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STATE OF WISCONSIN

CIRCUIT COURT

WINNEBAGO COUNTY

CATHY S. LEVERICH,

Petitioner

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FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER FOR JUDGMENT

vs.

DEPARTMENT OF HEALTH AND SOCIAL
SERVICES FOR THE STATE OF
WISCONSIN,

CASE NO. 94-CV-784

Respondent.

The above-entitled action having come before me, the Honorable Bruce K. Schmidt, Circuit Court Judge of Winnebago County, Wisconsin, on January 30, 1995, on the petition for review, filed by the petitioner, Cathy S. Leverich, pursuant to Secs. 227.52 and 227.53, Stats., of a June 29, 1994 decision by the respondent, Department of Health and Social Services for the State of Wisconsin, permitting recovery of an alleged overpayment caused by agency error;

And the appearances at the hearing were as follows: the petitioner, Cathy S. Leverich, by Attorney Karen S. Roehl of Legal Services of Northeastern Wisconsin, Inc., in person, and the respondent, the Department of Health and Social Services for the State of Wisconsin, by Assistant Attorney General Donald P. Johns, by phone;

NOW THEREFORE, upon the entire record herein, including the briefs of the parties and the hearing, I make the following:

FINDINGS OF FACT

1. This is a Chapter 227 review of a June 29, 1994 decision by the respondent holding petitioner responsible for an alleged overpayment, caused by agency error, of benefits her family

received under the Aid to Families with Dependent Children (AFDC) program from May of 1993 to January of 1994.

2. Petitioner and her two minor sons received AFDC, Medical Assistance (MA) and Food Stamps (FS) benefits through Winnebago County, since August of 1990.

3. Petitioner is divorced and the divorce judgment awarded her a life insurance policy, that had been taken out by her former husband, and ordered her to maintain that life insurance in full force for the benefit of the children.

4. Petitioner applied for benefits in July of 1990 and provided the county agency a copy of the life insurance policy which listed a \$0 cash surrender value, to verify the asset information.

5. Petitioner's case was reviewed every six months, in January 1991, July 1991, January 1992, July 1992, January 1993, July 1993, and January 1994.

6. At each review prior to January 1994, the petitioner was determined to be eligible for AFDC. At these reviews, the life insurance was included and the worker verified that the life insurance policy had no cash value and so informed the petitioner.

7. At one of these earlier reviews, petitioner informed her worker that she had lost her copy of the policy and she was told not to worry about it because the county agency had everything it needed and that the policy had no cash value.

8. At the January 21, 1994 review, the petitioner had a new worker who requested new verification of this life insurance policy.

9. The petitioner fully cooperated with obtaining the new verification. The new verification from Woodman's, the life insurance company, indicated to the worker that the actual cash value of the policy was \$1,319.12, over the \$1,000.00 asset limit.

10. The worker informed petitioner of her options, including the loan option, and petitioner promptly took out a loan on the policy and her benefits were uninterrupted.

11. On February 15, 1994, the worker called Woodman's directly and learned that Woodman's had begun a new yearly practice of sending a value statement in May 1993, and sent the worker a copy of the May 1993 statement.

12. Petitioner credibly testified that she did not receive this value statement from Woodman's due to problems with her mail.

13. On March 11, 1994, the agency sent petitioner an overpayment notice demanding repayment of an alleged overpayment in the amount of \$2,395.00, for the months of June 1993 to February 1994, inclusive.

14. Petitioner requested a hearing on March 14, 1994. Although petitioner promptly requested a hearing, and requested continuing benefits, her April 1994 AFDC check was reduced due to the alleged overpayment.

15. The hearing was held on May 18, 1994.

16. A hearing decision upholding the overpayment was issued on June 29, 1994 and her July 18, 1994 request for a rehearing was denied on August 16, 1994.

17. The petitioner filed this petition for review on September 16, 1994, raising three basic arguments: equitable estoppel; unavailability; and inadequate notice.

CONCLUSIONS OF LAW

1. Sec. 227.57(5), Stats., on the scope of review, provides that incorrect interpretations of law can be set aside and the Court is not bound by the agency's interpretation of the law. The Court can order appropriate relief. §227.57(9), Stats.

2. Equitable estoppel can be applied to a state agency such as the respondent. See Dent. of Revenue v. Moebius Printing Co., 89 Wis.2d 610, 279 N.W.2d 213, 224-25 (1979); State v. City of Green Bay, 96 Wis.2d 195, 291 N.W.2d 508, 511 (1980), and cases cited in petitioner's brief. Neither federal nor state authorities prevent equitable estoppel in these cases.

3. The basic elements of equitable estoppel are: 1) action or non-action which induces; 2) reasonable reliance by another; 3) to his or her detriment. Dent. of Revenue v. Moebius Printing Co., 89 Wis.2d 610, 279 N.W.2d 213, 224-25 (1979); State v. City of Green Bay, 96 Wis.2d 195, 291 N.W.2d 508, 511 (1980). For government agencies, there is a fourth step, involving an individual assessment of the balance between the injustice that might be caused if the estoppel doctrine is not applied against the

public interests at stake if the doctrine is applied. State v. City of Green Bay, 96 Wis.2d 195, 291 N.W.2d 508, 511 (1980).

4. The first element, action by an agency, is disputed by the respondent. The respondent's argument, blaming the petitioner, is faulty and misplaced, for several reasons. First of all, petitioner provided a copy of the life insurance policy in July of 1990 and was told the life insurance policy had no cash value. Three workers had determined that the life insurance had no cash value. Each review, in January 1991, July 1991, January 1992, July 1992, January 1993, and July 1993, included the life insurance, and each review verified that the life insurance policy had no cash value. The workers had an option to verify either through the policy itself or direct contact with the insurance company, and it was the workers' decision to use the policy itself. Only the fourth worker, chose the direct contact option, because she had come across the issue in other cases.

5. The first element, action by the respondent, is established. Even if the petitioner had received the May 1993 statement, it is seriously doubtful that she would have understood its significance based on her workers' statements.

6. The second element, reasonable and justifiable reliance, is established. Several workers told the petitioner, based on seven separate formal and required previous reviews, that the life insurance policy had no cash value. This induced reasonable reliance.

7. The third element, detriment to the petitioner, is self-evident to the Court.

8. The fourth element, balancing the injustice against the petitioner with the public interest at stake, weighs in the petitioner's favor. This factor is analyzed on a case by case basis. The effect on the public, in this case, would be minor. This decision merely bars the agency in this particular case from collecting an overpayment which is a result of the agency's actions. Not all agency errors involve equitable principles. The respondent can continue to collect overpayments in other cases, however, permitting collection of the overpayment from the petitioner in this case would result in a great injury to the petitioner. Petitioner and her family are already living on monthly AFDC benefits for the poor. It would be devastating to this family to have to pay back the alleged overpayment out of its AFDC benefits.

9. Based on the unique circumstances of this case, the respondent is equitably estopped from recovering this overpayment from the petitioner. Valid arguments could be made to support petitioner's other arguments, but they will not be addressed, because of the Court's decision that equitable estoppel bars the

recoupment of the overpayment.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 31 day of MAY, 1995.

BY THE COURT:



Bruce K. Schmidt
Circuit Court Judge

Drafted by Attorney Karen S. Roehl.

Approved as to form by Attorney Johns:

Dated: 5-15-95 D. Medley