STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. A-12/09-658
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Economic Services Division, applying a disqualification period to her eligibility for Reach Up Financial Assistance (RUFA) due to the receipt of a lump sum settlement.

The issues include whether the Department is equitably estopped from applying the lump sum rule, and if not, whether the disqualification period has been calculated correctly, and whether petitioner should have received continuing benefits pending decision.

The decision is based upon the documentary evidence and the testimony provided by the parties through deposition and through the March 16, 2010 hearing.

FINDINGS OF FACT

1. The petitioner lives with her boyfriend, C.C., and their three-year-old daughter.

2. The petitioner first received RUFA on or about November 30, 2006. The petitioner is diagnosed with Post-Traumatic Stress Disorder, Bi-Polar Disorder, and Attention Deficit Disorder. In addition, petitioner's boyfriend is disabled and has an application for disability benefits pending with the Social Security Administration.

3. During the period of July 2009 until October 26, 2009, petitioner and C.C received services from the Burlington District Office (BDO) of the Department. Petitioner worked with A.H.[1], a benefits program specialist, and J.S., a RUFA case manager. C.C. also received case management through the BDO and the Division of Vocational Rehabilitation. The purpose of case management is to identify a participant's barriers to employment and craft a plan to move the participant to employment. In C.C.'s case, the decision was made that he seek disability benefits.

4. Petitioner's case was transferred to the St. Albans District Office (ADO) after she moved to Franklin County. Normally, it can take a district up to three weeks to transfer a case. When issues arise such as a lump sum, the transfer can take longer. Accessing information and

[1] A.H. is no longer working in the BDO as a benefits program specialist. She is now working at the Department's call center.

communicating with a district office may be more difficult for a recipient during a transfer period. It is not clear from the record and testimony of all the Department witnesses what the operative date of the transfer was.

5. During the summer of 2009, petitioner had difficulties with her landlord (an eviction action) and with the local housing authority that issued Section 8 assistance to her family (status of her Section 8 eligibility).

6. On or about August 2, 2009, the petitioner filed a lawsuit against the local housing authority. Petitioner timely notified the Department of her lawsuit. Petitioner testified that A.H. told her to provide the Department with copies of the court papers and keep the Department notified about the lawsuit's progress. Petitioner did so.

7. Petitioner's family lost their housing on or about August 31, 2009. On that day, the petitioner's family was granted emergency assistance (EA) for temporary housing through the Burlington district office (BDO) of the Department. The Department paid for housing at local motels/hotels.

8. A.H. handled petitioner's EA assistance. The petitioner and A.H. met weekly and also talked on the telephone during the week. A.H. testified that the

Department was concerned about petitioner's family and that she worked with petitioner's case manager to ensure wraparound services for petitioner's family.

Temporary housing under the EA program is limited to twenty-eight days. After twenty-eight days, an extension can be granted up to a maximum of fifty-six additional days. A.H. informed petitioner of her obligations under the EA program that included meeting with A.H. weekly, looking for permanent housing, providing housing search information, and moving into permanent housing as soon as such housing became available. Declining available permanent housing could lead to the loss of housing assistance.

9. A.H. gave petitioner a copy of the lump sum rules during mid to late September 2009 after C.C. applied for disability.

10. Petitioner first told A.H. that there was a possibility of a money settlement from the lawsuit after her first court appearance in August 2009.

11. The parties in the lawsuit entered into a settlement on October 20, 2009 in which the local housing authority agreed to pay petitioner the sum of $12,600. Petitioner did not receive the settlement monies until October 26, 2009.

12. Prior to the receipt of the settlement, petitioner informed A.H. that there would be a money settlement. During the beginning or middle of October 2009, petitioner met with A.H. about the possible settlement and lump sum rule.

13. A.H. did not inform petitioner that she had an option of closing her RUFA grant prior to receipt of the court settlement and reapplying in the future if petitioner found that she needed assistance once again from the Department. A.H. testified that it is not the Department's policy to inform recipients of this option.

14. A.H. testified that she gave petitioner a copy of the lump sum rule. A copy of the lump sum rule is set out later. A.H. testified that she tells recipients that for the Food Stamp program the lump sum amount is income in the month received and a resource thereafter and that the treatment is different in the RUFA program. She lets the recipients know they can be disqualified from RUFA for a number of months. She had no recollection whether she gave petitioner any examples of permissible expenses that would reduce the disqualification period.

