STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 18,123
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) denying his application for Reach Up benefits. The issue is whether the petitioner is disqualified from receiving RUFA due to his receipt of a lump sum insurance settlement. The following facts are not in dispute.

FINDINGS OF FACT

1. Until spring 2001 the petitioner received RUFA benefits. In April 2001 the petitioner reported to the Department that he had received an insurance settlement of $64,000.

2. The petitioner does not dispute that the Department has considered and deducted all documented expenses he submitted regarding his legal, medical, and overdue household

and car expenses that were outstanding at the time he received the settlement.[1]

3. The petitioner did not appeal the Department's decision in spring 2001 that based on the remainder of the settlement that was available to him at that time that he would be ineligible for RUFA for 36 months, until April 2004.

4. The petitioner does not allege that the Department misinformed or misled him as to the effect of the lump sum disqualification period. The petitioner maintains that at the time he received the lump sum he was receiving regular child support payments and he expected to be found eligible for Social Security disability benefits. Thus, he paid off all his credit card debts even though many of those debts were for items he could not establish were deductible from his lump sum (see infra).

5. Unfortunately, the petitioner has not yet been found eligible for Social Security and his child support payments have become sporadic. He ran out of money in September 2002 and reapplied for RUFA. The Department denied the application because the petitioner's disqualification period was still in effect.

[1] The hearing was continued for several weeks to allow the petitioner additional time to review and document any such expenses.

6. Presently, the petitioner receives only Food Stamps and General Assistance.

7. The petitioner maintains that he has been unable to work since he sustained injuries prior to the time he began receiving RUFA benefits. Presumably, his insurance settlement was compensation for those injuries. It is unclear whether the petitioner has sought the services of Vocational Rehabilitation or has otherwise attempted to be retrained for employment that he could do in spite of his physical limitations. He states he is still appealing the denial of Social Security disability benefits.

ORDER

The Department's decision is affirmed.

REASONS

The regulations regarding lump sum income are reproduced in their entirety as follows:

> 2250.1 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. Windfall payments shall not include sums resulting from the conversion of an existing asset (i.e. acquired when the individual was not in receipt of ANFC

benefits) to a liquid asset. However, money resulting from the sale of a vehicle acquired when the individual was in receipt of ANFC benefits shall be treated as a resource and not as a windfall payment. 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:

1) An income tax refund should be treated as a resource, except for any portion which is a federal Earned Income Tax Credit (EITC) refund. The latter is disregarded both as income and as a resource.

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 home owner'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.

3) Renters' rebates, property tax rebates, sales tax rebates and Vermont Earned Income Tax Credits are excluded provided the sum of the rebates and credit does not exceed the difference between the annualized need standard (including the applicable housing allowance) and the annualized entitlement (payment standard before any recoupment) for that size family. If the sum of the rebates and credit is more than this difference, then the amount which exceeds this difference is considered lump sum income.

   If the assistance group has net countable income, that income must be annualized and added to the annualized ANFC entitlement before it is subtracted from the annualized need standard. If the sum of the rebates and credit does not exceed the difference it is excluded for ANFC purposes. If the sum of the rebates and credit is greater than the difference, the balance must be counted as lump sum income.

> Any amount of a renters' or property tax rebate which is excluded from income under this policy and is set aside for the purpose of using it to pay rent or property taxes due within 12 months of the assistance group's receipt of such rebate shall be excluded from resources in determining the assistance group's eligibility for ANFC.

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 of 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)
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, there is no dispute in this matter that the Department has credited the petitioner with all the expenses that he could verify that fell within the definitions under paragraphs 2b-g and 3 on page 2 of the above. It is also clear from the petitioner's representations that any "incapacity" to work under paragraph 2a, above, preexisted his receipt of the lump sum and, therefore, was not an unforeseen "circumstance beyond his control" that led to the lump sum becoming "unavailable" to him.

It is unfortunate that the petitioner failed to anticipate a continuing lack of income after he received his insurance settlement. However, there is no indication in this matter that the Department has not followed its regulations regarding the treatment of lump sum benefits, even though those regulations are now working an undeniable hardship on the petitioner and his family. Therefore, the Board is bound to affirm the Department's decision. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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