

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. A-03/14-213
)
Appeal of)

INTRODUCTION

Petitioner appeals the imposition of a disqualification period with respect to her Reach Up benefits by the Department for Children and Families ("Department") due to the receipt of a lump sum payment. The following facts are adduced from hearings held on May 16 and June 9, 2014 and briefing by the parties that completed July 30.

FINDINGS OF FACT

1. Petitioner lives with her seventeen-year old daughter and is a recipient of Reach Up Financial Assistance (RUFA). During the summer and early fall of 2013, her case worker was assigned through the state's Vocational Rehabilitation (VR) program.

2. Over the summer of 2013, petitioner's mother became seriously ill and passed away in August of 2013. On October 2, 2013, petitioner received a life insurance inheritance of \$14,829.96.

3. Petitioner's RUFA case was transferred from VR to the Economic Services Division (ESD) in October, although her ESD case worker did not have contact with her until December 3, 2013, by phone.

4. Petitioner spent the entirety of her inheritance during October and November.

5. In December, the Department initiated a review of petitioner's expenditures and ultimately determined that she should be ineligible for RUFA from October 1, 2013 through June 30, 2014, based on application of the "lump sum rule." The Department determined that \$4,269.29 of the inheritance could be excluded, leaving \$10,560.67 subject to the rule.¹

6. Petitioner alleges that she told her RUFA-VR case worker about her inheritance on three separate occasions, and was never given any advice or information about the operation of the lump sum rule.

7. The Department disputes that petitioner ever informed either case worker about the inheritance until

¹The lump sum rule disqualifies recipients for the number of months of benefits equal to the amount of the lump sum, after subtracting allowable uses of the funds. The monthly benefit amount applied is equal to the monthly standard of need plus the applicable housing allowance. Using the funds for certain expenses, as specified in the regulations, may lessen the countable amount of the lump sum and therefore lessen the period of disqualification.

meeting with her ESD case worker on December 17, 2013, by which time the funds had been spent.

8. The evidence submitted by each party is substantially incongruent and cannot be reconciled absent a credibility determination.

9. In sum, petitioner testified that:

a. She "dropped in" on her case worker sometime in September of 2013 and informed her that she would be receiving an inheritance but did not know the amount. She states that the discussion lasted just a few minutes and her case worker told her to report the inheritance when she received it. She further states that her daughter was with her when this impromptu meeting occurred.

b. After she received the inheritance on October 2, she did not report it immediately to the Department but did report it to her case worker when they spoke on the phone on October 18. She states that her VR case worker told her to discuss it with her ESD case worker after the case was transferred there.

c. She had another brief "drop-in" meeting with her case worker in October, which she states she initiated in order to report her inheritance once again,

and was told by the caseworker to report the inheritance "upstairs."² Petitioner initially testified that she brought receipts with her, but later testified that was for the December meeting with her ESD case worker.

d. Petitioner states that her daughter was with her for the drop-in meetings in September and October and that they must have occurred on days that her daughter had an appointment at her psychiatrist's office, which is also in St. Albans.

e. She reported the inheritance to her new ESD case worker in a phone conversation on December 3.

10. In sum, petitioner's VR-RUFA case worker testified that:

a. She met in-person with petitioner once, on July 26, 2013.

b. She spoke on the phone with petitioner on August 26, 2013. Her casenote for that call mistakenly indicates that petitioner's father is in the hospital.

c. She spoke on the phone with petitioner on October 18, 2013. Her casenote indicates that petitioner's mother passed away several months prior.

²The VR office is on the first floor of the building and the Economic Services Division is on the third floor.

d. She was never informed by petitioner, nor do her casenotes reflect such, about the inheritance.

e. Petitioner never dropped in to see her without an appointment, nor do her casenotes reflect such.

f. She has never met petitioner's daughter.

g. If she had been told about the inheritance, or if a client "dropped-in" and they had a substantive conversation, this is the type of information that she would have included in a casenote.

h. She acknowledged that her case load was high during this period.

11. The VR case worker's notes include interactions with petitioner such as phone calls to cancel or reschedule appointments, and details from their conversations about her employment challenges, personal issues, and vocational goals.