A.H. was asked what information she generally gives recipients about the operation of the lump sum rule; her response was vague.

15. Petitioner testified that A.H. did not give examples of allowable expenses that would shorten a disqualification period. Petitioner testified that no one explained what expenses were allowable until October 23, 2009 when she met with D.B-B., a Department supervisor. Petitioner's testimony regarding this information is credible.

16. Petitioner testified that at the time of the settlement, she was afraid of becoming homeless. As part of the emergency housing program, she had an obligation to find and enter permanent housing as soon as such housing became available. She found housing in Franklin County. She testified that she was not the only one interested in the apartment and she asked the landlord what she could do to get the apartment. The rent was $600 per month. To secure housing, she agreed to pay the security deposit and six months rent totaling $4,200. She used monies from her settlement to pay the landlord. She secured this housing prior to her meeting on October 23, 2009 at the BDO.

17. D.B-B. is a supervisor at the BDO. On October 23, 2009, she met with petitioner. A.H. was unavailable that day. D.B-B. gave petitioner a copy of the lump sum rule and explained types of excludable expenses. She explained that

the purchase or repair of a vehicle was permissible as well as other examples. She does not remember whether she told petitioner that petitioner could get off assistance prior to receipt of the settlement. If she told petitioner about this option, her notes would reflect this information. Because her notes do not indicate explaining this option to petitioner, petitioner was not told.

Petitioner talked about her housing situation and asked if she could prepay rent. D.B-B. told petitioner that prepayment of rent was not a permissible expense under the lump sum rule. D.B-B. testified at deposition that petitioner told her that petitioner understood her benefits would close.

18. On November 13, 2009, A.H. calculated the period of disqualification for petitioner. A.H. divided the settlement amount of $12,600 by the household's total monthly needs of $1,531 and found that petitioner would be disqualified for 8.23 months or until August 2010. A Notice detailing the disqualification period was generated on November 16, 2010.

There is no indication in the record or testimony that the disqualification period was calculated prior to this time or that petitioner was told when the disqualification period would start and how long it would last.

19. A.H. generated A Notice of Decision on November 13, 2009 that was sent to petitioner on November 14, 2010 denying petitioner's RUFA for the month of November 2009 due to excess resources. A.H. assumed the Notices sent to petitioner were received as they were not returned to the Department.

The Department sent petitioner an earlier decision dated November 9, 2010 that RUFA benefits would end November 30, 2009. Petitioner received RUFA through November 2009.

20. Petitioner testified that she did not receive any written notices from the Department during November 2009. Petitioner testified that she called the Department's call-in center on November 13 or 14, 2009 because she knew that her RUFA eligibility was in question but she had not received anything in writing.

21. The Case Action Log Notes (CATN notes) from early November 2009 show telephone calls between petitioner and J.S. as well as petitioner and A.H. regarding petitioner's case but not information about the specifics of the disqualification period.

22. On November 24, 2009, petitioner left a message for A.H. who called her back. They both agree that A.H. told petitioner that her case had been transferred to the ADO and that petitioner should call the ADO.

Petitioner called the ADO that day and spoke to R.C. who indicated in the CATN notes that petitioner called about RUFA denial and wanted to know reasons why. R.C. was not petitioner's caseworker. He did not act upon petitioner's call. It appears that petitioner was not assigned a caseworker until December 1, 2009.

23. T.Q. became petitioner's caseworker on or about December 1, 2009. Petitioner and T.Q. spoke on December 1 and 4, 2009. On December 1, 2009, petitioner let T.Q. know that she did not understand why she was not eligible for RUFA. T.Q. used the intervening time to check into what happened in petitioner's case at the BDO. On December 4, 2009, T.Q. contacted petitioner to let her know she was ineligible due to a lump sum settlement. Petitioner told T.Q. that she wanted to appeal her RUFA ineligibility.

24. Petitioner has not received RUFA benefits or case management since December 1, 2009.[2]

25. Petitioner used her settlement monies to prepay $4,200 in rent and security deposit to secure housing. Petitioner paid $200 to a motel for the week of October 27 to November 2, 2009.

[2] Petitioner's family receives 3Squares VT assistance. Medicaid benefits for petitioner and C.C. closed December 1, 2009 due to the RUFA disqualification. They receive VHAP instead.

