

BURLINGTON COUNTY WELFARE AGENCY,
Petitioner,
v.
E.G.,
Respondent.

Decided March 4, 1982

Initial Decision

SYNOPSIS

The Burlington County Welfare Agency sought to terminate respondent's AFDC benefits on the grounds that respondent possessed an automobile, the value of which was said to be excessive under *N.J.A.C. 10:82-3.1 et seq.* as those regulations were amended as a result of the Omnibus Budget Reconciliation Act of 1981.

The administrative law judge found that the respondent owned a 1978 automobile with an accumulated mileage of 53,400 miles. On November 9, 1981, the agency advised the respondent that his benefits would be terminated because his automobile was valued at \$2,500, a figure in excess of that permitted by *N.J.A.C. 10:82-3.2*. The respondent was not informed of any right or opportunity to liquidate this resource which was allegedly in excess of the permitted value. The respondent himself presented an appraisal of the automobile which valued it at \$1,750.

Under existing regulations, the administrative law judge determined that a welfare agency must give notice to a welfare recipient that the recipient is required to liquidate an alleged excess resource within a reasonable period of time. This notice must be given prior to an agency's filing a notice of adverse action seeking termination. It is only when the agency has determined that the recipient is not liquidating the asset that the agency should move to terminate the recipient's benefits. Accordingly, the judge concluded that the agency's termination of respondent's benefits had been procedurally improper.

In addition, the judge determined that in using the "Red Book" to value the respondent's auto, the agency had failed to follow the instructions given in the Red Book and thus had failed to consider the present condition of the vehicle in reaching its valuation. Noting that an assessment based on generalized information is no assessment at all, the judge determined that in order to comply with existing federal and state regulations, the local agency must determine more than the auto's make, year and model before making an assessment.

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Accordingly, the judge determined that the agency had terminated the respondent's benefits improperly and ordered that the matter be remanded to the agency for re-evaluation of respondent's eligibility based on the judge's decision.

Jeffrey David Kotler, Esq. for Petitioner
James G. Gavin, Esq. for the Respondent

MASIN, ALJ:

The Burlington County Welfare Agency seeks to terminate benefits under the Aid to Families with Dependent Children (AFDC) program which it has been providing to the respondent because the agency believes that the respondent possesses an automobile, the value of which is such as to be excessive under the terms of the applicable welfare regulations concerning resources, *N.J.A.C.* 10:82-3.1 *et seq.*, as those regulations were amended effective October 1, 1981, as a result of the passage by Congress of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35). Following receipt of a notice of adverse action, Mr. G. requested a hearing on the proposed termination, and the matter was scheduled for hearing. Following argument by counsel and presentation of testimony at that hearing, the court directed counsel to file legal memoranda on various legal issues raised in the course of the hearing. The last submission by counsel was received by the administrative law judge on February 24, and the record closed at that time.

The facts respecting the case are not particularly in dispute. According to the testimony, the respondent owns a 1978 Honda. The respondent testified that the automobile has 53,400 miles on it. The car is equipped with a radio and has no air conditioning. Testimony received from Larry Thompson, an income maintenance supervisor for the agency, indicated that the respondent's last redetermination interview was held on September 16, 1981. At that time, since the new regulations dealing with automobiles as resources were not yet in effect, the respondent was determined to be eligible for benefits. On November 9, 1981, the agency advised Mr. G., through an adverse action letter, that his benefits would be terminated, effective December 1, 1981, because his automobile was valued, with respect to its average wholesale value, at \$2,500, a figure in excess of that permitted by the amended regulation, *N.J.A.C.* 10:82-3.2.

The respondent testified that when he received the notice of adverse action he called the welfare agency and was advised "not to worry,

this will go on for four months.” He was led to believe that his Medicaid benefits would continue regardless of the termination of his AFDC benefits, information which was incorrect. No one mentioned anything to him concerning any right or opportunity to liquidate the allegedly excessive asset, that is, the automobile. Mr. G. presented to the court an appraisal received from Willis Honda, a dealer in new and used automobiles, which appraisal noted that the vehicle had 54,000 miles, that the driver’s side window was out of track, that the interior has rips, that the front bumper was dented and that the automobile needed a new clutch. The appraisal lists the value of the vehicle at \$1,750. The appraisal was received by Mr. G. on December 10, 1981.

