STATE OF VERMONT

HUMAN SERVICES BOARD

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| In re | ) | Fair Hearing No. 8615 |
| | ) | |
| Appeal of | ) | |

## INTRODUCTION

The petitioner appeals the amount of money the Department of Social Welfare deducted from his lump-sum retroactive SSI benefits as reimbursement for General Assistance (G.A.) payments made by the department to the petitioner and his wife during the pendency of the petitioner's SSI application. The issue is whether the methodology used by the department in calculating reimbursement is in accord with the state G.A. regulations and with the federal SSI statutes and regulations.

## FINDINGS OF FACT

The facts are not in dispute. In September, 1988, the petitioner, who lives with his wife, applied for SSI benefits. While that application was pending, the petitioner and his wife began receiving regular G.A. payments to cover most of their basic needs (e.g., rent, utilities, personal needs, and medical expenses). At the time of his application for SSI, the petitioner, as a condition of receiving G.A., agreed in writing to authorize the Social Security Administration (SSA) to send the "first payment" of his SSI benefit directly to the department. The petitioner further authorized the department

to deduct from his first SSI check "the total amount of G.A. . . . received during the period of time from my initial eligibility for SSI and this first SSI check."

In April, 1988, the petitioner was found eligible for SSI, effective January 1, 1987. SSA sent the department the petitioner's lump sum SSI check in the amount of $5,758.34. The department determined that it was entitled to a reimbursement of $2,818.30 for the G.A. it had paid to the petitioner while his SSI was pending. The department deducted this amount and sent the petitioner a check for the balance ($2,940.04) of the retroactive SSI payment.

Based on its regulations and policies (see infra), the department computed its share of the SSI payment by "prorating" 50 percent of the G.A. payments made to the petitioner and his wife during this period for their personal needs and for their utility bills. The department also deducted, but did not prorate, the G.A. it provided to cover the petitioner's mortgage payments. However, the department did not take any reimbursement for vendor G.A. payments it made on behalf of the petitioner and his wife during this period for medical treatment and prescription medications.

The petitioner argues that since both he and his wife received G.A. during the period in question, the department can deduct from his SSI only those amounts of G.A. paid to him above and beyond the amounts that would have been

payable to his wife without his presence in the household. The department contends that its methodology for calculating G.A. reimbursement is consistent with the federal and state statutes and regulations.

ORDER

The department's decision is affirmed.

REASONS

The G.A. regulations define an "applicant" as "the individual who is applying for (G.A.) for his own needs and for the needs of those dependents with whom he lives and for whom he is legally responsible . . . For married individuals, living together, the term applicant refers to both spouses and either spouse may complete the application." W.A.M. ∋ 2601. The same regulation defines "dependents" as "husband, a wife, natural, adopted or step-child(ren) under age 18."

The regulations setting forth the G.A. "eligibility criteria" provide as follows (at W.A.M. ∋ 2600D):

> General Assistance shall be furnished with the understanding that when a recipient subsequently acquires benefits or resources in any amount from: an inheritance; cash prize; sale of property; retroactive lump sum Social Security; Veterans: or Railroad Retirement benefits; or court awards or settlements; he shall be required to make reimbursement for the amount of aid furnished during the previous two years.
>
> The G.A. applicant or member of the G.A. household who is also an SSI applicant must sign a Recovery of General Assistance Agreement (DSW-230B) which authorizes SSA to send the initial check to this department so that the amount of General Assistance received can be deducted. The deduction will be made

> regardless of the amount of the initial SSI check. Any remainder due the SSI recipient shall be forwarded to him or her within 10 days. The deduction shall be made for General Assistance issued during the period from the first day of eligibility for SSI to the date the initial SSI check is received by the department.
>
> When the SSI grant does not include all members of the G.A. household, the deduction shall be for a prorated portion of G.A. granted, to reflect only those included in the SSI grant.