She paid a past due bill of $325.78 to Vermont Gas and a $150 deposit to secure new services because Vermont Gas would not provide services without a deposit.

Petitioner used settlement monies towards car repairs and maintenance. The car repairs included patching a hole to the interior of the car caused by rust, repairing the heating unit, replacement of four headlights, wiring and fuses, de-icer and tools necessary to do repairs. Petitioner has receipts for $6.90 wiring and caps, $5.00 ratchet set, $3.00 de-icer, $94.99 tool kit, $7.38 work light, $1.68 solder, $1.78 clips, $13.00 wire and $10.48 glass fuses. Petitioner stated the materials for fixing the hole was $35.00 and the cost of the headlights was $85.00. C.C. did the repairs with a friend.

She purchased a vacuum sweeper for $50.00 and paid for certain medical expenses (receipts total $34.00).

26. Petitioner was unaware that she could have closed her RUFA grant prior to receipt of her settlement. If she had been aware of this option, petitioner would have closed her grant.

ORDER

The Department's decision is reversed based on the reasons below.

REASONS

The RUFA program provides financial assistance to low-income households who have minor children. To be eligible, a household must meet income and resource tests. A household will be eligible only if their available monthly income is less than the payment standard and their resources are less than the maximums.

Continuing Benefits

Before the Department takes adverse action in a recipient's case, they need to send written notice at least ten days prior to the operative date of the decision. W.A.M. §§ 2216 and 2217. If the recipient requests a fair hearing prior to the date of the proposed action, the individual will receive continuing benefits.[3]

The recipient need not use the words "fair hearing" provided the recipient is clear that he/she disagrees with

[3] A recipient can decline continuing benefits. If a recipient receives continuing benefits and is unsuccessful at fair hearing, the recipient will owe the Department an overpayment.

the Department's actions.[4] In fact, the right to request a fair hearing extends to those who are "aggrieved" by department action affecting their benefits. 3 V.S.A. § 3091(a).

On November 24, 2009, petitioner called the ADO to let the Department know that she disagreed with the decision to deny her RUFA benefits. This call was sufficient to notify the Department that petitioner disagreed with their decision and that the fair hearing process should commence. The petitioner should have received continuing benefits from the Department pending this decision.

Lump Sum Rule

The petitioner's receipt of an insurance settlement triggered the lump sum rule. The lump sum rule was one of many changes to the federal law governing the Aid to Families with Dependent Children (AFDC) program in 1981. § 2304 of the Omnibus Budget Reconciliation Act of 1981, 95 Stat. 845, 42 U.S.C. § 602(a)(17).[5] The lump sum rule allows the

[4] The Department has long had the obligation of asking an aggrieved person whether the person wants a fair hearing and documenting if the person declines the opportunity for a hearing. This is not the case here.

[5] In 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act (Public Law 104-193, 110 Stat. 2105) 42 U.S.C. § 601 *et seq*. This act replaced the earlier act. There is no longer a statutory provision regarding lump sums although the federal regulations remain.

Department to treat certain types of nonrecurring income or windfalls as income in the month such income is received. If the income is greater than the month's standard of need, the Department will divide the remainder by the monthly standard of need to determine the period of ineligibility. 45 C.F.R. § 233.20(a)(3)(ii)(F), W.A.M. § 2270.1. However, it is important to state at the outset that a recipient can lawfully close their grant prior to receipt of lump sum income and then reapply at such time as they meet eligibility criteria if they find they need assistance once again.

The effect of the lump sum rule can be draconian. The holding in Gardebring v. Jenkins, 485 U.S. 415 (1988) regarded a challenge to the notice of the change used by Minnesota. The facts involving the Jenkins family are instructive. They received a retroactive Social Security disability payment of $5,752 on October 31, 1983. Within two days, they used $3,863.75 to cure a mortgage arrearage, $1,366 on an overdue care repair bill, and the remainder on other necessities. They were disqualified from assistance until April 1984. Although the notice provisions were upheld, the Court described the result as "Kafkaesque".

The states were given latitude in crafting regulations to deal with lump sums. States are allowed to shorten the

period of ineligibility including when "the lump sum income or a portion thereof becomes unavailable to the family" in certain situations. 45 C.F.R. § 233.20(a)(3)(ii)(F). Early on, Vermont availed itself of this latitude by trying to ameliorate the results of the lump sum rule by listing certain exceptions and giving the Commissioner the latitude to go beyond the listed exceptions. The Jenkins family would have faced a different result here.