On cross-examination, the respondent advised that he spoke to the welfare agency about one week after receiving his adverse action notice, in order to determine how they had arrived at the decision that he had an excess resource. Mr. G. agreed that he had not asked anyone at the agency at that time about whether he could get rid of his vehicle. He testified that he does need to have an automobile.

LEGAL ARGUMENTS

The major issues which were presented for consideration by this court and ultimately by the Division of Public Welfare were as follows:

1. Is the county welfare agency required, prior to terminating an individual from welfare benefits, to provide an individual with a period within which to liquidate the resource or potential resource, in accordance with *N.J.A.C.* 10:82-3.4(a) and (b)?
2. Has the agency properly determined the value of the vehicle in accordance with applicable Federal and State regulations?
3. Has the welfare agency properly construed applicable Federal and State regulations respecting the treatment of monies which would be received were the resource liquidated?

It appears that the determination of these legal issues may have significance with respect to cases other than the one presently before the court. From my consideration of the various statutes and regulations, I have concluded that the Burlington County Welfare Agency has misconstrued the proper procedures to be employed in connection with the class of cases sometimes referred to as “automobile” cases, which have arisen as a result of the implementation of the October 1, 1981 changes in the Federal regulations.

(a) *Liquidation of Resources*

N.J.A.C. 10:82-3.4(a) deals with “Principles Affecting Potential Resources.” Section. 3.4(a) reads:

Liquidation or conversion of potential resources shall be undertaken and completed as promptly as the nature of the resource and circumstances permit. Such liquidation or conversion to an expendable form creates available income as defined in *N.J.A.C.* 10:82-4.1(a) and the agency shall take prompt and appropriate action to redetermine eligibility or adjust the payment as indicated.

Section 3.4(b) states:

If a member of an eligible unit willfully fails or refuses, within a period of 30 days after being requested in writing, to consent to or to take any action necessary in connection with a plan for liquidation, such individual shall be ineligible for assistance.

In the present case, the agency agrees that it at no time made any attempt to advise the respondent, either orally or in writing, that the respondent, being the owner of a resource which the agency considered to be of excess value as a result of the changes in regulations, had the right and obligation under welfare regulations to liquidate or convert said asset, namely the automobile, into an expendable form, presumably by selling the car, *N.J.A.C.* 10:82-35(a)1-3. According to the argument of counsel for the agency, there was no such requirement placed on the agency. Therefore, in counsel’s view, the agency acted perfectly in accordance with the regulations when it advised this recipient, upon discovering that he had a vehicle valued in the agency’s view at \$2,500, that his assistance would be terminated within less than one month of the time of the intended termination. In support of his position that *N.J.A.C.* 10:82-3.4 does not apply to automobiles of excess value, counsel for the welfare board cites 45 *CFR* Section 233.20(d) which he says states that, “income derived from the liquidation of an automobile is to be treated as ‘available for current use’ and that, therefore, ‘. . . the family will be ineligible for the full number of months derived by dividing the sum of the lump sum income and other income by the monthly needs standard for a family that size. . . .’” Counsel argues that this “mandatory language” substantiates the agency’s position “that a period of liquidation would be irrelevant in that any income obtained from the sale of the vehicle would result in a period of ineligibility for AFDC assistance.”

The position asserted by the welfare agency is incorrect for two reasons. First, the regulations contained in *N.J.A.C.* 10:82-3.4 do not indicate that they are to be disregarded where the expendable form of

