

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 17,457
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) denying his family eligibility for Reach Up benefits based on the family's receipt of a lump sum of income.

FINDINGS OF FACT

1. The petitioner and his wife have three minor children. The petitioner is disabled and receives SSI benefits. Until October 1, 2000, the family received ANFC, Food Stamp, and Medicaid benefits through the PATH office. In November of 2001, the family asked to be reinstated for these benefits. They were reinstated for Food Stamps and Medicaid but were notified by a letter dated November 29, 2001 that their reapplication for Reach Up benefits had been denied because they were under a period of disqualification due to receipt of a lump sum. The Department attached the original letter of period disqualification sent to the petitioners on

September 14, 2000. The family has been receiving General Assistance benefits since their Reach Up denial.

2. The evidence shows that the petitioner was sent a spate of letters in September of 2000 prompted not only by a routine periodic review of the family's benefits but also because the Department had received an anonymous call stating that the petitioner had received a large lump sum insurance settlement payment. The petitioners were first notified by mail on September 1, 2000 that the anonymous call had come in and were asked to verify the amounts and payees of the settlement. PATH asked for the same information in a letter dated September 12, 2000.

3. The worker handling the petitioner's case spoke with him on or shortly before September 12, 2000. She testified that the petitioner said his children had gotten a settlement but he was angry at being questioned about it and refused to give her specifics saying the money was "none of her business". He told her she could call the Court if she wanted to find out what happened because it was a public record. The petitioner agrees there was a phone call but denies that he was angry or made this statement. Subsequent notices and events make the worker's version of the conversation more credible and her testimony is adopted as fact.

4. Although she felt it was the petitioner's obligation to get the information, the worker did as the petitioner suggested and called the probate court. She was informed that the petitioner's three children had each received an award of \$10,429.63 as the result of an insurance settlement for injuries from dog attacks which occurred in 1996. The clerk was unsure whether the petitioner or his wife had received any compensation themselves, as the probate court was handling only the children's settlements.

5. In a letter dated September 12, 2000, the worker informed the petitioner that she had received this information from the court and that she would have to handle it as a "lump sum" payment and that "more information would be mailed" to him soon. He was asked to verify whether any other money was received and urged to call the worker immediately with questions. The petitioner provided no verification of total amounts received by his family either then or at any time since. Neither has the petitioner verified when any amounts were received except to say it was the summer of 2000.

6. Several other notices were sent to the petitioner at the same rural route address during the month of September 2000. One dated September 13 notified the petitioner that his ANFC and Food Stamps would close for the next month because of

the \$31,288.89 in income. One dated September 14 closed his Medical Assistance for the following month. One dated September 15, 2000 purported to increase the family's ANFC and Food Stamp benefits during the next month.¹ The petitioner originally denied that any of these notices were received by him. Subsequent to the hearing, however, the petitioner provided his own copies of the September 1, 2000 letter, both September 12, 2000 letters, the September 13 letter, the September 14 letter, the September 15 letter and the September 18 letter described below. He now says that he received all of these letters. The addresses show that they were all sent to the same rural route address.

7. A second notice sent on September 14, 2000 was somewhat different in appearance from the other notices but was also mailed from the worker to the same rural route address as all the others. This was the follow-up letter regarding the "lump sum" payment promised in the September 12, 2000 letter and, unlike the others, was a form containing blanks to be filled in. The filled in blanks informed the family that their ANFC would be cut off on October 1, 2000

¹ This notice was the only one which did not contain the worker's name. PATH says that this notice came from the central office (which appears not to have been aware that a lump sum disqualification was in process) as the result of a yearly increase in benefits.

because of the receipt of \$31,288.89. The petitioner was notified that the family was overpaid benefits in September of 2000 and would not be eligible for an ANFC grant again until September or October of 2002. The petitioner was informed that he could shorten that period if certain enumerated events occurred or by presenting evidence that he had spent the money for certain expenses. The petitioner denies ever receiving that notice.

8. The worker says that the September 14, 2000 notice was prepared by her on that date, signed by her, and was mailed at her direction to the petitioner's same rural route address. She distinctly remembers this mailing because it was the only lump sum notice she had ever prepared to date and she had to get assistance from her supervisor in preparing the calculations. Neither this nor any other letter mailed by her to the petitioner in September of 2000 was ever returned to her as undelivered. PATH's procedure would have routed all undelivered mail addressed to her clients back to her. Based on her testimony, it is found that this letter was mailed out to the petitioner at the same address as all the others and was not returned by the post office.

