STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 8501
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals a decision of the Department terminating her ANFC, Food Stamps and Medicaid benefits due to excess resources.

FINDINGS OF FACT

1. The petitioner is the mother of D.B., a minor child, who is a member of her household.

2. Because D.B. was involved in a lawsuit which had a potential monetary recovery, the petitioner and her husband were appointed legal guardians of D.B. in probate court and filed a bond in January of 1984.

3. In September of 1984, D.B. received $10,000 in settlement of her claim, which money was deposited in a bank account under the names of the petitioner and her husband "In Trust for" D.B. Her parents were instructed by their attorney that the money was to be used for D.B.'s benefits and were required by the probate court to file accountings of their expenditures. After the petitioner and her husband separated, the account was later transferred to the name of the petitioner only "In Trust" for D.B.

4. Following her separation from her husband in April

1987, the petitioner first applied for benefits in May of 1987 but was denied ANFC, Medicaid and Food Stamps for excess resources due to her daughter's account.

5. For a few months, the petitioner used funds from the account to pay her and her children's living expenses. Something less than $1400 was used for this purpose. At the time of the hearing, the petitioner did not know if this use would be approved.

6. In September, 1987, the petitioner, wishing to reapply for benefits, arranged for the probate court judge to hold the passbook and disburse funds from the bank account (which remained in her name) on the belief (apparently originally agreed to by the Department) that her household would be eligible for benefits if she was not the trustee of the account.

7. On September 22, 1987, the probate court granted the petitioner's request to receive $1,000 from D.B.'s account for family moving expenses because it indirectly benefited D.B.

8. In September, 1987, the petitioner reapplied for ANFC, Medicaid, and Food Stamps at the Brattleboro District Office. She did not list D.B.'s bank account on this application as a resource because she thought her relinquishment of control meant the back account was no long available.

9. On September 23, 1987, the probate court judge sent a letter to the petitioner and the Brattleboro DSW

director stating:

> In order to protect your daughter's assets, I am hereby terminating your authority to spend any of the funds presently entrusted to you as guardian of "D.B.".

10. The petitioner was found, based on her September application, to be eligible for ANFC, Medicaid and Food Stamps.

11. After the petitioner's move on October 1, 1987, from Brattleboro to Bellows Falls, her case was transferred to the Springfield District Office. In January of 1988 a routine computer match-up run indicated that $7,637.80 was in an account in the petitioner's name in trust for her daughter.

12. The account was reviewed by DSW supervisors, the Springfield director and persons in the central office who determined that the funds were still available to the family when authorized by the probate judge and therefore notified the petitioner in mid-March that as of March 31, 1988, she was no longer eligible for ANFC, Food Stamps and Medicaid because her daughter has resources in excess of department standards for a household her size.

13. Following the petitioner's appeal of this decision, the department sought more information about the account and received the following letter from the probate court judge:

> The funds in question are presently in an account at the Vermont National Bank in Brattleboro Entitled [Petitioner's Name] ITF [D.B.]. The court is holding the passbook so the only way for money to be withdrawn from the account would be for the mother to request

the Court's permission to do so.

> I have not established any specific guidelines on what kind of expenditures would be permitted. Nevertheless, I have informed the mother that I would consider each request on a case by case basis and would be guided by the applicable provisions of Chapter 111 of Title 14.

A copy of this letter was not sent to the petitioner and she first learned of it at the fair hearing.

14. The petitioner has not requested any other money from D.B.'s account since September 22, 1987, although she says that she has needed money and D.B. has needed clothing. It is not clear why the petitioner has failed to make requests, especially with relation to expenses which directly affect her daughter, except that she apparently does not believe that she should or could get any money from the account.

15. On December 21, 1988, petitioner's motion for a change of venue was granted and her case was moved to the District of Westminster Probate Court.

16. On December 9, 1988, petitioner through her representatives, requested that the probate court release the funds in the guardianship account to be used for the care, support, and maintenance of petitioner and her household.

17. On January 5, 1989, Judge Edward Goutas denied petitioner's request. Judge Goutas said that he might release money exclusively for the use of the ward, D. B., on petition and a showing that petitioner and her ex-husband (the co-guardian of the amount in question) were

incapable of providing for D.B.'s needs.

ORDER

The decision of the department is affirmed as to the period of time prior to January 5, 1989, and reversed for time periods following that date.

REASONS

If the petitioner's child, D.B., has close to $8,000 in "available" resources, she and the family members with whom she lives (by virtue of the DEFRA sibling deeming regulation, see 42 U.S.C. ə 602(a)(38) are ineligible for ANFC ($1,000 limit, W.A.M. ə 2261), Food Stamps ($2,000 limit, F.S.M. ə 273.8(b)) and Medicaid $3,150 limit, W.A.M. ə 2424). The issue is whether the money in the bank account is "available" to D.B. to cover her daily expenses.