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resource received from the liquidation may, because of other regulations, not affect the terminability of the benefits. That is, the mere fact that, after liquidating, a recipient may not be in a better position with regard to eligibility than had he not liquidated does not give the agency the right to ignore the resisting regulations requiring that an opportunity to liquidate be given. Such reasoning by the agency as a means of ignoring its own regulations is certainly inappropriate and should not be condoned. Second, and perhaps of even more significance, is the fact that on January 19, 1982, the Department of Human Services, Division of Public Welfare, in an effort to clarify the treatment of resources in accordance with the changes made because of the congressional action, issued Circular Letter No. 82-1-3, which contains a discussion of the treatment to be accorded funds received from sale or liquidation of a resource. Specifically, the letter details a situation where an individual disposes of an automobile which is within the criteria of excess equity value and receives \$3,000 for that car. The letter indicates that if there were no other resources, the individual may "reserve \$2,500 with intent to purchase a motor vehicle within the resource limit." The remaining \$500 in proceeds is treated as if it were a lump sum income. The reservation of funds in order to obtain a replacement for the motor vehicle is permitted for a period no greater than three months. Further, where an individual has other assets, such as, in the example given, a cash surrender value of \$500 on a life insurance policy, the individual may reserve, where the car is sold for \$3,000, \$2,000 with intent to purchase a vehicle, with the remaining \$1,000 to be treated as if it were lump sum income. This lump sum income would then be dealt with in accordance with the procedures cited by the agency requiring that the family be ineligible for aid for the number of full months derived by dividing the total income by the needs standard applicable to the family.

In summary, the agency is required to provide notice to the recipient that the recipient must liquidate the alleged excess resource within a reasonable period of time, *i.e.*, 30 days. This action must be taken prior to the agency filing a notice of adverse action seeking termination. It is only when the agency has determined that the recipient is not liquidating the asset, or has done so but will still be ineligible, that the agency should move to terminate the recipient's benefits. Any other procedure bespeaks of undue haste in fulfilling the intent of the congressional changes in the welfare program, a haste which may be causing unfair and unintended harm to individuals who, prior to October 1, owned vehicles which were not ineligible assets but which, as of October 1, suddenly became such.

(b) *The Use of the Red Book*

The determination of the value of a motor vehicle in connection with these regulation is governed initially by the methods set forth in 45 *C.F.R.* 233.20(e) which states that resources will be evaluated “according to their equity value.” The definition proceeds to define equity value as meaning the:

fair market value minus encumbrances (legal debts); Fair market value means the price an item of a particular make, model, size, material or condition will sell for in the open market in the geographic area involved.

The State regulations, contained at *N.J.A.C.* 10:82-3.2, state that the equity value shall be determined from the average wholesale value as contained in the most recent edition of the Red Book. The evidence in this case indicates that in determining that value, the agency merely looked at the table listing cars by make, year and model and determined that the average wholesale value of Mr. G.’s vehicle was \$2,500, without giving any consideration whatsoever to the actual condition of his vehicle, including the mileage, any damage, and any costs necessary to put the car in shape for sale. Such disregard of the actual condition of the vehicle is an improper means of determining the value of the specific vehicle involved. The very Red Book used by the agency contains prefatory language in the “General Information” section, contained at page II, which states that:

Valuations are based on a thorough study of the used car market and do not apply to Fleet and Taxi Cab Sales.

Average wholesale value—represents used cars with average mileage, ready for resale with reconditioning costs included. . . .

NOTE: Deduct from all the above values, any repair or reconditioning expense other than for normal clean-up and brightening.

My understanding of the method used by the agency for determining the value of Mr. G.’s vehicle is that it did not take into account the fact that the vehicle had mileage which was perhaps somewhat in excess of the average mileage for a vehicle of the type and age involved. Further, there is no indication that the agency considered the information contained on the appraisal, or if that was unavailable to it, made any attempt to obtain, before issuing a termination of benefits, information from Mr. G. as to the mileage and condition of the vehicle. In order to determine properly whether the Red Book valuation of the car indicated that it was of a value which would make the recipient ineligible, the agency, in order to fulfill its responsibility properly, must make some reasonable attempt to determine the value in accordance with the specific cautions and conditions set forth in

the Red Book. Merely relying on a listing of an average wholesale value to determine whether an individual should be cut off from benefits, without attempting to determine the actual value of the vehicle, is incorrect. While it is fully recognized that the requirements set forth put a burden on the agency to become an evaluator of motor vehicles, the regulations do not allow the kind of generalized treatment which has apparently been afforded these matters to date. Both the Federal regulation, which indicates that the equity value is to be determined by considering, among other items, the condition of the vehicle, and the State regulation, which refers to the Red Book, and thereby appears to incorporate the Red Book's precautions, require that individualized evaluations be made before determining that benefits will be reduced or eliminated.

