

income her SSI payments were \$250.04 a month. Inasmuch as her trust payments resulted in a dollar-for-dollar reduction in the amount of SSI for which she was eligible, the petitioner, in effect, received no overall financial benefit from the trust.

3. In an attempt to remedy this situation the petitioner's attorney requested the trustee (a bank in Connecticut) to pay the petitioner an amount of \$3,208 from the trust on a yearly basis ($\$267.33 \times 12$). On May 2, 2005 the trust paid the petitioner this amount for 2005.

4. The yearly disbursement was made to a client trust account administered by the petitioner's attorney. In May 2005 the attorney prepaid the petitioner's rent for the remainder of the year, paid some medical bills and rented a portable air conditioner for the summer. The amount remaining in her account following these payments was \$1,105, which is well under the resource limit for both SSI and Food Stamps.

5. Based on the above information the Social Security Administration notified the petitioner that she was ineligible for SSI in May 2005, but that beginning June 1,

\$123.67 a month. It also appears that the trust is no longer making any payments to the petitioner's landlord.

2005 her monthly SSI payment would be the maximum amount of \$631.04.

6. Prior to May, the petitioner received \$149 in Food Stamps a month based on her combined monthly income from the trust and SSI. In May the petitioner notified the Department of the one-time payment from the trust, and she filed a new application for Food Stamps reflecting this payment. In a decision dated June 29, 2005 the Department notified the petitioner that effective August 1, 2005 her Food Stamps would decrease from \$149 to \$10 a month because of her increase in SSI to \$631.04 a month and a monthly prorated amount from the trust of \$267.33 (\$3,208 divided by 12).

ORDER

The Department's decision is reversed. The matter is remanded to the Department to calculate the amount of the petitioner's Food Stamps in accord with this decision.

REASONS

The issue in this matter is whether the Department can prorate or spread the petitioner's yearly trust payment of \$3,208 over a twelve-month period. The petitioner argues that the Department should treat her receipt of the yearly trust payment in the same manner the Social Security

Administration did in determining her eligibility for SSI. Under this method the petitioner concedes she was ineligible for Food Stamps for May 2005, the month she received the annual trust payment. She argues, however, that beginning in June 2005 the Department should only have counted her monthly SSI payments in determining her subsequent Food Stamp eligibility. There is no question that the regulations clearly and unequivocally support the petitioner's arguments.

F.S.M. §§ 273.10(a)(3-4) provide as follows:

3. Anticipated Changes

Because of anticipated changes, a household may be eligible for the month of application, but ineligible in the subsequent month. The household shall be entitled to benefits for the month of application even if the processing of its application results in the benefits being issued in the subsequent month. Similarly a household may be ineligible for the month of application, but eligible in the subsequent month due to anticipated changes in circumstances. Even though denied for the month of application, the household does not have to reapply in the subsequent month. The same application shall be used for the denial for the month of application and the determination of eligibility for subsequent months, within the timeliness standards in 273.2.

4. Changes in Allotment Level

As a result of anticipating changes, the household's allotment for the month of application may differ from its allotment in subsequent months. The State agency shall establish a certification period for the longest possible period over which changes in the household's circumstances can be reasonably anticipated. The household's allotment shall vary month to month within the certification period to reflect changes anticipated at the time of certification, unless the household elects the averaging techniques in paragraphs (c)(3) and (d)(3) of this section.

The petitioner's situation fits the above provisions exactly. In the month she applied, May 2005, she was ineligible for Food Stamps because of her receipt that month of the annual trust payment placed her over the income and resource maximums. However, the *change* in her situation to receiving only a monthly SSI payment as of June 1, 2005 was clearly "anticipated". The Department should have processed her application accordingly.

This is further supported by F.S.M. § 273.10(c)(2)(i), which provides as follows:

Income anticipated during the certification period shall be counted as income only in the month it is expected to be received, unless the income is averaged. Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the State agency shall convert the income to a monthly amount by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15, use the State agency's PA conversion standard, or use the exact monthly figure if it can be anticipated for each month of the certification period. Nonrecurring lump sum

payments shall be counted as a resource starting in the month received and shall not be counted as income.

Moreover, "nonrecurring lump-sum payments" are specifically excluded as income under § 273.9(c)(8). Although annual payments from trusts are not specifically mentioned in that regulation, the regulation specifically applies to payments "including, but not limited to" those that are listed.

Clearly, the list cannot be read as exclusive. Moreover, at least one of the types of payments that is specifically listed is "income tax refunds", which, like the petitioner's trust payments, are often received on an annual basis. The obvious point of the above regulations is to differentiate payments to the household that occur once, and will not recur, *within the certification period*. The petitioner's trust payment clearly falls into this category.

Even if it was considered income rather than a resource, however, nothing in the regulations allows the Department to count it for any month other than the one in which it was received. The provisions of the regulations cited by the Department in support of its decision simply do not pertain. After May 2005, other than the petitioner's SSI, there was no other *income* to "anticipate". Thus, the provisions of § 273.10(c)(1) ("Anticipating Income") are inapplicable.

Similarly, the petitioner's income does not "fluctuate". Both her trust payments and her SSI are predictable, periodic and fixed amounts. The petitioner receives no "contract", "self-employment" or "educational" income. Therefore, the provisions regarding "income averaging" also do not apply. See § 273.10(c)(3). Even if they did, this regulation allows income averaging *only if the household "elects" to do so*. In this case the petitioner clearly elected *not* to do so. Instead, it was forced upon her by the Department, which the regulations clearly do not contemplate or allow.

Contrary to the Department's assertion, the decision of the trustee to switch to annual payments is not "driving (the petitioner) into destitution". Just the opposite, it is a perfectly reasonable and humane attempt to allow an *already destitute* person some small measure of actual benefit to a modest trust that was established to help provide for her basic needs. The above Food Stamp regulations cannot, and

certainly need not, be read to penalize the petitioner for doing this.²

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² The RUFA regulations, for example, impose a prorated penalty for the receipt of lump sum payments, although the Board has ruled that, even then, it is perfectly permissible for households to avoid such penalties by voluntarily removing themselves from eligibility for the month in which the lump sum is received. See, e.g., Fair Hearing No. 11,745. There is no question that the petitioner could have avoided any problems in this case by voluntarily closing her Food Stamps for May 2005, and then reapplying in June. Clearly, however, the Food Stamp regulations (and, apparently, SSI) are not nearly as strict in this regard, and households are not required to "finagle" their way around the lump sum rules in this manner.