

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 14,378

)

Appeal of )

)

INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare terminating her ANFC due to the possession of resources, specifically an automobile, over the allowable standard.

FINDINGS OF FACT

1. The petitioner is the single mother of two children for whom she received an ANFC grant of \$540 per month as a Group 1 recipient. On March 29, 1996, the petitioner received a notice from the Department that her ANFC benefits would be terminated because her resources were more than \$1,089 above the \$1,000 limit for ANFC recipients. The termination occurred April 16, 1996, because the petitioner did not request continuing benefits.

2. The resources ascribed to the petitioner are a 1991 Chevrolet Cavalier which was assigned a blue book value of \$3,575 and a bank account with \$14 in it. The petitioner does not dispute the value of these resources. The Department took the value of the automobile and deducted a \$1,500 motor vehicle allowance figure from it and added the balance of \$2,075 to the \$14 for a countable resource amount of \$2,089. That figure was compared with the \$1,000 resource maximum to conclude that she was over income. 3. The petitioner does not dispute the above calculations but rather says that the Department's failure to provide her with information caused her to purchase the car which made her ineligible. She claims both that the Department advised her to sue after a car accident and failed to tell her that the money she received could not be used to purchase a car worth \$3,575. 4. The evidence shows that the petitioner was in two automobile accidents in November of 1994, a time when she was an ANFC recipient. After discussing the matter with her worker, she did obtain an attorney but there is no evidence from which it can be fairly concluded that the worker gave her any advice about the course of action she should take. There is no evidence either that the worker explained the lump sum rule or automobile evaluation rules to the petitioner at that time, nor is there any evidence that the Department knew or should have known that the petitioner was about to receive any kind of a lump sum settlement at any time before it was actually reported. There is ample evidence that the petitioner was advised that she was to report the receipt of all income to the Department within ten days of its receipt and that the receipt of any money could affect her ANFC, a fact which the petitioner readily acknowledges. Throughout this time, the petitioner was represented by an attorney who neither asked her and whom she

did not inform that she was an ANFC recipient. Sometime in February or March of 1996, the petitioner was informed that she would receive a net of \$4,050 from her two insurance claims and received a check for that amount about a week later. She did not report the receipt of the check right away. She borrowed \$950 from her mother and two days later bought the Chevrolet for \$5,000. About a week later at a review meeting regarding her benefits, the petitioner reported the receipt of the lump sum and the purchase of the car for the first time. She was advised on the spot that the car would probably make her ineligible and she replied that it was "O.K. and that she would find a job."

### ORDER

The decision of the Department is affirmed.

### REASONS

The Department's regulations limit eligibility to households whose combined resources do not exceed \$1,000.00. W.A.M. § 2260. For individuals in Group 1, the "equity value of up to \$1,500 for one vehicle used as a primary means of transportation per assistance group is excluded as a resource." W.A.M. § 2263.6. The petitioner was correctly determined to be ineligible based on these regulations. She does not dispute their applicability or the calculations of the Department.

The petitioner argues that the Department should be faulted for not explaining the ANFC rules to her about the purchase of a motor vehicle from her lump sum and should be estopped from denying her benefits. The Department does have a legal duty to inform recipients who it knows are about to receive a lump sum or purchase an automobile what the regulations require in this regard. See Fair Hearing No. 13,119. However, the facts of this matter do not support the petitioner's view that the Department knew about her possible settlement or about the purchase of the automobile before the petitioner had already taken irretrievable actions which affected her benefits. Given the petitioner's clear understanding that the receipt of any money was to be reported and could affect her benefits, it is difficult to fault the Department in this matter. It cannot be found that the Department knew or should have known about her receipt of the lump sum or her plan to buy the vehicle before the month in which it was received and the car was purchased. Thus, even if it could be determined that the petitioner, despite being represented by an attorney, was as a matter of law "ignorant of the true facts", no estoppel can lie against the Department because it did not "know the facts" in time to affect any alternative action by the petitioner that could have lessened the impact on his ANFC benefits. See Stevens v. D.S.W., Vt. Supreme Ct. Dkt. No. 91-227 (Dec. 11, 1992).

It certainly appears that the petitioner was the victim of a lack of diligent legal representation at that time regarding the impact of her settlement on her ANFC grant. However, absent evidence that the Department knew or should have known sufficiently in advance that the petitioner was about to receive a lump sum settlement, there are no grounds to estop the Department from applying the lump sum regulations, supra, to the petitioner's circumstances. See Fair Hearing No. 12,081. For all the above reasons, the Department's decision in this matter is affirmed.

###