

M.R.,
Petitioner,
v.
CAMDEN COUNTY WELFARE BOARD,
Respondent.

Decided November 16, 1979

Initial Decision

SYNOPSIS

Petitioner's failure to cooperate with the county welfare agency properly resulted in the denial of her food stamp application. Petitioner refused to provide information concerning the proceeds of an automobile accident claim which was being held in escrow for her by her attorney. *N.J.A.C.* 10:87-2.14 to 17 permits denial of benefits on these grounds.

Petitioner's contention that the funds should not be counted as income due to regulations which exclude "inaccessible resources" is incorrect. The regulations do not intend to shelter money which is easily converted into cash or whose receipt the applicant can control.

Brian O'Malley, Esq., for Petitioner (Camden Regional Legal Services)
Gerald Burke, Esq., for Respondent

METZGER, ALJ:

Petitioner seeks relief from the decision of the Camden County Welfare Board (CWB) denying Aid to Families with Dependent Children (AFDC) and food stamp program eligibility. A hearing was requested on August 27, 1979, and the matter was transmitted to the Office of Administrative Law as a contested case pursuant to *N.J.S.A.* 52:14F-1 *et seq.*

A hearing was scheduled for October 10, 1979, at the Camden County Courthouse. At that time, the parties stipulated to a dismissal of the AFDC claim. However, as there was some uncertainty as to whether a hearing was requested with respect to food stamp eligibility, that portion of the case was rescheduled and heard on October 15, 1979 at the Camden County Courthouse.

Petitioner applied for food stamps on August 23, 1979, and the file was kept in pending status until the first scheduled date of hearing, October 10, 1979, when it was clear that a request for fair hearing had been made or was being made, with respect to food stamps. The application was then denied.

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The CWB testified that some time during the winter of 1979, petitioner became entitled to the proceeds of an automobile accident claim. They were not aware of the exact amount of the claim; however, they notified petitioner's attorney in that matter, Joseph Weinberg, Esq., that M.R. had executed an agreement to repay the CWB from the proceeds of the accident, and that the sum of their lien was \$8,321. As the question as to whether petitioner was required to repay any or all of these moneys is apparently to be the subject of future litigation, the entire proceeds were frozen in Mr. Weinberg's trust account. Mr. Burke, of the CWB, stepped out of his role as counsel to testify that in a telephone conversation with Mr. Weinberg, he inquired about what the total sum of the settlement had been and was told by Mr. Weinberg that his client had instructed him not to divulge that figure. There was additional testimony from Ms. Macelis, Supervisor of Property and Resources, Camden County Welfare Board, that the CWB had requested information concerning the total amount of the proceeds on several occasions, and that the information was not forthcoming. The individual who took the food stamp application was not present at the hearing, nor was any writing produced which specifically made claim for that information. A number of documents were produced, however, surrounding the CWB's claim for payment of the \$8,321 in accordance with its agreement to repay.

There was no dispute that in late August 1979, the CWB authorized Mr. Weinberg to release \$200 to petitioner for necessities, and that some \$2,300 was released to her in early October.

Petitioner testified that she was entirely without funds during the months of August and September 1979, except for the \$200 released by her attorney, and that she did not instruct her attorney not to disclose the total amount of the settlement. On cross-examination, petitioner testified that even now she was not aware of the total amount of the automobile accident settlement.

I FIND the facts as follows:

1. Petitioner applied for Food Stamps on August 21, 1979.
2. In August 1979, petitioner's attorney, Mr. Weinberg, was holding the proceeds of the settlement of an automobile accident case in escrow on behalf of petitioner.
3. The CWB notified Mr. Weinberg that they held a claim against \$8,321 of whatever amount was being held.
4. The CWB sought to determine the exact amount being held in escrow, but petitioner would not herself disclose that amount nor would she authorize her attorney to do so.
5. Petitioner's application was maintained in pending status, and her

eligibility denied on October 11, 1979, the day after the first scheduled hearing.

6. Since August, \$2,500 has been disbursed to petitioner from her attorney's escrow.

7. \$8,321 remains in escrow pending resolution of petitioner's dispute concerning any repayment obligations to the CWB.

Petitioner argues in effect that she was without resources, but for the \$200, during the months of August and September, and was, thus, entitled to a food stamp allotment. She asserts that the funds in escrow may not be counted as income as they were not available to her.

The CWB takes the view that if petitioner had cooperated and either personally or through her attorney informed them of the total amount in escrow, they would have permitted a segregation of these funds and they could have made a determination with respect to eligibility. However, as they did not know whether there was more or less in the account than the \$8,321 which had been frozen and concerning which there is a contest, they could make no determination of eligibility other than to deny for failure to cooperate, *N.J.A.C.* 10:87-2.14. They chose rather to keep the file in pending status until they could find out more. They feel that their position has been vindicated by the fact that some \$2500 over and above the amount to which they lay claim, has been released to petitioner, which amount if released in August would have made petitioner ineligible for food stamps, *N.J.A.C.* 10:87-4.13(a)2.

