

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 8608
)	
Appeal of)	

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare finding him ineligible for ANFC from December, 1987, through December, 1988, due to his receipt of a lump-sum insurance payment in November, 1987. The issue is whether part of the lump-sum payment can be considered "unavailable to the family for reasons beyond their control."

FINDINGS OF FACT

The petitioner lives with his wife and their three children. In August, 1984, the petitioner suffered a back injury while at work. He was found eligible for workman's compensation; but several times over the past few years his benefits have been interrupted by administrative appeals involving his continuing eligibility. Fortunately for the family, the petitioner's wife has been employed throughout most of this period. However, as time went by the family's debts began to mount.

In June, 1987, his workman's compensation having again been discontinued pending an appeal, the petitioner applied for and began receiving ANFC benefits. On November 23, 1987, the petitioner prevailed in his workman's

compensation appeal and received a lump-sum award of \$11,214. He also received an ongoing monthly benefit. He immediately reported this to the department and asked that his ANFC grant be closed. The department informed him at this time that he would have to use the lump-sum award to meet basic living expense before he could again be eligible for ANFC.

Inasmuch as the petitioner felt that he would soon be able to return to work he quickly spent much of the lump-sum by paying off many of his debts. However, by May, 1988, his monthly compensation benefits had expired, he had not found work, and he had spent the entire lump-sum. At this time the petitioner reapplied for ANFC. Initially, the department notified him that, based on the amount of his lump-sum and the family's monthly "standard of need", he would be ineligible for ANFC until September, 1988 (see infra). The department subsequently informed the petitioner that because he was not incurring monthly mortgage payments (the Farmers Home Administration had allowed the petitioner a "moratorium" on his rental obligation) it had mistakenly included a "housing allowance" as part of the petitioner's standard of need. When the petitioner's standard of need not including the housing allowance was divided into the lump-sum, the department determined that the resulting disqualification period for ANFC was until December, 1988.¹

The petitioner maintains that the portions of the

lump-sum he spent for certain past due housing, utility, transportation, and food expenses were not "available" to him "for reasons beyond his control" within the meaning of the pertinent regulations. (See W.A.M. § 2250.1, infra). Uncontroverted evidence establishes that out of the lump-sum received in November, 1987, the petitioner paid \$1,031 in past due car payments, \$171 for car repairs, \$168 for car insurance, \$170 overdue for house insurance, \$1,044 in past due property taxes, \$347 in past due credit charges for school clothing, \$486 for a bill at a local food market, and \$283 for an overdue fuel oil bill.

Although the petitioner testified that his wife used the family car to drive to the place of her employment, he stated that his 18 year old son (who lives with the family) also had a car. The petitioner did not specifically testify, and the evidence does not otherwise indicate, that the car for which he made the payments was necessary for his wife to maintain her employment. Similarly, the evidence does not establish the necessity (discussed below) of the petitioner's having paid the bills for new school clothes and past food purchases. However, it is found that the amount the petitioner paid for past due property taxes, house insurance, and fuel were necessary to keep and maintain the family's housing and utilities.

ORDER

The department's decision is modified. The department shall "offset" from the amount of the petitioner's lump-sum

payment the amounts the petitioner paid in past due property taxes, house insurance, and fuel oil bills. The matter is remanded to the department to determine the petitioner's ANFC disqualification in accord with this decision.

REASONS

Ordinarily, when an individual receives a lump-sum payment his household becomes ineligible for ANFC for the number of months obtained by dividing the household's monthly "standard of need" (which is set by regulations-- see W.A.M. § 2245.2) into the total amount of the lump-sum.² W.A.M. § 2250.1. However, the same regulation allows the department to "offset" amounts against the lump-sum in the following three instances:

- 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 reasons beyond their control;
- 3) The family incurs and pays for medical expenses which offset the lump-sum income.

In Fair Hearing No. 6891 (decided on December 9, 1985) the board examined the requirements of the above "offset" provisions. In that case it held that subparagraph 2 of § 2250.1 (supra), the only one at issue both here and in Fair Hearing No. 6891, established a two-part test: 1) unavailability, and 2) due to circumstances beyond the

control of the family. Regarding the first part of the test, the board ruled that payments by an individual from a lump-sum to satisfy pre-existing legal obligations rendered that portion of the lump-sum "unavailable" to the individual within the meaning of § 2250.1(2) (supra). Id. pp 5-7.³ In the instant matter there is no dispute that all the payments specifically described in the above findings that were made by the petitioner when he received his lump-sum were for past-due debts. Thus, for all these payments, the first part of the test (i.e., the "unavailability" to him of this amount of the lump-sum) is met.

