's or recipient's equity in real property which is owned, but is not being occupied as a home by the applicant or recipient or spouse or minor child(ren), may be excluded from the total combined resources for a period of up to 6 months provided the family is making a good faith effort to sell the property. Assistance paid during this period shall be considered an overpayment, since ANFC would not have been granted had the owner had the proceeds of the sale in hand. The recipient must agree that the proceeds of the sale shall be used to repay the ANFC paid. The balance shall be counted as a resource.

The petitioner does not cite, and the hearing officer is unaware of, any provision in the law that provides an exemption from the above provisions under any conditions, including medical considerations, or any other circumstances or status of the recipient. The above regulation is clear that an agreement by the recipient to repay ANFC from the proceeds of the sale of real property is a condition of receiving ANFC pending the property's sale. His medical status notwithstanding, unless and until the petitioner agrees to this reimbursement he is ineligible for ANFC.

Inasmuch as the Department's decision in this matter is in accord with the above regulation the Board is bound by law to affirm it. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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1. The Department has indicated that because of its "error" it will not require reimbursement from the petitioner for any of the ANFC paid to him through August, 1995.