The lump sum rule is found at W.A.M. § 2270.1 and states:

> The applicant or recipient of Reach Up 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 Reach Up benefits) to a liquid asset. However, money resulting from the sale of a vehicle acquired when the individual was in receipt of Reach Up 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 Reach Up policy relating to "Trust Funds" shall not be counted as income.
>
> Additional exceptions to the above regulation are:
>
> > A. An income tax refund shall be treated as a resource, except for any portion which is a federal or Vermont Earned Income Tax Credit (EITC) refund. EITC payments are disregarded both as income and as a resource (rules 2276 and 2284).
> >
> > B. 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-Reach Up income received by the assistance group during the month. When the total less appreciable disregards exceeds the standard of need for that family, the family will be ineligible for Reach Up 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 may be recalculated if:

A. An event occurs which, had the family been receiving assistance, would have changed the amount paid.

B. The income received has become unavailable to the family for circumstances beyond its control. Such circumstances are limited to the following unless the Commissioner or his designee determines that the recipient's circumstances are substantially similar to those described below:

1. death or incapacity of the principal wage earner.

2. loss of shelter due to fire or flood.

3. repairs to owner-occupied homes which are essential to the health and safety of the family.

4. repair or replacement of essential, major household appliances.

5. repair or purchase of one motor vehicle per Reach-Up 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.

6. payments attributable to current monthly housing expenses (rule 2264) which are not in excess of the maximum monthly Reach Up housing allowance. Advance payments (i.e. payments for expenses which will be incurred after the period of ineligibility has ended) towards excess monthly housing expenses are not allowed.

7. payment of expenses which meet the following criteria:

a. The bills were overdue as of the date the lump sum income was received.

b. The bills were the legal liability of the client or other member of the assistance group.

c. The client provides documentation that the lump sum was used to pay the bills.

Eligible expenses under "7" 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 Reach Up, only the unsubsidized amounts attributable to employment-related child care are considered eligible expenses.

i. overdue expenses for one motor vehicle per Reach Up assistance group, essential for employment, education, training or other day-to-day living necessities. Expenses may include overdue bills for repairs, purchases and use tax, inspection fee, insurance, and registration fees, but not day-to-day operating expenses.

C. The family incurs and pays for medical expenses which offset the lump sum income.

The petitioner received a copy of the above regulation during a period in which her family was homeless, living in motels, looking for housing, and meeting (in-person or by telephone) at least twice per week with various Department staff. One can see how just receiving the regulation could be overwhelming and confusing.

The petitioner faced competing demands from the Department. She needed to find permanent housing. She needed to continue with her case management. She needed to understand how the settlement would impact her. Petitioner did not have all necessary information to determine how to treat the settlement monies. She did not know that she could close her RUFA benefits prior to receipt of the settlement, thus, obviating this whole case. She was told she would be ineligible but she did not know for how long or the operative dates of ineligibility.

Being homeless in a tight housing market is very difficult. Petitioner did use a significant portion of her settlement to ensure that her family is housed.

It is well settled that the Department has an affirmative duty to advise applicants and recipients of their rights under the RUFA program. Lavigne v. D.S.W., 139 Vt.114 (1980). The Lavigne case dealt with the Department's failure to advise the petitioner at her initial eligibility interview and subsequent six-month review about the work expenses/deductions that were available to determine income for the ANFC program (RUFA predecessor). See also Stevens v. Department of Social Welfare, 159 Vt.408 (1982).

These programs are quite complex. The purpose of these programs is remedial, and as such, the Department's regulations and practices are to be liberally construed to ensure that individuals receive the benefits of these programs. The Department relies on the program beneficiaries to comply with myriad regulations in order to accurately determine eligibility and benefits. It behooves the Department to ensure that people understand program operation and requirements.

Petitioner requests that the Board apply equitable estoppel because she was not told of her option to close her

RUFA grant prior to receipt of the settlement. The Board can apply equitable estoppel in cases provided the petitioner can show that all four essential elements of equitable estoppel are met. Stevens, *supra*. The four elements 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 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.

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

The Board addressed the application of equitable estoppel to lump sum cases on several occasions.

The Board found that the Department was equitably estopped from applying the lump sum rule in Fair Hearing Nos. 11,745 and 13,119. The Board found the caseworkers did not fully inform petitioners of all their options and of the operation of the lump sum rule even though petitioners had informed their caseworkers of impending settlements and sought advice. The Board found the petitioners had relied upon their caseworkers' advice to their detriment.