The regulations governing ANFC define "resources" as "any assets, other than income, which the recipients have available to meet need." W.A.M. ə 2260, (emphasis added). Similarly, the Medicaid regulations define resources as "any assets, other than income, which are owned by a member of the Medicaid Group . . ." M.M. ə 340. "Available" and "owned" with regard to both the ANFC and Medicaid benefits have been consistently interpreted by the Board as requiring that assets be "actually available" to a party, that is, realistically accessible, not just theoretically owned. See Fair Hearings No. 6838, 7310. If the "owner" does not have the right to use or liquidate the asset owned

by her, it cannot be found to be available to meet her needs. Fletcher v. Turner, 105 S. Ct. 1138, 84L. Ed. 2d 138 (1985).

With regard to trust funds and trust accounts, the ANFC regulations further state:

> Evaluation of trust funds or trust accounts shall take into account the terms of the trust. The value of principal which can be made immediately available to the applicant/recipient and/or spouse shall be considered. The value of principal which cannot be made available shall be excluded: however, any special provisions for use of principal (such as payment of medical expenses, upkeep of property, etc.) shall be evaluated as a future or potential resource, including but not limited to recovery potential. It is also necessary to take into consideration the value and possible use of interest accruing from trust funds. Unless prohibited by terms of the trust, accrued interest shall be considered as income in the month received and a resource thereafter. W.A.M. ə 2263.2.

The Medicaid regulation with regard to trust accounts is almost identical. See M.M. ə 341.2.

When examining the case at hand for Medicaid and ANFC eligibility, it is necessary to look at what restrictions exist with regard to D.B.'s use of the $8,000 in her trust account and what amounts can be made immediately available to her under the terms of the trust. The facts show that from its receipt, the money was put in an account set up for the sole use and benefit of D.B. The use of the money was restricted in no other way. Initially and at least until January 5, 1989, the account had been used, presumably with the probate court's approval, not only for the purchase of items personal to D.B. but for the provision of basics to her family such as food, clothing

and shelter which only indirectly benefited D.B. It must be concluded from this history of approved use, that until January 5, 1989 the account was available for use which directly or indirectly benefited D.B., subject only to court approval.

As a minor, D.B. has no control over the disbursement of that money and must rely of the discretion and judgement of her guardians, her parents. Guardians are guided in their dealings with the assets of their wards by law. Title 14, Chapter 11 of the Vermont Statutes discusses the obligation of guardians and sets out, in pertinent part, that:

> A guardian shall manage the estate of his ward frugally and without waste and in a manner most beneficial to the ward and out of the estate of his ward shall provide for the maintenance of the ward and his family, according to his condition and property, 14 V.S.A. ə 2797.

At the request of the petitioner (the guardian), the statutory ability and obligation to make decisions regarding spending sums from her daughter's (the ward's) account was taken from her and transferred to the probate court. As such, the probate court assumed the guardian's financial obligation, a fact recognized by the probate court judge when he said he would "be guided by the applicable provisions of Chapter 111 of Title 14," with regard to authorizing the guardian to make expenditures on behalf of the ward.

What this means, then, is that the probate court judge

is required by law to authorize the petitioner to withdraw funds to maintain D.B. and her family and to provide for her well-being to the extent that it is necessary and that funds exist. As such, it must be concluded that as of January 5, 1989 the entire sum in the account is actually immediately available to D.B. to relieve at least her necessary basic needs. As the bank account is unrestricted as to use by D.B. and can be used upon request to the probate court, at any time, to pay for D.B.'s and her family's maintenance, the department was correct in counting the money in the trust account as actually available to D.B. for ANFC and Medicaid purposes.

Although the regulations define resources somewhat differently for Food Stamps, the same analysis of "availability" holds true for that program as well. The pertinent regulation states that the following will be excluded as resources:

> Resources having a cash value which is not accessible to the household, such as but not limited to, irrevocable trust funds, security deposits on rental property or utilities, property in probate, and real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold . . . Any fund in a trust or transferred to a trust, and the income produced by that trust to the extent it is not available to the household, shall be considered inaccessible to the household if:
>
> > i The trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;
> >
> > ii The trustee administering the funds is either:

> A. a court, or an institution, corporation, or organization which is not under the direction or ownership of any household member, or
> B. an individual appointed by the court who has court imposed limitations placed on his/her use of the funds which meet the requirements of this paragraph;
>
> iii Trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, or influence of a household member, and
>
> iv The funds held in irrevocable trust are either:
>
> A. established from the household's own funds, if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the household creating the trust, or
>
> B. established from non-household funds by a non-household member. F.S.M. ∋ 273.8(e)(8).

