



monthly "PSE living expense stipend" in lieu of RUFA benefits. In most cases, including the petitioner's, the amount of the PSE stipend is at least the same as that recipient's former RUFA amount. The petitioner's stipend was \$664 a month.

3. At the time the petitioner entered the PSE program both she and the Department anticipated that her course of study would take three years. Under the terms of the petitioner's plan, however, it was specified that the petitioner would seek gainful employment during her third year of study.

4. The petitioner began her studies at Community College of Vermont (CCV) in January 2003. It was anticipated that after taking some general courses she would transfer to Vermont Technical College (VTC) in September 2003. However due to a delay (not at issue herein) the petitioner remained at CCV through the summer of 2004.

5. The Department reviewed the petitioner's eligibility in December 2003 and found her eligible to continue in PSE "for the next academic year, from 1/04 through 12/04".

6. Unfortunately, both in 2002 and 2003 the Department failed to notice that the petitioner's only child was to turn 18 and graduate high school in June 2004. This meant that

the petitioner could not have been eligible for RUFA (and hence PSE) as of that date. (See *infra*.)

7. The Department belatedly "discovered" this fact, and on June 3, 2004 it sent the petitioner a notice terminating her PSE stipend effective July 1, 2004. At the time, the petitioner had just started her summer session at CCV, and she was about to enroll for the 2004-2005 school year at VTC.

8. The petitioner completed her courses at CCV in the summer of 2004, and in September 2004 she enrolled at VTC. It appears she has been able to continue her studies with the help of additional financial aid through the college. However, she has not received any PSE stipend since July 1, 2004.

9. The petitioner maintains that had she realized her participation in the PSE program would not extend past June 2004 she probably would not have committed to a course of study scheduled to conclude in December 2005. As a result, she is incurring financial indebtedness far more than she anticipated when she entered her college program.

ORDER

The Department's decision is reversed for the months of July and August 2004. The Department's decision is affirmed effective September 1, 2004.

REASONS

The PSE regulations are clear that it is limited to "parents in eligible low-income families". W.A.M. § 2400. Section 2401(P) of the regulations define a "parent" as having a "dependent child". The petitioner does not maintain that her son continued to be a dependent after his eighteenth birthday and graduation from high school.

In this case there is no question that the Department's decisions in December 2002 and 2003 to grant the petitioner eligibility for the PSE program beyond June 2004 were in error. The legal issue in this case is whether there is a legal basis to "estop" the Department from, in effect, correcting that error and terminating the petitioner's eligibility for the program effective July 1, 2004.

The Board has held on several occasions that it has the power to make such a ruling, and this authority has been expressly upheld on appeal. See Stevens v. Department of Social Welfare 159 Vt. 408, 620 A.2d 737 (1992). But in

order to do so, it has been held that the petitioner must demonstrate that all 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*.

The PSE regulations include the following provisions: "eligibility is based on financial and non-financial criteria" and "the PSE program is not an entitlement program". W.A.M. § 2400. This latter aspect of the PSE program requires careful scrutiny of all the factual bases of the petitioner's claim.

In this case there is no dispute that the first three tests are met. The Department knew, or should have known, the age of the petitioner's son and that her eligibility for RUFA, and hence PSE, could not extend past June 2004. There

is also no question either that the Department gave the petitioner no basis to question her continuing eligibility for a PSE stipend for the first two years of her educational plan or that the petitioner was otherwise ignorant of any eligibility limitation based on her son's age. Thus, the issue in the matter comes down to the fourth test: whether the petitioner suffered a sufficient "detrimental reliance" on the Department's mistake.

In this regard, there is no question that the petitioner received full benefit and value for the year and a half the Department provided her with a PSE stipend while she was taking college courses. She does not claim that the termination of the stipend caused her to lose or forfeit any of the value of the courses she had taken during that time. Moreover, it appears (much to her credit) that she continued with her course of study even after the termination of her stipend in June 2004. Thus, her actual "detriment" appears to be limited to the fact that she will be more in debt when she finishes her studies than she anticipated she would be when she started.

However, as noted above, the petitioner agreed at the outset of her PSE plan that she would pursue gainful employment in the third year of her studies (which was

anticipated to begin in January 2005). As of December 2004 the Department had notified her only that she would remain eligible for PSE until January 2005. Therefore, the only period of time in which the petitioner had a reasonable expectation of a continuing PSE stipend was through December 2004.

In this regard, there is no dispute that when the Department terminated the petitioner's stipend effective July 1, 2004, the petitioner had already started her summer classes at CCV. In retrospect, it seems unreasonable to expect that the petitioner could have lined up a job, or taken any other action to offset her expenses, caused by the Department's sudden removal of her stipend. Thus, for the period of July through August 2004 it must be concluded that the petitioner met the fourth test of detrimental reliance. The Department shall retroactively pay the petitioner the amount of her PSE stipends for July and August 2004.

However, the petitioner has made no claim or showing that she could not have begun working as of September 2004-- at least enough to offset the \$664 a month loss of her stipend. This is not to say that either an increase in debt or an earlier-than-anticipated need to obtain employment does not constitute a financial hardship for the petitioner. It

does, however, render highly questionable any claim on her part that she is worse off for having started this course of study than she would have been if in December 2002 she had elected not to do so based on the knowledge that she was only eligible for PSE until June 2004. For this reason, as of September 1, 2004, it cannot be concluded that the petitioner suffered a "detrimental reliance" on the Department's actions sufficient as a matter of law to estop the Department from taking an action it was clearly required to do under its regulations.

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