In interpreting the final sentence of the above provision the department relies on the following portions of an internal memorandum (dated May 5, 1986) from a representative of the commissioner to the department's operations and legal staff:

1. deduct all of the G.A. paid for housing (rent and/or mortgage, etc. expense excluding separate G.A. payments for fuel and/or utilities);

2. deduct the SSI recipient/s' pro-rata share of the total of all other G.A. payments made to the household during the period when the SSI application was being processed irrespective of which household member was the payee for the G.A. check or vendor (e.g. if a married couple received G.A. but only one becomes eligible for SSI, we would deduct 1/2 of the total non-housing G.A. payments made on behalf of the couple plus all of the G.A. payments made for housing).

At issue in this case are the failure of the department to "prorate" any of the petitioner's mortgage payments and the department's policy of deducting 50% rather than the "incremental" amount of <u>other</u> G.A. received by an SSI applicant who resides with a G.A.-eligible (but not SSI-eligible) spouse. In order to frame these issues it is necessary at the outset to examine the federal statutory and regulatory SSI/G.A. reimbursement scheme.

The Social Security Act was amended in 1974 to include an "interim assistance program" with two objectives: (1) To provide needy SSI applicants with a means of support while their SSI applications were pending, and (2) to encourage states to provide this support by establishing a means by which states could recoup interim assistance payments directly from SSA. See Moore v. Colantti, 483 F.Supp. 357 (E.D. Pa., 1979). Shortly after the federal amendments, the department enacted the SSI reimbursement provisions of ə 2600D (see Fair Hearing No. 7970).

42 U.S.C. ə 1383(g)(3) defines "interim assistance" as "assistance financed from State or local funds and furnished for meeting basic needs during the period, beginning with the month in which the individual filed an application for (SSI) benefits . . . for which he was eligible for such benefits." The federal regulations, at 20 C.F.R. ə 416.1902 essentially repeat the above definition, with the added proviso that interim assistance "does not include assistance the state gives to or for any other person." The petitioner argues that under the above sections the department cannot deduct as reimbursement the entirety of any G.A. payment made to him and to his wife. He further argues that the only amount the department can deduct from SSI for G.A. payments made to the household is the incremental amount he received in G.A. over and above

what his wife would have received as an eligible G.A. household of one.

In making this argument, the petitioner relies primarily on a 1981 decision by the New York Court of Appeals, Delmar v. Blum, 423 NE2d 27, which held that the state is required to use the same formula under the state's general assistance program in computing reimbursement from SSI for "interim assistance" as it originally used in calculating the amount of G.A. the petitioner was entitled to receive. The Delmar court observed that "interim benefits are in the nature of a loan, or a substitute for SSI benefits." The state, it held, is entitled to reimbursement to only those portions of G.A. actually paid to the recipient pending the recipient's application for SSI.

Delmar, however, is distinguishable from the instant matter in one crucial respect. In New York, unlike in Vermont (see supra), G.A. benefits are payable to the spouse of an SSI recipient as a separate household of one. In other words, New York has adopted a definition of G.A. "household" akin to that of the federal AFDC (in Vermont, ANFC) program, whereby SSI recipients are considered "separate households" from their relatives. Thus, their SSI benefits are not factored in determining the income-eligibility of the remaining household members--including spouses. The key to the court's decision in Delmar was its conclusion that the regulations did not authorize a

reimbursement methodology that would result in a net loss of benefits to the SSI recipient. Because the SSI applicant in Delmar was entitled under New York law to only an incremental increase in G.A. over and above what her husband was receiving in G.A. during the pendency of her SSI application, the state could not claim reimbursement from her SSI on the basis of a per capita (50/50) division of G.A. paid to the household during that time. In other words, the state could not "benefit from the petitioner's need for interim benefits" by being reimbursed more than what it would have been had the petitioner waited for her SSI without applying for G.A. Id at p 30.