9. On September 18, 2000, the petitioner called the worker and said he wanted to close out all his benefits

received from the state. At that time, he was filing lawsuits against the Congress of the United States for "inciting the war on poverty" and against various state agencies (not PATH) for discriminating against him based on this ethnic origin. He wanted nothing more to do with the state agencies. The worker advised him that the only benefit he was still receiving was medical benefits. She urged the petitioner not to drop the Dr. Dynasaur health benefits for his children. She tried to talk to him about the lump sum disqualification period but he was too angry to listen and was not interested in anything except getting off all public benefits. He did not say he was confused, ask any questions about the future or indicate that he wanted to appeal any decisions. The worker asked him to confirm in writing that he wanted to close his benefits. The worker sent a letter to him confirming their conversation and its contents on September 18, 2000.

10. The petitioner disagrees that he was angry but said he did not see any reason to talk any further about his eligibility because he had money now and "assumed" that he could close the benefits, spend the money on the children and, when it was gone, apply for benefits again.

11. All of the petitioner's benefits were closed. PATH got no further applications from the petitioner until he

reapplied for benefits on November 13, 2001. On November 19, 2001, the same worker interviewed the petitioner and told him that she thought he was still under a period of disqualification for the lump sum receipt but that she would have to retrieve the disqualification notice from the archives to confirm this. At that time the worker said the petitioner became angry and said the children's money was "none of her business".

12. After the worker obtained the September 14, 2000 lump sum closure letter she mailed a copy to the petitioner and called him. She told him that the letter would tell him of a number of ways he could have the period of disqualification shortened and urged him to bring in receipts showing how the money was expended. The petitioner replied that he had spent the money for the children's education by taking them overseas and had no intention of bringing in any receipts. He said he had been behind on some bills and spent some of the money on them but that she would have to take his word for it.

13. At hearing the petitioner alleged that the September 14, 2000 lump sum closure letter was a forgery and that it had actually been prepared in November of 2002. He offered no evidence to substantiate this allegation.

14. The petitioner also alleged that he had not received the September 14 lump sum notice because his address is confusing, he often misses mail and, although he had not physically moved, he had, in fact, reported a new address to the Department, which included a street address rather than a rural route address. The worker agreed that the latter was true about the report of the new 911 street address. However, she had not had any trouble getting mail delivered to rural route boxes after 911 street addresses were added. After the hearing, the petitioner put into evidence information showing that several different governmental and municipal agencies (not PATH) had used different addresses to him and that his road was not on a town map. However, this evidence does not prove that PATH was having trouble getting mail to him. On the contrary, all the notices provided by the petitioner, as set forth above, showed that he was, in fact, getting his notices from the Department at the rural route address.

15. The petitioner alleged further that he had, in fact, notified the worker that he was going to receive benefits before he did receive them and that she should have known that his children were likely to get a settlement because Medicaid was paying their hospital bills. The worker does recall that some years ago she read in the paper that the children had

been attacked by dogs and that during reviews she often asked the petitioner how his children were doing. However, she alleges that the petitioner never told her that the children were involved in a lawsuit and that she had no way of knowing what bills Medicaid is paying. She testified that such a statement from a client is a significant event which she would have noted in the file. No such note exists. She alleged that she has been trained to advise persons who report that they may receive an insurance settlement to close their grants before they receive the settlement and to put funds which are received as damages for children into separate trust accounts. She says she had no opportunity to discuss this with the petitioner because he never told her about the money before it was received. Because the petitioner has been secretive about the children's money both at the time it was anonymously reported and at the time he reapplied for benefits, the worker's version of the events is found to be more credible than the petitioner's and is accepted as fact. It is therefore, found, that the petitioner never reported that he would receive a lump sum to PATH before he received it or indeed at any other time.

16. The petitioner alleged at the hearing that his children were represented by an attorney during the

settlement. This attorney knew the children were on ANFC and, in fact, set up a trust for the children. The petitioner was given leave to present a trust instrument confirming this allegation but failed to do so. The money transferred to the children was paid over to the children's mother who used the vast bulk of it to travel to Syria and to live with the petitioner's family for seven months. The purpose of the visit was to give the children a respite from the trauma of dealing with their injuries and a hostile neighborhood environment. The money was used to pay for transportation, food, lodging and medical care for the petitioner's wife and the three children. While the petitioner asserted that the money was used for the children's benefit, neither he nor his wife could point to any restrictions on the use of the money. It cannot be found, therefore that the money was in a trust.

17. At the hearing officer's request, the Department sent a letter to the petitioner dated April 8, 2002, explaining in detail how the disqualification period was calculated. The Department divided the \$31,288.89 lump sum by a family need standard of \$1,213.00 per month. The result was a 25 month disqualification from September 1, 2000 until September 30, 2002. The family could be eligible again on October 1, 2002 at which time the remaining \$963.00 of the

lump sum would be counted as income when calculating the amount of the grant.