Regarding the second part of the test (i.e., whether the unavailability was "beyond the control of the family"), the board in Fair Hearing No. 6891 held the determining factor to be "whether or not it was necessary to the petitioner to incur and pay for these bills" Id. p 7. In the instant case there can be little question that it was "necessary" for the petitioner to pay his property taxes, house insurance, and fuel oil bills in order to maintain his family's housing and utilities. Housing and utilities (especially heat) must be considered basic necessities per se. In the absence of evidence to the contrary it can reasonably be assumed that individuals who are behind in their house and utility payments risk losing or not being able to obtain these items.⁴ Thus, it is concluded that a

family's payment of their past-due housing and utility debts is "beyond their control" within the meaning of 2250.1(2), supra.

The question of the "necessity" of the petitioner's payment of the debts and expenses relating to his car is a more difficult one. These types of expenses were also the issue in Fair Hearing No. 6891 (supra). Consider, however, the following discussion by the board in Fair Hearing No. 6891 (at pp 7-8) regarding its conclusion that payment of care-related debts was "necessary" for the petitioner in that matter:

The uncontradicted evidence in the record shows that the petitioner is dependent on her vehicle for employment. She lives 2 miles out of town in a public housing project and must travel 4 miles further on the other side of town to get to her employment. She has explored all possibilities of public and other private transportation to no avail. Her car is an extremely modest one that probably has little value other than as basic transportation. The role that a vehicle plays in the lives of persons in a largely rural area with little public transportation is well-recognized in the department's own regulations. For example, a person is allowed to exclude up to \$1,500 in equity for a vehicle which is used as the primary means of transportation for an assistance group. W.A.M. 2263.6. The department's General Assistance regulations also include transportation as a significant factor to be considered in employability.

See W.A.M. 2607 and 2607.1.c.4. It is not difficult to conclude that the loss of transportation can be a deciding factor in whether or not a person maintains his or her employment.

In light of the above, it must be concluded that the petitioner bears the factual burden of proof in establishing the actual necessity of a car or any other item that cannot be considered universally essential.

Unlike shelter and basic utilities, which can be assumed to be essential to everyone (see supra), a car cannot be considered a necessity per se.⁵ There must be specific evidence that the car in question is necessary for a household member to become or remain employed or to meet some other basic need (e.g., transportation for medical treatment).

In this case, although specifically citing Fair Hearing No. 6891 in his arguments, the petitioner presented virtually no evidence establishing that the car in question was actually necessary for anyone's employment or to meet any other basic need of the household. The petitioner testified only that his wife "used" the car to get to work.

He did not allege, however, that she had no alternative means of getting to work. This is especially crucial in this case because another family member also had a car. Therefore, it cannot be concluded that the past-due payments the petitioner made on the car in question rendered this amount of the lump-sum payment "unavailable" to him for reasons "beyond his control".

This leaves the question of the petitioner's payment of his past-due grocery bill and his credit purchase of school clothes for his children. Certainly, food and clothing, in general, should also be considered basic necessities. However, unlike past due taxes, house insurance, and utility payments (see supra), it cannot reasonably be assumed, nor does any evidence in this matter

remotely establish, that the petitioner would have been unable to obtain these necessities if he did not pay past-due bills from a particular grocery and clothing store. Since it cannot be found that it was "necessary" for the petitioner to pay these bills, it cannot be concluded that these amounts of the lump-sum were "unavailable" to the petitioner "for reasons beyond his control." See Fair Hearing No. 6891 (supra).

In light of the above, the department's decision is modified. The department shall offset the amounts (described above) that the petitioner spent for past-due housing and utility obligations out of the lump-sum payment he received in November, 1987. The matter is remanded to the department to implement the above conclusions in determining the length of the petitioner's ANFC disqualification period.

FOOTNOTES

¹It does not appear that the petitioner disputes the basis of this revised determination. See Cronin v. Dept. of Social Welfare, 145 Vt 187 (1984).

²The "rationale" of the regulation appears to be that an ANFC family should not benefit in any way from "windfall" lump-sum income.

³In Fair Hearing No. 6891, the board also determined that it would be against public policy to require that individuals face legal process before it could be determined that they have a "legal obligation to pay bills in arrears." Id. at pp 6-7.

⁴Policy considerations similar to those noted in Footnote 3 (supra) also apply to the question of the "control" a petitioner has over paying off certain debts. It can always be argued that even if the petitioner lost

his house through non-payment of his taxes, he could still obtain alternative housing--e.g., he could simply locate a rental. There are compelling policy reasons, however, to prevent and discourage the disruption to low-income families that inevitably occurs when they are involuntarily forced to move. Such a situation might also be more costly to the department in that the loss of a home through a tax sale could well trigger the family's need and eligibility for other benefits (e.g., E.A. or G.A.).

⁵The hearing officer knows of no assistance program in which a car is considered a "basic necessity."

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