The Vermont regulatory scheme is significantly different. As noted above, the regulations here require that spouses be considered a single "household" for G.A. purposes. If one spouse receives SSI, that income is considered in determining the eligibility of any other household member--not just the amount of payment to them. In this sense, G.A. paid to and for one spouse in Vermont is considered payment to and for the other.

Neither the petitioner nor his wife in this case could have received any G.A. if the petitioner had been receiving SSI during the period in question. Unlike in Delmar, the department in this case is not seeking reimbursement from the petitioner's SSI of more than it paid out in G.A. In fact, because of the department's regulation regarding "proration" (supra), the department is reimbursed

considerably less than it actually paid out to the household.

The federal statute and regulation recognize that "interim assistance" plans vary from state to state and that they are entirely state-funded and state-administered. They give each state the authority to "determine appropriate methodology for calculating the amount of reimbursement due." Kraft v. Commissioner of Public Welfare, 496 NE 2d 1379, 1385 (Mass., 1986). The problems that existed in the Delmar case simply do not apply to Vermont's G.A. scheme. Thus, it cannot be concluded that W.A.M. ə 2600D is violative of the federal provisions.

The remaining issue, then, is whether the department's policy of not "prorating" G.A. housing payments is contrary to its own regulation (ə 2600D, supra). The department's rationale for treating housing payments differently from other G.A. payments (which the department does prorate) is that expenses for rent or mortgage do not ordinarily increase or decrease relative to the number of members in the household. While this distinction is perhaps tenuous, at least as compared to some other expenses that the department does prorate (do heating costs, for example, necessarily increase with more household members?), it cannot be concluded that the department's policy is plainly contrary to the wording of ə 2600D. Since the amounts households pay for rent or mortgage are not usually related

to household size, they cannot, as a practical matter, be "prorated . . . to reflect only those included in the SSI grant." Inasmuch as it cannot be concluded that the department's policy of not prorating housing payments is either irrational or plainly contrary to the wording of ɜ 2600D, the department's interpretation of its own regulation must be upheld. See Fair Hearing No. 7970.

In ordering that the department's policy toward G.A. reimbursement be upheld the hearing officer and the board are persuaded less by any compelling logic behind the department's position than by the realization that the department's overall scheme of G.A. reimbursement is significantly more liberal to recipients than it need be according to either federal or state regulation. As noted above, it does not appear that the federal regulations require the department to make a "proration" of any G.A. paid to a household with an SSI applicant. Furthermore, although the department's policy of not prorating housing payments works against the petitioner in this matter, it is nearly offset by another department "policy"--that of not seeking reimbursement from SSI for any G.A. paid out in the form of vendors to the providers of medical services to the household. This "policy" is also uncompelled by a plain reading of either the state of federal regulations. For those reasons the hearing officer and the board believe that recipients will probably be better served if the department's overall "scheme" of G.A. reimbursement from

SSI is left undisturbed.[1] Inasmuch as the department's decision can reasonably be viewed as consistent with federal and state regulations, it is affirmed.

FOOTNOTES

[1]In the petitioner's case, the hearing officer calculates that the SSI benefits "lost" by the petitioner because his G.A. rent payments were not prorated was about $800. However, the G.A. vendor payments for medical services for the petitioner totaled over $750--none of which was included by the department in the reimbursement. The hearing officer further calculates that because of the proration of G.A. payments that the department did allow, the petitioner had about $2,000 less deducted from his SSI than he would have had if the department did not prorate any G.A. payments.

These points are made not to attribute any largesse to the department, nor to characterize the petitioner's claims in this matter as "looking a gift horse in the mouth." Rather, the intent is to acknowledge that the department, if it chose, could have as a reimbursement policy one that is far more Draconian than the one now in effect. The petitioner's arguments are not without merit. But if this aspect of the department's "scheme" (i.e., the treatment of housing payments) is declared invalid, the door would be open for the department to abolish the other "policies" that clearly work in the favor of individuals like the petitioner. While not a sufficient legal basis, in and of itself, to affirm the department, this consideration is difficult to ignore as a matter of public policy.

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