An opposite conclusion was reached in Fair Hearing Nos. 13,342 and B-02/09-112. In Fair Hearing No. 13,342 the

petitioner did not ask the Department for advice during the two years her lawsuit was pending and, then, did not inform the Department of the receipt of her settlement (albeit upon advice of her attorney). The Board presumed that petitioner could meet the first three elements of equitable estoppel given the caseworker's testimony that if she had been aware of the potential settlement, she would not have informed petitioner of her option to avoid the lump sum rule by closing her case.[6] But, the Board found that there was no detrimental reliance by the petitioner on the Department's conduct. In Fair Hearing No. B-02/09-112, the petitioner did not inform the Department of her lawsuit until two days before receipt of the monies and did not wait to use these monies until she could receive information from the Department or her attorney how to proceed. As a result, there was no detrimental reliance.

In this case, the Department knew that petitioner was going to receive a settlement. They first knew this in August 2009. They knew that one option for petitioner was to close her RUFA case prior to receipt of the settlement but

[6] The Department has long been aware that recipients have the option of closing their grants prior to receipt of a lump sum. The Department has had ample opportunity over the past fifteen years to close this loophole but has not done so.

did not make petitioner aware of this information. In addition, the petitioner was not given full information as to the specifics of the lump sum rule in terms of when disqualification would start and how long disqualification would last prior to receipt of the settlement. The petitioner did not know that she could close her RUFA grant prior to receipt of the settlement. Petitioner detrimentally relied on the Department's information. The elements of equitable estoppel are met in this case.

The Department argues that their affirmative duty to inform individuals of program requirements extends to applicants, not recipients based on underlying federal regulation. On a policy level, this is a short sighted argument, and, arguably, not in accord with past practices.

The applicable portion of 45 C.F.R. § 206.10(a)(2) states:

> (i) Applicants shall be informed about the eligibility requirements and their rights and obligations under the program. Under this requirement individuals are given information in written form, and orally as appropriate, about coverage, conditions of eligibility, scope of the program, and related services available and the rights and responsibilities of applicants for and recipients of assistance. Specifically developed bulletins or pamphlets explaining the rules regarding eligibility and appeals in simple, understandable terms are publicized and available in quantity.
> (ii) Procedures shall be adopted which are designed to assure that recipients make timely and accurate reports

> of any change in circumstances which may affect their eligibility or the amount of assistance.

Applicant is defined at 45 C.F.R. § 206.10(b)(1) as someone who has "made application for public assistance from the agency administering the program, and whose application has not been terminated". There is no definition for recipient. Recipient would seem to be subsumed in the above definition of applicant as a person whose "application has not been terminated".

Moreover, the Department has adopted its own regulations that address the respective responsibilities of the applicant/recipient to provide information and of the Department to explain program requirements and operations. W.A.M. §§ 2000(H), 2213. Applicants and recipients are not treated differently under state regulations.

Disqualification Period

Although it is not necessary to reach how the lump sum disqualification period should be calculated, it may be helpful for the purposes of this decision.

The above regulation allows the Department to consider income unavailable in circumstances beyond the family's control. W.A.M. § 2270.1(B) gives the Commissioner discretion to allow certain expenses in situations that are

similar to the list in that section, including loss of shelter or payments for current housing expenses (see 2 and 6). In fact advance housing payments are defined as payments after the period of disqualification has ended. In other words, payments during the period of ineligibility can count. The payment of rent and security deposit should be so considered as those monies ended the family's homelessness; the refusal to do so is an abuse of discretion.

The petitioner would be allowed the past due utility payment and deposit, medical expenses (receipts), materials to repair the car based on receipts, and the payment to the landlord totaling $4,853.99. Petitioner would not be allowed labor for the car repairs because it was done by C.C. and a friend for no outlay of cash nor allowed regular maintenance expenses. She would not be allowed expenses where receipts were not available. The deductions would reduce the disqualification period by 3.17 months making the family eligible once again for RUFA towards the end of April 2010.

Conclusion

The Department incorrectly denied continuing benefits to petitioner pending fair hearing. The Department's decision to impose a disqualification period based upon lump sum

income is reversed. 3 V.S.A. § 3091(d), Fair Hearing Rule 1000.4D.

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