STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,450

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare that she is disqualified from receiving ANFC for a period of time due to the receipt of lump sum benefits and the Department's refusal to reduce the amount of her lump sum based on payments she made from the lump sum for business expenses.

FINDINGS OF FACT

The petitioner and her child are ANFC recipients. In May, 1996, the petitioner received a $3,080 lump sum payment on a lawsuit she had filed against a previous employer. The petitioner did not discuss her receipt of this money with the Department because at that time she was starting up a business, and she immediately used the money to pay off a debt she had incurred as part of that business. It is uncontroverted that the petitioner did not spend any part of the lump sum for anything other than expenses she had incurred in her business. The Department does not allege that the petitioner knowingly deceived or misled the Department regarding her receipt of the lump sum.

When the Department learned of the lump sum it mailed the petitioner a notice of decision informing her that her grant would close as of July 15, 1996, and that she would not be eligible again for ANFC until August, 1996, at which time $405 would be counted toward her eligibility. She was also notified that she had been overpaid $1,140 for the months of May, June, and part of July, 1996.[(1)]

The above was calculated by using a $915 total budget ($565 basic needs for two people and a $350 shelter allowance) for her needs each month and dividing it into the countable lump sum of $3,080 for a three-plus month disqualification from May through part of August, 1996.

The issue in this case is whether the petitioner's use of the lump sum to pay a debt incurred in the course of her self employment should be considered "unavailable to the family for circumstances beyond its control" (see infra). At the time she received the lump sum the petitioner was struggling to establish a greeting card business. She is a talented artist, and she had been working closely with a small business consultant, to which she had been referred by Reach Up, to try to manufacture and market her cards.

About a month prior to receiving the lump sum, and in anticipation of it, the petitioner, with the knowledge and apparent advice of her advisors, established a business checking account by writing a check on her credit card account of $2,950.[(2)] She used this money and other credit over the course of the next few weeks to purchase inventory that she took with her to trade shows.

When the petitioner received the lump sum, she felt her business was at a critical juncture. Her business plan called for her to increase her inventory in anticipation of orders she hoped to receive through other upcoming trade shows. She, therefore, used virtually the entire lump sum to "clear" her credit card debt so that she could keep open a line of credit to order more inventory.

Despite the petitioner's plan, she found over the course of the next few months that she was unprepared to compete business-wise in the greeting card market. By the time this case was set for hearing (on October 8, 1996)[(3)] the petitioner had, at least temporarily, abandoned her attempts to establish her business.

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.

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 issue in this case is whether the petitioner's use of the lump sum to pay an outstanding debt incurred during the course of attempting to further her fledgling business should be considered "substantially similar" to an overdue child care or car expense "necessary" or "essential" to "maintain employment" within the meaning of the above regulation. Although the petitioner struck the hearing officer as credible and sincere in her testimony regarding the state of the business in May, 1996, it is concluded that it is beyond the meaning and intent of the above regulation to allow ANFC recipients to use lump sum income to further a self employment enterprise.

The main difference between the petitioner's circumstances and those of a salaried person maintaining a car or purchasing child care is that money invested in a self employment enterprise, especially a fledgling business like the petitioner's, is by nature speculative. Although the petitioner's testimony is credible that at that time it <u>appeared</u> to be necessary for her to have access to credit to purchase inventory, and that maintaining a sufficient line of credit by paying down her outstanding credit card balance was an advisable and reasonable business decision, it cannot be concluded that the lump sum regulations contemplate such expenditures, which, though defensible from a business standpoint, are still discretionary.

To hold otherwise, though arguable from a policy standpoint, would constitute an expansion of the implicit policy that underpins the above regulation--that expenditures from lump sums be for clear and demonstrable necessities. It cannot be concluded that paying off a non-overdue business debt is "essential to employment" in the same sense as maintaining a car or obtaining child care. For this reason, the Department's decision must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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1. The petitioner continued to receive ANFC throughout the period in question due to her timely appeal of the Department's decision. The issue now is whether those payments should be considered an overpayment to the petitioner.

2. The petitioner does not allege that she spoke directly with Reach Up about any of her specific business decisions made during this period, but she feels she had Reach Up's "tacit approval" to follow the advice of the business advisors to whom Reach Up had referred her.

3. The hearing officer's consideration of this matter was delayed several months to allow the Department to file a written response to arguments submitted by the petitioner at the hearing.