

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,868

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare reducing his ANFC benefits based upon his receipt of unemployment compensation.

FINDINGS OF FACT

1. The petitioner has received ANFC under the unemployed parent category since February 1, 1997 and is assigned to Group 2. There are four persons in his household dependent upon this income, including two minor daughters.
2. On February 13, 1997, the petitioner reported to the Department that he had started to receive unemployment compensation in the amount of \$112 per week. Based on that information, the Department deducted \$481.60 ($\112×4.3 weeks per month) from his monthly ANFC payment of \$663.93. He was notified by letter dated February 14 1997, that his ANFC would be reduced to \$182 effective March 1, 1997.
3. The petitioner does not dispute the accuracy of the Department's information or its mathematical calculations. Before reporting the receipt of his unemployment compensation, he believed, based on information he received from the Department, that those benefits would be treated like income he earned from wages and would thus be subject to only a partial deduction from his benefits rather than a dollar for dollar deduction.
4. The information he received from the Department was an information sheet entitled "What It Means to Be in Group 2." That sheet informed recipients, in pertinent part, as follows:

The Group 2 Rules Encourage Work

Your earnings are only partially counted against your ANFC benefits, so working can provide your family with a higher monthly income than the ANFC grant alone. For example:

Gross monthly earnings

(40 hrs./wk.)@ \$5.00/hr.) \$860.00

Earnings disregarded

(\$150 plus 1/4 of remainder) -327.50

Net earnings countable against

ANFC grant \$532.50

Basic ANFC grant for a family of

three \$599.00

Net earnings countable against

ANFC grant -532.50

New grant amount \$ 66.00

Estimated net earnings

(after taxes, transportation) \$751.21

New grant amount + 66.00

Total of net earnings plus new grant

amount \$817.21

The value of one vehicle that you own is disregarded, because we realize that having reliable transportation is very important in finding and keeping a job.

You can save money from your earnings.

If you are the main breadwinner in a two-parent family, you can work as many hours as you want without losing eligibility, as long as your income is under the limit.

If you find a job that gets you off ANFC, you may be eligible for an extra three years of Medicaid benefits and for assistance with child care for as long as you need it if you continue to meet all other eligibility requirements.

5. The petitioner was aware that income received was to be reported to the Department and could impact his grant. He never inquired as to whether the above notice included unemployment compensation benefits nor did he have any conversation with his worker about this topic prior to receiving the notice that his ANFC would be reduced. He told her when he received the notice that he would have never applied for unemployment compensation benefits if he had known that they would reduce his ANFC

benefits dollar for dollar.

6. The petitioner claims that the Department gave him erroneous information and that because of that he thought he would have more money each month than he actually did. Because he did not get as much money as anticipated, he had to call creditors and make different arrangements about his debts. He believes the Department should be required to tell recipients in writing that unemployment compensation is counted fully against their grants.

ORDER

The decision of the Department is affirmed.

REASONS

Under the regulations adopted by the Department of Social Welfare "[a]ll income except that specifically excluded shall be evaluated to establish net income available to meet need." W.A.M. 2250. The regulations further specifically describe "unemployment compensation" as "unearned income" (W.A.M. 2252A) which is treated as follows:

The full amount of available unearned income shall be applied to the payment standard, except for disregards specified under certain Federal programs, see Exempt Income.

W.A.M. 2252

Unemployment compensation is not contained in the list of excluded income found at W.A.M. 2255.1. Under the regulations, only income which is "earned" is subject to disregards which result in only partial counting of the income to the family from that source. W.A.M. 2254. Income can only be classified as "earned" if it comes from "wages, salary (cash or in kind), commissions or profit from activities in which the individual is engaged as an employee or a self-employed person, including but not limited to active management of capital investments (e.g., rental property)." W.A.M. 2253.

Under the regulations, the unemployment compensation received by the petitioner was correctly designated as "unearned income" subject to a hundred per cent deduction from the ANFC payment standard. The only remaining question for purposes of this appeal is whether the petitioner can prevent, or equitably estop, the Department from enforcing its rules on treatment of income based on his claim that the Department misled him about the treatment of unemployment compensation prior to his application for those benefits. The Board clearly has the power to make such a ruling, see Stevens v. Department of Social Welfare 159 Vt. 408, 620 A.2d 737 (1992), but in order to do so, the petitioner must show that the elements necessary for estoppel are met.

The four essential elements of equitable estoppel are: (1) the party to be estopped must know the facts; (2) the party to be estopped must intend that its conduct shall be acted upon or the acts must be such that the party asserting the estoppel has a right to believe it is so intended; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must detrimentally rely on the

conduct of the party to be estopped.

Burlington Fire Fighter's Ass'n v. City of Burlington, 149 Vt. 293, 299 (1988); and Stevens, *supra*.

There can be no dispute that the Department knew how unemployment compensation was treated and knew that the petitioner could receive such benefits. Certainly the Department expects that persons who receive written information about their benefits rely on that information. And it does appear that the petitioner was ignorant as to the true facts. However, the evidence shows that the petitioner was told in the Group 2 informational sheet only that his "earnings" would be partially counted. While the word "earnings" is not defined in the handout, the context and further use of words like "working" and "finding and keeping a job", in addition to the general rubric in the section "The Group 2 Rules Encourage Work" clearly indicate that it is money from working that is given favorable treatment as an incentive to work.

It cannot be concluded that the petitioner was given any misinformation about treatment of his unemployment compensation benefits by the Department. At best, it can be said that the petitioner reached an erroneous conclusion from reading the informational sheet which was no fault of the Department's and which he made no attempt to confirm or clarify with his worker.

Even if the Department could be found to have some obligation to notify him specifically in writing at the time of application as to how unemployment compensation would be treated, as the petitioner urges, he can show no detriment from such a failure. Under the regulations, the petitioner's eligibility depends upon his cooperation in applying for unemployment benefits if he is potentially eligible. (W.A.M. 2270) Given that regulation, the petitioner was required to seek unemployment benefits to remain eligible and could not have chosen not to do so. His other claimed detriment, rearranging payments to his creditors, can only be classified as a de minimis inconvenience and not of sufficient import to prohibit the enforcement of an income rule. Inasmuch as the Department's decision in the petitioner's case is fully in accord with the pertinent regulations, it must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19. The Board would note, however, an explanation on the worksheet that unemployment benefits are not treated like income which is earned would prevent such a misunderstanding in the future.

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