ORDER

The decision of PATH that the petitioner's family is currently under a lump sum disqualification for Reach Up benefits is affirmed.

REASONS

Unlike almost all other financial transactions, the receipt of a lump sum of money has an impact on the recipient's Reach Up eligibility that can stretch far into the future. The Department's regulations treat such income as follows:

Lump Sum Income

The applicant or recipient of ANFC is responsible for notifying the Department promptly upon receipt of any lump sum payment of earned or unearned income.

Lump sum payments, including windfall payments, shall be counted as income unless excluded under an exception cited below . . . Lump sum payments, including windfall payments, which have been set aside in a trust fund and which are excluded in accordance with ANFC policy relating to "Trust Funds" shall not be counted as income.

Additional exceptions to the above regulation are:

. . .

2) Insurance payments or similar third party payments if received for payment of medical bills or funeral costs and used for those purposes, must be excluded. Also excluded would be a homeowner's insurance payment (e.g. for a house which burned down) if it is used to rebuild or repair the house or purchase a new one.

. . .

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.

W.A.M. 2250.1

The petitioner never reported the receipt of the insurance settlement payment to his children to PATH. It was reported for him by an anonymous caller. He never gave the Department any information verifying the amounts received or what they were used for. There is no evidence from which it could be concluded that the insurance settlements for the children should be excluded income either because they were spent for medical expenses or because they were placed in a trust. The petitioner has been loath to provide any receipts of any expenditures. Evidence exists from the petitioner's own admission that the vast majority of this money was freely spent for overseas travel and living expenses for his wife and children. It must be concluded then that the entire amount of

the settlements received by these three children are a countable lump sum payment.

The regulation requires that a period of disqualification for a lump sum payment is calculated by dividing the amount of the lump sum payment by the applicable family size standard of need. W.A.M. § 2250.1. The petitioner's Reach Up family group consisted of four members because as an SSI recipient, neither he nor his income is included in the assistance group. W.A.M. 2242. The applicable standard of need is calculated for these four persons based on a basic need figure of \$970 per month plus \$243.84 for excess shelter expenses.² W.A.M. § 2245.2. The amount of the lump sum, \$31,288.89, is divided by that figure, \$1,213 (the cents are dropped off), to obtain a disqualification period of 25.79 months. That figure would disqualify the petitioner from September 1, 2000 through September 30, 2002. The remainder of \$963 will be applied in October of 2002 if the petitioner should reapply in that month. The Department has complied with the above regulations and it must be concluded that unless events occur which would change that result,³ the family will not be eligible for any RUFA benefits until October 1, 2002.

² The petitioner was notified of these figures and did not dispute them.

³ The petitioner has been notified repeatedly as to what these events are.

As stated above, the petitioner's contention that he was not aware of the lump sum disqualification until November of 2001 is not deemed credible. Although the petitioner received a number of contradictory notices in September of 2000, there was plenty of information which would have put any recipient on notice that he was subject to some special treatment due to the receipt of a lump sum. Even if the petitioner had not received the actual disqualification period letter dated September 14, 2000 (and there is little reason to believe he did not), he did admit to receiving a letter dated two days before which told him that a letter on lump sum treatment was coming. Any ordinarily curious recipient would have surely asked his worker about that disqualification during their conversation if he had gotten no further information. If he was confused about what was going on he had ample opportunity to express that confusion either through conversations with his worker or appeals a year-and-half ago when these events were occurring. He did not take advantage of those opportunities then and it is untimely to do so now.

The evidence rather indicates that the petitioner was not very interested in knowing anything about his benefit eligibility in September of 2000 because he had a considerable sum of money in his hand. It appears that the petitioner felt

that he could sever his relationship with the Department with little need to communicate any of the specifics of his situation. As the petitioner stated, he assumed that he could just spend the money and reapply later when it ran out. That assumption has cost him dearly.

The petitioner's continued secrecy with regard to this money and his expenditures of it undercut his assertions that he told his worker that he was to receive this money before it came to him. It is unfortunate that he did not discuss this with her because, as she testified, PATH's procedures would have required her to advise him to close his grant before he got the money to avoid the disqualification or to put his money in a trust for the children's needs. The petitioner could have avoided this disqualification totally by informing his worker that he knew he was going to get a settlement. It is not known what he told his own attorney about this situation because that person should also have been a source of information to him about putting the money into a trust.

The money is gone now and the petitioner will have to endure the disqualification period unless he provides receipts to the Department showing that he spent at least some of the money on deductible items. The petitioner is urged to provide any information he has to the Department at once. It would

also be advisable for him to actually verify what sums his children did receive as he was required to do by law. As the Department's decision is in accord with its regulations, the current denial of RUFA benefits must be upheld. 3 V.S.A. § 3091(D), Fair Hearing Rule No. 17.

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