As I have found, as a matter of fact, that petitioner was unwilling to provide information concerning the sum of the amount held in escrow by her attorney, there remains only the question of whether that refusal is sufficient to give rise to a denial of food stamps. *N.J.A.C.* 10:87-2.15 states:

Denial of Eligibility for Non-Cooperation – For a determination of refusal to be made by the CWA, the household must be able to cooperate but clearly demonstrate that it will not take actions it can take, to do what is required to complete the application process. For example, to be denied for refusal to cooperate, a household must refuse to be interviewed, not merely fail to appear for the interview. If there is any question as to whether the household has merely failed to cooperate as opposed to refused to cooperate the household shall not be denied.

Instructive also is the treatment of the subject of verification. *N.J.A.C.* 10:87-2.25 states in pertinent part:

Responsibility for Obtaining Verification – The household has primary responsibility for providing documentary evidence to support its income statements to resolve any questionable information. . . .

N.J.A.C. 10:87-2.25(b) states further:

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Inability to Obtain Documentary Evidence – Whenever documentary evidence cannot be obtained, the CWA shall substitute a collateral contact. . . .

N.J.A.C. 10:87-2.23 defines collateral contract as:

. . . a verbal confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made either in person or over the telephone. The acceptability of a collateral contact shall not be restricted to a particular individual but may be anyone who can be expected to provide an accurate third party verification of the household's statements.

It appears to me that in her unwillingness to disclose the required information, petitioner failed to cooperate within the meaning of the sections cited, and that the denial on these grounds was justified.

Petitioner relies upon various sections of the regulations most particularly *N.J.A.C.* 10:87-4.8, which indicates that "inaccessible resources" may not be counted as income, and *N.J.A.C.* 10:17-5.9, which establishes that nonrecurring lump sum payments may only be counted as a resource in the month "received." While in the narrow sense there may be no need to reach this question, as I have already concluded that there has been a failure to cooperate, it seems to me that in their context, the sections cited do not intend to shelter moneys which the applicant has in his or her power to receive or gain access to.

N.J.A.C. 10:87-4.7, which lists some 17 broad categories of resource exclusions, is concerned either with broad policy questions with respect to items which should, or should not, be considered resources, such as household goods, personal effects, burial plots, life insurance policies and the like; or with assets which the applicant has no reasonable prospect of controlling or gaining access to. In this context, *N.J.A.C.* 10:87-4.8, which excludes "inaccessible resources," is primarily concerned with nonliquid assets which cannot be readily converted into cash, or with assets which may be tied up in probate or like proceedings.

N.J.A.C. 10:87-5.10, in discussing nonrecurring lump sum payments, requires that these moneys must be "received" in order to be counted as a resource in any given month. However, the examples mentioned in the section of what it deems a nonrecurring lump sum payment, *i.e.*, income tax refunds, rebates or credits, retroactive lump sum Social Security, SSI, public assistance, railroad retirement benefits, lump sum insurance settlements and refunds of security deposits, indicates that the exclusion is for these and like payments, the receipt of which cannot be timed or controlled by the applicant. Further, when read together with *N.J.A.C.* 10:87-4.4, defining liquid resources as ". . . cash on hand, money in

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checking or savings accounts, saving certificates, and bonds, and lump sum payments as described in *N.J.A.C.* 10:81-5.9," the moneys with which we are here concerned more readily find their place with the former categories which are considered countable resources, irrespective of their immediate location, than in the latter category, for which actual receipt may be a prerequisite.

Finally, petitioner argued that as a procedural matter, the CWB failed to provide notice that it was placing her application in pending status, which it was required to do if it was not going to take action within 30 days, *N.J.A.C.* 10:87-2.30. And, while it appears that such a notice was not sent after September 23, 1979, the purpose of such notice would have been for "advising the household of action still required to determine eligibility . . ." *N.J.A.C.* 10:87-2.31 As petitioner was aware that the reason for delay was her unwillingness to disclose the total sum of the money in escrow, the notice would not have advised her of anything of which she was not already aware. The defect, if there be one, is technical at best.

It is my **CONCLUSION**, therefore, that petitioner failed to cooperate with the CWB within the meaning of *N.J.A.C.* 10:87-4.13(a)2, and, further, had the appropriate information been available to the CWB, petitioner's resources would have exceeded program standards, *N.J.A.C.* 10:87-4.13(a)2. The action of the CWB is, thus, **AFFIRMED**.

After reviewing this Initial Decision, the Division
of Public Welfare on December 24, 1979 issued the
following Final Decision:

The initial decision in the case of the above captioned, is accepted and incorporated herein.