
Ocean County v. L.G.

Cite as 4 *N.J.A.R.* 216

**OCEAN COUNTY BOARD
OF SOCIAL SERVICES,**

Petitioner,

v.

L.G.,

Respondent.

Decided April 16, 1982

Initial Decision

SYNOPSIS

A local Board of Social Services determined that a certain portion of respondent's educational grants should be included in her income level for the purpose of determining her eligibility level for food stamps.

The administrative law judge found that the respondent, a college student, received \$4,270 in educational grants for the prior academic year, while her actual tuition and mandatory fees totaled \$3,446. The judge noted that pursuant to *N.J.A.C.* 10:87-5.9 to the extent an educational grant is used for tuition and mandatory school fees, the grants are not included in income for Food Stamp purposes. The balance of the educational grant was earmarked by the respondent's college to cover the costs of books and transportation. The judge found that the earmarking was sufficient to remove the entire amount of the grant from consideration as income.

Accordingly, the administrative law judge ordered that the Board recompute the respondent's benefits based upon an exclusion of the grant from income.

SMITH, ALJ:

The Ocean County Board of Social Services determined that certain portions of the respondent's federal and state educational grants should be included in her income for the purpose of determining her eligibility level for Food Stamps.

The respondent is a college student who received the following educational grants for the academic year 1981-82, including the summer session of 1982:

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Basic Educational Grant Program (20 *U.S.C.A.* § 1070 *et seq.*), \$1,670.

New Jersey Tuition Grant Program (*N.J.S.A.* 18A:71-41 *et seq.*), \$1,400.

New Jersey Educational Opportunity Fund (*N.J.S.A.* 18A:71-28 *et seq.*), \$1,200.

Totaling \$4,270.

To the extent that the educational grant is used for tuition and mandatory school fees (defined as: those fees charged to all students within a certain curriculum), the grants are not included in income for food stamp purposes. *N.J.A.C.* 10:87-5.9. The agency received a letter from Georgian Court College, dated December 21, 1981, showing the tuition and fees to total \$2,800. Pursuant to the cited section, the \$2,800 was excluded from the respondent's income. The remaining \$1,470 was counted as part of the respondent's income by dividing it by 12 and adding \$123 per month to the respondent's income. However, bills were entered into evidence showing that the actual expenses of the respondent for tuition and fees totaled \$3,446. Therefore, I find that the actual tuition and mandatory fees totaled \$3,446, not \$2,800.

More complicated is the question of books and transportation. *N.J.A.C.* 10:87-5.9 excludes student reimbursements for educational expenses such as travel and books only where the portion of the general grant or scholarship is specifically earmarked by the grantor for education expenses, rather than living expenses. The question of how this earmarking is determined was specifically addressed in the case of *Murray v. Dept. of Human Services*, 177 *N.J. Super.* 467 (App. Div. 1981). There, the court held that the grants, by the very wording of the statutory enabling acts, earmark the funds for education and education-related expenses. The statutory language is sufficient earmarking to satisfy the regulation of the Division of Public Welfare. Furthermore, the court held that by paying the proceeds of the grants directly to the college, federal and state grantors delegated the responsibility to the college to deduct tuition and other expenses on behalf of the student and to earmark the purposes to which the balance of the funds could be used. I **FIND** as a fact that Georgian Court College received the grant monies, kept all monies necessary to pay not only tuition and general fees but also books, returning the balance to the respondent as a credit. In this case, the college retained

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a total of \$245 for the payment of the respondent's books. The respondent never actually possessed that sum of money, since it was withheld from her by the college to pay for her book expense.

Finally, the college earmarked the sum of \$600 for reasonable transportation expenses. This was done in the letter, dated December 21, 1981, by the Director of Financial Aid, introduced in evidence. Thus, \$3,446 was specifically allotted by the college for tuition and mandatory fees, \$245 for books, and \$600 for transportation, totaling \$4,291, \$21 more than the total amount of the grants.

I **FIND** no justification for the Division's argument that the earmarking must be done in some specific way by the actual grantor agency, and not the college. It is interesting to observe that the practice of the county welfare board, as was done in this case, is to communicate with the college financial officer and ask for the grant and the expense information. If, in fact, the welfare board, is of the opinion that the actual grantor agency must do the earmarking, then the welfare board should communicate with the grantor agency. They do not, because it is apparent that the grantors simply do not engage in earmarking grants for specific purposes for each recipient, beyond the earmarking already clearly set forth in the statutory language, as the *Murray* case observed.

This is not the first case in which this issue has arisen. The Division of Public Welfare has continually argued, in every case where earmarking is an issue, that it is not obligated to follow the decision of the Appellate Division in the *Murray* case. Initial decisions of administrative law judges including my own, have been routinely reversed by the agency head in what appears to me to be a direct and clear violation of the holding in the *Murray* case. This places an administrative law judge in a difficult situation. It is my understanding that I am obligated to apply the law to the facts in each case, and that the agency head is equally obligated. It is also my understanding that a clear statement by the Appellate Division regarding the interpretation of an agency regulation constitutes binding precedent for future cases that are not otherwise distinguishable. The Ocean County Board of Social Services made no attempt to distinguish the *Murray* case or to explain to me why it should not apply to this case. In fact, the *Murray* case merely applies what appears to me to be a common sense interpretation of the regulation. Interestingly, the United States District Court for the Northern District of Ohio, came to the same conclusion. *See, Shaffer v. Steger*, No. C-80-101 (N.D. Ohio, June 5, 1981).

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For the foregoing reasons, I **CONCLUDE** that all of the grant monies should be excluded from the respondent's income for food stamp purposes. The Ocean County Board of Social Services is hereby **ORDERED** to recompute the respondent's benefits in accordance with this decision.

**After reviewing this Initial Decision the
Division of Public Welfare on May 13, 1982,
issued the following Final Decision:**

Having reviewed the Initial Decision and any exceptions or replies submitted, I hereby amend the decision of the Administrative Law Judge in the above captioned case.

In determining countable food stamp income from educational assistance grants a county welfare agency is bound by provisions of *N.J.A.C.* 10:87-5.5(a)4 and 5.9(a)4 which prescribe conditions and limitations applicable to exclusions and reimbursements. Unless "specifically earmarked" by the grantor, only tuition and mandatory fees qualify for exclusion in calculating food stamp benefit entitlement.

Since funds received by the respondent were not provided by the college the respondent attends, the college cannot act as the grantor for purposes of earmarking funds. Accordingly, the recommended decision by the administrative law judge that all grant monies be excluded in determining food stamp benefit entitlement is rejected.

In the absence of dispute pertaining to the calculations of benefits, other than the treatment of grant monies, the action reducing the food stamp coupon allotment is affirmed.