12. Petitioner's daughter testified as follows:

a. She recalls coming to meet with her mother's case worker at the Vocational Rehabilitation office. She was able to give a general description of the VR case worker.

b. She recalls coming to only one meeting. When it was suggested that the meeting was in October, she indicated "yes." When pressed further, she could not

recall the exact date or month or time of day, but that it was during the day, sunny, and chilly.³ She did not recall whether it was before or after she attended school, on a day that she also went to her psychiatrist's office, or, if it was, whether it occurred before or after she attended the appointment. She stated that it was likely the meeting occurred sometime in the afternoon.

c. She testified variously that the meeting occurred "downstairs" and "upstairs."⁴

d. While she acknowledges that she was not paying attention during the entire meeting, she recalled that her mother came there to report the inheritance, and that her mother told the caseworker she had received \$13,000. She recalls the caseworker telling her mother that she needed to go see someone else to report the inheritance.

13. The daughter's school attendance is comprised of a daily tutoring session from 2:45 p.m. to 4:15 p.m.

³It is anticipated that petitioner will argue her daughter testified that the meeting occurred in October. However, this testimony came in the form of a suggestion from petitioner's counsel, and is not weighed as strongly as the daughter's testimony in response to open-ended questioning.

⁴See note 2, *supra*.

14. The daughter had appointments at her psychiatrist's office on September 11, October 9, and November 14, 2013.

15. The VR caseworker had a meeting out of the office on October 9 from late morning until the end of the day, including travel time. She did not return to the office.

16. Petitioner spoke with her new ESD case worker by phone on December 3. There is no record in the case worker's notes of that conversation that the inheritance was disclosed, and the ESD case worker testified that petitioner did not disclose it at the time. This contradicts petitioner's testimony that she disclosed the inheritance on December 3.

17. There is a record of petitioner disclosing the inheritance in her meeting with the ESD case worker on December 17.

18. In general, the testimony and evidence offered by the Department is given more weight and credibility than that offered by petitioner. Petitioner's evidence lacks detail and internal consistency. Petitioner was certain that she informed her case worker about the inheritance during two "drop-in" meetings in September and October when her daughter was with her on a day she also had an appointment with her psychiatrist. Her daughter clearly testified to a single

meeting, could not recall the month or day, but that it was daytime, sunny, and chilly. On the only relevant day in question for petitioner's claims, October 9, a day petitioner's daughter had a psychiatrist's appointment, the VR case worker was out of the office during the time a meeting might have taken place.⁵

19. At its best, disregarding the inconsistencies in the testimony, petitioner's evidence suggests a meeting is just as likely to have occurred sometime in November as October; by the end of November, petitioner had spent through the inheritance.

20. Petitioner's evidence also lacked reliability. She states that she informed her VR case worker on three separate occasions about the inheritance, in September during an unscheduled meeting, by phone on October 18, and in another unscheduled meeting after October 18. After stating that she reported the inheritance on October 18, petitioner states, inexplicably, that she came in again in October to report the

⁵By necessity, as she acknowledges, petitioner must rely on a meeting in October. In September, she did not know how much the inheritance was, while her daughter recollects that a figure of \$13,000 was discussed. In order to accept that petitioner's daughter recollects the same meeting, it had to have occurred after September. By some point in November, the inheritance had been spent down. Petitioner argues that she "speculated" that the drop in meeting occurred on a day that her daughter had her appointment with her psychiatrist. That is inconsistent with her testimony, in which she said it "had to have been" on the same day as the appointment.

inheritance to the same case worker, despite having had her case transferred to ESD. In this respect petitioner's testimony undermines itself, as there is no reason given or apparent for this third meeting. Moreover, her testimony was uncertain and confused at times, and she acknowledged struggling, understandably, to recall dates and times.

21. Petitioner's daughter also acknowledged that she could not remember with any certainty when the meeting occurred. She recalled meeting both "upstairs" and "downstairs," although the VR office is located on the first floor. She could not recall whether the meeting was before or after school, or before or after her psychiatrist's appointment.

22. The Department's sole written record relating to any meeting during the relevant time in question was the VR case worker's summary note from the October 18 phone conversation. The case worker's practice is to record such notes contemporaneously or shortly afterwards. While the note makes mention of several details concerning petitioner's family life, including the passing of her mother, and employment issues, such as the fact that she refinishes furniture on the side for additional income, there is no reference of any kind to the inheritance.

23. Based on the above credibility determinations, testimony, and other evidence submitted, it is found that petitioner fails to establish notice of the inheritance prior to her expending the funds.