This regulation also focuses upon "accessibility" (another way of saying actual availability) of funds places in a trust account for purposes of determining resource availability. If the four criteria in the regulations are met, a trust account will be considered inaccessible and therefore not countable. Even assuming that the first three criteria are met,[1] D.B.'s trust account does not meet the criterion in (iv) because the trust funds are not used "solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the household creating the trust." Quite to the contrary, the funds in the trust have been used in the past

to pay for D.B.'s and her family's necessary living expenses. That use runs afoul of the goal of the regulation which is to make sure that money available to the beneficiary and/or her household to cover living expense, will not be excluded as a resource. Therefore, the Department was correct in finding that the trust funds were actually available to the household for Food Stamp purposes as well.

The petitioner's argument that money in the trust account is not available to her daughter because she as guardian has no authority to spend it misunderstands the fact that she can request the authority to spend that money and that the court must grant that authority under law if expenditures are necessary to maintain D.B. and her family. The court has granted $1,000 for family moving in the past, and there is not reason to believe that future similar requests would not be granted. Further, the petitioner's argument that the funds should not be considered available unless they are actually disbursed by the court, begs the question since the petitioner can avoid disbursement merely by deciding not to request funds, even when they are needed.[2] It is understandable that the petitioner wants to preserve her daughter's injury settlement for her daughter and not to deplete it on family support. However, her current action in transferring payment authority to the probate judge has not accomplished that goal. It is possible, as the regulations imply, to

set up a trust for education or other purposes for her daughter, which would not be countable to the family as a resource, because it could not be dipped into to pay household maintenance costs. If the trust is set up for the purpose of preserving a benefit for her daughter and not merely to become eligible for benefits, the petitioner can set up the trust now and it could not be considered a transfer of resources for eligibility purposes. If she is interested in so doing, she is strongly advised to discuss this possibility with her attorney.

ADDENDUM

Since the original recommendation was issued on May 18, 1988, D.B.'s account has been transferred to a new probate judge. That judge has stated that the money in the account would be available for the exclusive use of D.B. upon a showing that each of her parents (and guardians) were incapable of providing for her needs. At this point, the money is only available to D.B. if she can persuade the court not only that her mother, the welfare head of household, is without funds, but also her father, who is not a member of the welfare household. Such a showing implies the cooperation and assent of a person who is not in the welfare household as a prerequisite for accessing the funds. The ANFC resource regulations deal with a situation closely paralleling this one as follows:

> . . . The resource shall be considered totally inaccessible to the household if the resource cannot practically be subdivided the household's access to the value of the resource is dependent upon the

agreement of the joint owners . . . W.A.M. ə 2260

While D.B.'s father is a guardian of her account and not a true "owner" the same burden of getting joint agreement and cooperation of and cooperation of an outside party is present in this instance making the accessibility of the resource very speculative. Thus, as of January 5, 1989, it is found that D.B.'s account is not readily available to her and thus cannot be counted as a resource for ANFC purposes. If it is not so treated, D.B. is put in the unique position of qualifying for welfare only if her parent is both absent and indigent. There is no support for this treatment in the regulations.[3]

With regard to Food Stamps, it also appears that all the criteria are now met to consider the money an unavailable trust under the regulations set forth above because the money held in trust is not readily available to meet household expenses and is no longer under the control of a household member.

FOOTNOTES

[1]The trust in this case was initially required by operation of law as the beneficiary is a minor and thus it probably meets criterion (i) which requires irrevocability and duration throughout the certification period. The petitioner is technically still the trustee of the account although the court could be considered the actual trustee at present, then meeting criteria (ii). Assuming, however, that (ii) is met, it appears that (iii) is also met as there is no evidence that any investments are made from the trust accounts interest.

[2]With regard to the latter, the petitioner appears to remain the guardian of her daughter, and as such undoubtedly has a duty to seek funds for her daughter's

real needs, such as clothing which, due to her perception of the unavailability of the funds, she has not done since September, 1987.

[3]In a letter dated December 1, 1988, which is part of the record in Fair Hearing No. 9127, the Department suggested that the petitioner request the use of funds from the Probate Court. The letter said "The Department has stated that should the court rule that [petitioner] is not entitled to the funds, the Department would then consider the funds unavailable. Based upon this letter and the judge's refusal to give the petitioner money it would appear that the Department does not disagree with this result.

# # #