
Burlington County v. J.R.
Cite as 4 *N.J.A.R.* 34

**BURLINGTON COUNTY
WELFARE BOARD,**
Petitioner,
v.
J.R.,
Respondent.

Decided August 22, 1983

Initial Decision

SYNOPSIS

A local county welfare board attempted to reduce respondent's benefits under the Food Stamp and Aid to Families with Dependent Children Programs in order to recoup overpayment of those benefits.

The administrative law judge concluded that the board could not recoup the amount of the overpayment of benefits which had been recognized as a debt and had been overcharged in bankruptcy. The judge noted that it was clear that the obligation to repay a welfare debt is dischargeable in bankruptcy and that the board had had ample opportunity to take action as to the respondent's debt prior to the discharge in bankruptcy and thus could not now attempt to collect the amount of the overpayment by way of recoupment.

TYLUTKI, ALJ:

This matter concerns the determination of the Burlington County Welfare Board that respondent's food stamp benefits and Aid to Families with Dependent Children (AFDC) should be reduced benefits in order to recoup a prior overpayment of these benefits, pursuant to *N.J.A.C.* 10:87-11.29 and 10:82-2.19(a).

The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case, pursuant to *N.J.S.A.* 52:14F—1 *et seq.*

I **FIND** that the undisputed facts are:

- (1) The Board determined that there was an overpayment of AFDC benefits to the respondent in the amount of \$7,943 and an overissuance of food stamps to the respondent in the amount of \$2,976 for the periods of August 1977 through May 1979, November 1979 through January 1980, July 1980 through December 1980 and March 1981.

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- (2) By letter dated January 18, 1983, the Board requested repayment. At that time, the respondent was not receiving any AFDC or food stamp benefits.
- (3) On February 3, 1983, the respondent returned the January 18, 1983 letter with a notice that she had filed a Chapter 7 bankruptcy action, 11 *U.S.C.A.* §101, *et seq.* and that the Board had 30 days to file proof of its claim with the clerk of the bankruptcy judge.
- (4) Upon advice of its staff attorney, Jeffrey D. Kotler, the Board did not make a filing with the clerk of the bankruptcy judge.
- (5) Respondent received a discharge in bankruptcy.
- (6) Respondent applied for AFDC and food stamp benefits on May 17, 1983, and the Board determined that she was eligible for said benefits.
- (7) On June 14, 1983, the Board sent a notice to the respondent that her AFDC and food stamp benefits would be decreased by 10%, starting on July 1, 1983, in order to recoup the overpayment of \$7,943 in AFDC benefits and the overissuance of food stamps in the amount of \$2,976.
- (8) Respondent requested a hearing and as a result of this request, she received the full amount of her AFDC and food stamp benefits for July 1983.
- (9) After the hearing on July 27, 1983, I issued a Notice of Continued Benefits, stating that the respondent's AFDC and food stamp benefits should continue unreduced until there is a final decision in this matter.
- (10) J.R. does not dispute the computation of the amounts of the overpayments.

At the hearing, J.R. argued that the Board is not entitled to recoupment since she had received a discharge in bankruptcy. According to J.R., she called the bankruptcy judge's office and was advised that the Board could not take such action.

After the testimony in the matter, I requested the Board to submit, within ten days, a memorandum as to the legal basis for its position that there could be recoupment notwithstanding the discharge in bankruptcy. I also gave J.R. seven days to respond from the date of the receipt of this memorandum from the Board. I received nothing from the Board within the ten-day period.

The issue in this matter is whether the Board can recoup the amount of the overpayment of food stamps and AFDC benefits, which was recognized as a debt and discharged in bankruptcy, now that the respondent has again qualified for AFDC and food stamp benefits.

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It is clear from a reading of the federal bankruptcy law and cases that the legal obligation to repay a welfare overpayment is dischargeable in bankruptcy, 11 *U.S.C.A.* §523; *Lasher v. McIntyre*, 309 *N.Y.S.* 2d 960 (*N.Y. Fam. Ct.* 1970); *In re Osborne*, 8 *B.R.* 200 (Bankr. N.D. Ill. 1981). From the facts in this matter, it appears that the Board does not dispute that it cannot now initiate a collection action to recover the amount of the overpayments; however, it wants to draw a distinction between such an action and the recoupment of the amount of the overpayments by a reduction of current AFDC and food stamp benefits. Having reviewed both the federal bankruptcy law and the regulations as to food stamp and AFDC benefits, I **CONCLUDE** that there is no legal basis for such a distinction.

In this matter the Board had ample opportunity to take affirmative action as to the respondent's debt prior to the discharge in bankruptcy and cannot now attempt to collect the amount of the overpayment by way of recoupment. It has been well established by law, that a party cannot do indirectly what one cannot do directly, *Cavanagh v. Morris Cty. Democratic Comm.*, 121 *N.J. Super.* 430, 436-7 (Ch. Div. 1972).

Although I recognize that a person could argue that the equity maxim of unjust enrichment should apply in this matter and that the Board is entitled to recoupment, I am constrained to conclude that recoupment was also foreclosed by the release in bankruptcy.

It has been recognized by the courts that the exercise of a legal right cannot subject a person to liability for unjust enrichment and that equity cannot disregard the statutory law. In *Newark v. Central & Lafayette Realty Co., Inc.*, 150 *N.J. Super.* 18, 24 (App. Div. 1977), the court stated:

... that equity follows the law.

While [equity] will provide means of enforcement not to be had at law, it is bound to regard the rights of the parties as established at law unless a countervailing equity calls for relief. The maxim is applicable to the interpretation of statutes and as well to matters of public policy. [*Camden Trust Co. v. Handle*, 132 *N.J. Eg.* 97, 108 (E. & A. 1942)]

Therefore, I **CONCLUDE** that the Board is not entitled to recoupment of the amount of the overpayments which was discharged in bankruptcy and I **ORDER** that the matter be **DISMISSED**.

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**After reviewing this Initial Decision, the
Division of Public Welfare, on
September 22, 1983, 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 action to recover assistance overpayments under the AFDC program and overissued food stamp benefits is reversed.