

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,887

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Appeal of )

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INTRODUCTION

The petitioner appeals the decisions by the Department of Social Welfare to recoup ANFC benefits overpaid to the petitioner in September and October, 1994. The issue is whether the Department's decision is in accord with the pertinent regulations.

FINDINGS OF FACT

The facts are not in dispute. In late September, 1994, the petitioner received a lump sum payment of retroactive Social Security benefits totaling \$4,461.00. The Department, applying the regulations regarding lump sum income (see infra), determined that the petitioner was ineligible to receive ANFC benefits for the months of September through December, 1994. Because the petitioner had already received ANFC for September and part of October totaling \$773.00, the Department determined that the petitioner had to repay this amount if and when she again became eligible for ANFC.

The petitioner reapplied for ANFC in January, 1995. The Department mistakenly found her eligible for benefits that month and mailed the petitioner ANFC checks on the first and fifteenth of that month totalling \$419.00. It turns out, however, that the petitioner was ineligible for ANFC in January because the amount remaining from her lump sum after applying it to the Department's standard of need for the months of September through December, 1994, exceeded the amount of ANFC she was eligible to be paid in January.<sup>(1)</sup> When the Department discovered its error and notified the petitioner, the petitioner returned the ANFC check she had just received on the 15th of the month. A few days later, the petitioner sent the Department a personal check in the amount of the ANFC payment she had received on the first.

As of February, 1995, the Department began recouping the September-October overpayment of \$773 by reducing the petitioner's ongoing ANFC by 10% a month. Sometime soon thereafter, the petitioner discovered that the check she had written to the Department to repay the January 1 overpayment had not been cashed. The petitioner needed the money then, and asked the Department if it would return the check to her. The petitioner eventually spoke to a person in the Department's state office who told her

that the Department would not return the check. The petitioner then requested a fair hearing. For some reason, this request was not forwarded to the Board until September, 1995.

By this time, the Department had cashed the petitioner's check for the January 1, 1995, overpayment and, as of the date of the hearing, had recovered from the petitioner's ongoing ANFC payments \$257 out of the total overpayment for September and October, 1994, of \$733.

Prior to the hearing the Department agreed to review retroactively its decision regarding the lump sum disqualification period. The Department reviewed all the petitioner's expenses for the months September, 1994, through January, 1995. The petitioner's records showed, however, that she paid no past due bills during this period and had no unforeseen emergency expenses. Therefore, the petitioner was unable to establish any grounds under the regulations (see infra) to have the length of her disqualification period reduced.

Once all the above was sorted out and explained to the petitioner at the hearing (held on November 1, 1995), she did not disagree with the Department's calculations or findings. Fortunately, because she pays her bills in a timely manner and is good at budgeting her limited income, she was able to meet her basic needs during the time of her disqualification from ANFC. However, because of the mistakes made in its handling of the petitioner's appeal, the Department agreed to reduce the rate of its recoupment of the remaining overpayment (\$476.00) to 5% of the petitioner's ongoing monthly ANFC grant.

#### ORDER

The Department's decision is affirmed.

#### 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.
  - ...

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.

As noted above, the Department's calculation of the petitioner's disqualification period is in accord with the undisputed facts and the above provisions. Therefore, the Department's decision in this regard must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

The petitioner also appeals whether the Department should have returned her uncashed check for the January 1, 1995, overpayment when the petitioner asked them to do so. The regulations regarding

overpayments (W.A.M. § 2234.2) are silent as to voluntary repayments by overpaid recipients. However, nothing in the regulations suggests that once a voluntary repayment is made the Department is obligated to return it if the recipient changes her mind.<sup>(2)</sup> Therefore, it cannot be concluded that the Department's failure to return the petitioner's uncashed check is contrary to applicable law.

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1. The petitioner's standard of need was \$966.00. The lump sum disqualification period was determined by dividing the standard of need into the amount of the lump sum ( $\$4461 \div \$966 = 4$  months). The remainder (\$597) was supposed to have been applied to the first month of ANFC eligibility following the disqualification period, and subtracted from the amount of ANFC to be paid that month. In the petitioner's case, the remainder exceeded the \$419 in ANFC she was eligible to receive in January. Thus, the petitioner should have been found ineligible for any ANFC payment in January.
2. If, had she thought of it, the petitioner had stopped payment on the check, there is no penalty in the regulations for doing so--other than the addition of the amount of the check to the amount that would have to be eventually recouped from her ongoing benefits.