

6/29/94



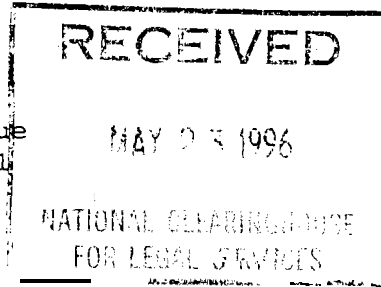
STATE OF WISCONSIN
DEPARTMENT OF HEALTH & SOCIAL SERVICES

51,151
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7p.

In the Matter of

1017264
(121 pp.)

Cathy S. Leverich
106 West 9th Avenue
Oshkosh, WI 54901



DECISION

AFD-70/81303

P R E L I M I N A R Y R E C I T A L S

Pursuant to a petition filed March 14, 1994, under sec. 49.50(8), Wis. Stats., to review a decision by the Winnebago County Dept. of Social Services to reduce Aid to Families with Dependent Children (AFDC), a hearing was held on May 18, 1994, at Oshkosh, Wisconsin. A hearing set for April 19, 1994 was rescheduled at the petitioner's request.

The issue for determination is whether the county agency correctly seeks to recoup an alleged AFDC overpayment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:
Cathy S. Leverich
106 West 9th Avenue
Oshkosh, WI 54901

By: Karen Roehl
Legal Services of Northeastern Wisconsin
404 North Main Street, Suite 702
Oshkosh, WI 54901

Wisconsin Dept. of Health & Social Services
Bureau of Welfare Initiatives
1 W. Wilson St., Room 350
P.O. Box 7851
Madison, WI 53707-7851

By: Sarah Turkow, ESS
Winnebago County Dept. of Social Services
448 Algoma Blvd., P.O. Box 2646
Oshkosh, WI 54903

EXAMINER:

Kenneth P. Adler, Attorney
Department of Health & Social Services

F I N D I N G S - O F - F A C T

1. The petitioner, whose social security number is 369-78-1641, is a divorced resident of Winnebago County who receives AFDC.
2. The petitioner is the owner of a basic universal life insurance policy through Woodman's Accident and Life Insurance Company.
3. When the petitioner applied for benefits in 1990, she provided a life insurance policy to verify asset information. The policy as provided by the petitioner stated both the cash and surrender values of her life insurance policy were \$0. Exhibit 2
4. Also at the time of application, the petitioner provided verification for an item which was subject to change, namely the cash surrender value of her life insurance policy. Exhibit 6
5. On May 6, 1993 the petitioner's life insurance company issued an annual statement. That statement indicated that as of the date of the letter, the petitioner's life insurance policy had a cash value of \$1,290.16 and policy surrender value of \$1,132.66. Exhibit 3
6. The petitioner and her former spouse entered into a Marital Settlement Agreement prior to the granting of their divorce. Section IV of that **settlement specifically** states that, for the benefit of their children, the parties are to maintain in full force, and pay the premiums on all life insurance presently in existence. Exhibit 7
7. On January 21, 1994 the county agency sent an Insurance Inquiry to the petitioner's insurance company seeking information on the net cash surrender value of the petitioner's universal life policy. The inquiry was returned by the insurance company indicating the net cash surrender value of the petitioner's life insurance policy was \$1,319.12. Exhibit 2
8. On March 11, 1994 the county agency sent the petitioner a Notice of AFDC Overpayment. This notice indicated the petitioner had been overpaid benefits from June, 1993 to February, 1994. The reason for the overpayment was the allegation that the petitioner had failed to report the available cash value of her life insurance. Exhibit 5
9. A computerized notice of decision was also generated on March 11, 1994. This notice stated the petitioner's food stamps were increasing based upon the reduction of her AFDC grant. Exhibit 4

D I S C U S S I O N

The issue in this case is whether the county took a correct action in attempting to seek a recoupment of alleged AFDC overpayments. The petitioner does not dispute that she was paid AFDC benefits during the period in question, but rather that the overpayment was not her fault and therefore it is unfair to make her pay it back.

The controlling federal regulation clearly requires recoupment of an AFDC overpayment regardless of whose error caused the overpayment to occur:

(13) Recovery of overpayments and correction of underpayments for AFDC. (i) . . . Overpayment means a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible. . . .

(A) The State must take all reasonable steps necessary to promptly correct any overpayment.

(B) The State shall recover an overpayment from (1) the assistance unit which was overpaid, or (2) any assistance unit of which a member of the overpaid assistance unit has subsequently become a member, or (3) any individual members of the overpaid assistance unit whether or not currently a recipient. . . .

(Emphasis added)

45 CFR 233.20(a)(13)(i)(A),(B). See also AFDC Handbook, Appendix 17.1.0. Accordingly, the county agency correctly sought recoupment here.

The petitioner asserted at hearing that she was not aware that her life insurance policy had a cash surrender value, and therefore she should not be punished for receiving AFDC during a period of time during which she believed she was entitled to assistance. She testified she did not receive the May 6, 1994 notice from her insurance company informing her of the cash value of the policy.