24. In the alternative to disregarding the entirety of the amount of the inheritance attributed to her as a resource, petitioner seeks to exclude two expenses that were not allowed by the Department.

25. One expense petitioner seeks is for the costs of a massage chair, which petitioner testified was for her arthritis and back pain. Petitioner did not submit any support from a medical provider for this item.

26. The second expense petitioner seeks is for funeral expenses, specifically flowers, an urn, granite stone, and cemetery permit. Petitioner received a loan from her employer to pay these expenses, and repaid the loan with a portion of the inheritance.

ORDER

The Department's decision is affirmed.

REASONS

If a Reach Up recipient receives a lump sum payment, they may be disqualified for a period of time equal to the amount of the standard of need for their household size, in addition to the applicable housing allowance, divided into the total of the lump sum amount minus any excludable expenses. See RUFA Rules § 2270.1. In petitioner's case, the Department determined that the lump sum rule was applicable to \$10,560.67 of petitioner's inheritance, which divided by \$1,170 (the applicable monthly standard of need plus the housing allowance), results in a nine(9) month disqualification. *Id.* It is also possible for a recipient to terminate RUFA altogether prior to receipt of the lump sum payment, spend the funds, and reapply without consequence as to the receipt of the payment.

Absent the two expenses specified above, petitioner does not dispute in general how the rule was applied, but argues the Department should be estopped from applying the rule in the first place. The Board has recognized the doctrine of equitable estoppel in prior lump sum disqualification cases. See Fair Hearing Nos. A-12/09-658 and B-02/09-112, and cases cited therein. The four elements of equitable estoppel 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 v. Dept. of Social Welfare, 159 Vt. 408 (1992); see also *Burlington Fire Fighter's Ass'n. v. City of Burlington*, 149 Vt. 293 (1988).

The first and only element to be considered here is whether the Department was on notice of petitioner's inheritance, i.e. did the Department "know the facts." *Id.* The evidence fails to establish that the Department was on notice to "know the facts" as required under the doctrine of equitable estoppel.

Not only was petitioner's evidence internally contradictory as to the issue of notice, it lacked specificity and reliability as found in the credibility determination above. *Even assuming* the Department was put on

notice, it was not clear as to when and how.⁶ Prior Board decisions considering estoppel have involved "advanced and repeated" efforts to notify the Department and a concomitant failure of the Department to adequately advise petitioners of the lump sum rule and their options. See Fair Hearing No. B-02/09-112 (refusing to apply estoppel where petitioner informed the Department contemporaneous with receipt of the lump sum and did not wait to receive information about how it might affect her RUFA, thus failing to show detrimental reliance).

Similarly, in Fair Hearing No. A-12/09-658, where the Board found that the elements of estoppel had been met, the Department was clearly put on advance notice and the case worker discussed the lump sum rule but failed to adequately explain the rules or the options to petitioner. Here, the evidence submitted by petitioner does not establish such notice.

Petitioner also fails to establish her case with respect to the issue of excludable expenses. She has presented no

⁶It is not necessary to address a secondary question of whether an impromptu "drop-in" meeting legally notifies the Department and triggers the obligations set forth in prior Board decisions. See e.g., Fair Hearing No B-02/09-112 ("In each case [where the Board applied estoppel], the petitioner gave the Department advance notice (over several months) and *repeatedly* asked their caseworkers if their grant would be affected and what they needed to do to keep their grants.").

medical evidence that her massage chair was an element of her medical treatment or care and as such, this expense was appropriately not excluded by the Department.

With respect to funeral expenses, petitioner's reliance on Fair Hearing No. A-12/09-658 is mistaken. RUFA Rule 2270.1 allows for the exclusion of payments of overdue bills under certain circumstances, restricted to nine areas, but not including funeral expenses. See RUFA Rules § 2270.1.B.7.a-i. These are among the areas cited in Fair Hearing No. A-12/09-658, which petitioner cites, but these areas do not include funeral expenses. A different section of the rule provides for payment of funeral expenses, specifically providing that "[i]nsurance payments or similar third party payments, *if received for payment of medical bills or funeral costs and used for those purposes*, must be excluded." RUFA Rules § 2270.1.B (emphasis supplied). Petitioner has made no showing or argument that the lump sum she received was for payment of funeral costs.

For the foregoing reasons, the Department's decision is consistent with the applicable rules and must be affirmed. See 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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