(c) *Treatment of Income Received from Liquidation*

With respect to the question of liquidation and the procedure by which the monies received for a liquidated asset are to be treated, the discussion above concerning the necessity of providing an opportunity to liquidate addresses this issue in part. As noted, the fact that someone may ultimately be ineligible, even after taking the opportunity to liquidate the resource into an expendable form, does not mean that the right must not be provided. Further, as noted in the Circular Letter, the treatment of the funds received after a sale, and the consequent determination of eligibility will vary from individual to individual based on the then available other assets and the amount of money received for the vehicle. The treatment of monies received from a liquidated automobile must be in accordance with the dictates of the regulations, as explained in Circular Letter 82-1-3, which clearly indicates the obvious and rational method of dealing with such resources where the goal of the Federal government in requiring the elimination of payments of welfare to recipients with automobiles with excess value is surely not to completely deny to recipients the right to own an automobile. The ability to repurchase vehicles of lesser value with a portion of the funds received for the sale of the original vehicle makes eminent sense and is clearly within the intent of the statute and accompanying regulations.

The agency has relied in part on the final decision entered by the Division of Public Welfare in the matter of *C.H. v. Burlington County Welfare Board*, OAL DKT. NO. HPW 8090-81 (Jan. 18, 1982), rejected, Div. of Public Welfare (Feb. 9, 1982). In that decision, Director Riti reversed a determination of Judge Reback in a case

in which Judge Reback had determined that the agency had failed to take into account the mileage of the vehicle in determining the proper value to be assigned the vehicle. Director Riti's decision appears to place reliance on the fact that the information "available to the agency at the time such assessment was made, was \$2,650." While I cannot be certain from the Director's decision, it appears that he is indicating that the agency acted properly because it did not have information indicating the mileage and condition of the vehicle when it made its assessment. While the agency may in that case have been technically correct as of the time it made the assessment based on the information it had, I believe that the spirit of the regulations as well as the obvious requirements for making a proper evaluation under the Red Book require the agency to do more than merely accept information in its file which may indicate that the individual owns a particular car of a particular make of a particular year. Again, while I recognize the administrative burden involved, I suggest that the regulations require that the agency determine from the recipient either by means of a reinterview, a telephone call, or a letter, some information other than make, year and model, before it makes its evaluation. An assessment based on generalized information is no assessment at all, at least if it is to be in accordance with the Federal and State regulations and the procedures explained by the Red Book itself.

DISPOSITION

Since it appears that the agency never accorded Mr. G. any notice of any right to liquidate the automobile and turn it into an expendable resource, and since I **CONCLUDE** that *N.J.A.C.* 10:82-3.4(a) requires that such a right be given prior to the agency acting to terminate assistance, I **CONCLUDE** that the agency has terminated the respondent improperly. The action of the agency was premature and procedurally improper. Therefore, the action of the agency in terminating assistance must be reversed. However, I **ORDER** that the matter be remanded to the Burlington County Welfare Agency so that it may properly advise Mr. G. of his rights pursuant to *N.J.A.C.* 10:82-3.4 and -3.5, and that, following the passage of 30 days, the agency may act in accordance with applicable regulations, depending upon whether the vehicle has or has not been liquidated and depending upon the amount of funds received by Mr. G. in such liquidation. The agency shall consider, in any redetermination of eligibility, the value of the vehicle in accordance with the complete instructions of the Red Book, in order to determine the value of the vehicle properly.

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Thereafter, if the agency concludes that Mr. G. would still be ineligible for benefits or that his benefits must be reduced because of the presence of a vehicle or excess resources, the agency shall then file a notice of adverse action and Mr. G. may then request a fair hearing if he contests the agency's action.

After reviewing this Initial Decision, the Division of Public Welfare on April 23, 1982, issued the following Final Decision:

Having reviewed the initial decision and any exceptions or replies submitted, I hereby adopt the decision of the administrative law judge in the above captioned case as the Final Decision.

The unresolved question regarding the actual equity value of the alleged resource and the failure by the agency to afford an opportunity for liquidation constitutes cause for invalidating the determination on program ineligibility. Accordingly, the action to terminate assistance is reversed.

Upon receipt of the decision, assistance shall be reinstated retroactive to the date of termination and a further evaluation shall be undertaken on continued program eligibility.