Counsel for the petitioner has incorrectly labelled the issue as one concerning equitable estoppel. The issue raised by the petitioner is not an equitable estoppel issue as equitable estoppel requires an agency action which a person relied upon to their detriment. In this particular case, the failure to receive the notice from the insurance company on May 6, 1994 was not an agency action which the petitioner relied upon to her detriment.

The petitioner also raised an issue concerning the availability of the life insurance policy and stating that it should not be considered available pursuant to AFDC Handbook, Appendix 11.1.0. That section provides that an asset can only be considered available to a person when the person has a legal interest in the asset, the legal ability to make it available, and that it can be made available during a particular period of time.

The petitioner argued that removing the cash value of her policy is a violation of her divorce settlement agreement which requires her to keep her life insurance policy in full force and effect for the benefit of her children. I do not find this argument persuasive. By removing the cash value which is accruing, the petitioner is not in any way affecting the face value of the policy.

Finally, the petitioner questioned receipt of a computerized notice of decision informing her of the recoupment action. However, there was no dispute that the petitioner did receive the hand-written notice of decision. This decision informed her of the reduction of her grant and her right to contest this action. While the county was not able to produce the computerized notice of decision concerning the recoupment action, the petitioner was not prejudiced as she received the hand-written notice informing her of the reduction of her grant and

her right to appeal the issue. The petitioner did, in fact, subsequently timely appeal the action.

C O N C L U S I O N S O F L A W

1. That, based upon the cash surrender value of the petitioner's life insurance policy, she was ineligible to receive benefits during the period in question.
2. That, based upon, the fact the petitioner was ineligible to receive benefits for the period in question, the county agency correctly seeks to recoup those benefits.

NOW, THEREFORE, it is

O R D E R E D

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to Office of Administrative Hearings, P. O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important. Or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.


Your request for a new hearing must be received no later than 20 days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in Sec. 227.49 of the state statutes. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one). The appeal must be served on the Department of Health and Social Services as respondent, P. O. Box 7850, Madison, WI 53707-7850.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in Sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this 29TH
day of JUNE, 1994.



Kenneth P. Adler, Attorney
DEPARTMENT OF HEALTH & SOCIAL SERVICES
6/9/94kpa

cc: Petitioner
Winnebago Co. DSS
Karen Roehl, Atty - LSNEW



OFFICE OF ADMINISTRATIVE HEARINGS

Tommy G. Thompson
Governor

3319 W. BELTLINE HWY.
P.O. BOX 7875
MADISON, WI 53707-7875

Gerald Whitburn
secretary

state of Wisconsin

Department of Health and Social Services

PHONE: (608) 266-3096
FAX: (608) 264-9885
TDD: (608) 264-9853

August 16, 1994

Karen Roehl
Legal Services of Northeastern Wisconsin
404 North Main St., Suite 702
Oshkosh, WI 54901

Re: Rehearing Request
Cathy Leverich - AFD-70/81303

O R D E R

Dear Ms. Roehl:

Your request for a rehearing dated July 18, 1994 is hereby denied.

Pursuant to sec. 227.49, Wis. Stats., a rehearing may be granted only on the basis of a material error of law or fact or upon the discovery of new evidence sufficiently strong to reverse or modify the order and which could not have been discovered previously by due diligence. The petition must specify in detail the grounds for the relief sought and supporting authorities. Your request does not establish the grounds necessary for granting a rehearing in this matter.

I am not persuaded by your reassertion of arguments made at hearing as to unavailability of the asset at issue.

The cash value has already been reduced by her loan. Thus it clearly was available. As to being unaware of it, even if it is conceded that this is so, the error here was the agency's, in not seeking verification. Overpayments must be recovered whether caused by recipient or agency error.

Your equitable argument amounts to saying that the petitioner relied on the agency continuing to find her eligible. This would be the case in all overpayment causes where there is agency error. Your argument is equivalent to saying that "by finding me eligible in error, the agency estops itself from ever enforcing an overpayment claim." Yet, again, the intent of the federal regulations is unequivocally clear: to recover benefits even where due to agency error.

Finally, I decline to reverse the decision on the basis of procedural error, i.e., inadequate notice. The petitioner was not materially prejudiced by a notice inadequacy.

This is an order of the Department of Health and Social Services disposing of a petition for rehearing. Parties having standing to appeal may file a petition to Circuit Court under sec. 227.53 of the Wisconsin Statutes. A petition to Circuit Court must be filed no more than 30 days after the date of a denial of a timely rehearing petition. An appeal must be served on the

Letter to Karen Roehl
Re: Rehearing Request - Cathy Leverich
August 16, 1994
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Department of Health and Social Services, P.O. Box 7850, Madison, WI 53707-7850. Copies of the appeal must also be served on all other "Parties in Interest" identified in the original administrative hearing decision in this case.

Sincerely,



Louis H. Dunlap, Director/
OFFICE OF ADMINISTRATIVE HEARINGS

LHD:bjw

cc: Gary Kuhnen - BEA
Cathy Leverich
Winnebago County