
Mercer County v. E.S.
Cite as 5 *N.J.A.R.* 427

**MERCER COUNTY
WELFARE AGENCY,**
Petitioner,
v.
E.S.,
Respondent.

Decided: March 22, 1983

Initial Decision
SYNOPSIS

Respondent requested relief from the decision of a local county welfare agency reducing her AFDC payments which allegedly resulted from the willful withholding of information about her return to work.

The administrative law judge assigned to the case determined that the applicable regulations limited recoupment of overpayments to the 12 months proceeding the month in which the overpayment was discovered unless willful withholding of information could be found. The judge found that no willful withholding of information occurred since the respondent clearly reported her employment.

Accordingly, the recoupment of payments was denied.

GOLDBERG, ALJ:

Respondent requests relief from the decision of the Mercer County Welfare Agency (CWA) reducing Aid to Families with Dependent Children (AFDC) from \$522 to \$470 in order to recoup August and September 1981 overpayments totalling \$297. The overpayments allegedly resulted from respondent's willful withholding of information regarding her return to work. A hearing was requested on February 17, 1983, and the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to *N.J.S.A.* 52:14F-1 *et seq.*

For its action, the CWA relied upon *N.J.A.C.* 10:81-4.24, which establishes the basis for recoupment of overpayments to include the failure of a client to inform the CWA of a change in income resources or circumstances. *N.J.A.C.* 10:81-4.24(a)1 authorizes the CWA to recoup overpayments when they result from willful withholding of information. *N.J.A.C.* 10:81-4.24(b) defines willful withholding of

Mercer County v. E.S.
Cite as 5 *N.J.A.R.* 427

information to mean a “*deliberate failure by the recipient to report income or resources*” (emphasis supplied).

The changes in regulations affecting recoupment of AFDC overpayments which became effective on October 1, 1981, with the implementation of the Omnibus Budget Reconciliation Act of 1981 do not apply in this matter since the overpayments occurred in August and September 1981. The regulations in effect prior to October 1, 1981, limit recoupment of overpayments other than for reason of willful withholding of information to the 12 months preceding the month in which the overpayment was discovered. *N.J.A.C.* 10:81-4.24(c)

The facts in the case were not disputed. Respondent receives an AFDC grant of \$522 for herself and her five children. On July 22, 1981, respondent began working at the Mercer Medical Center in Trenton. A check with the employer’s comptroller revealed that respondent did not receive her first pay until August 6, 1981. On August 19, 1981, at a redetermination of eligibility interview, respondent reported her employment to the CWA.

The CWA calculated total overpayments for August and September 1981 as \$297 using information contained on a wage letter which it received on September 22, 1981. Though the CWA became aware of respondent’s employment on August 19, 1981, the September 1981 assistance check was issued unreduced and no action to recoup the overpayments for August and September 1981 was taken until February 16, 1983, some 18 months after the overpayments occurred.

As none of the facts in the above narrative were disputed, they are adopted as uncontested findings of fact.

ANALYSIS

The applicable regulations in this matter are those which were in effect prior to implementation of the Omnibus Reconciliation Act of 1981. These regulations limit recoupment of overpayments made during the 12 months preceding the month in which the overpayment was discovered unless there is evidence of willful withholding of information. Since the CWA determined the amount of overpayments on September 22, 1981, when it received wage verification and took no action for 18 months, it may not recoup unless willful withholding is established.

Certainly, respondent cannot be determined guilty of willful withholding affecting the issuance of the September 1981 AFDC check

Mercer County v. E.S.
Cite as 5 *N.J.A.R.* 427

since she reported her employment on August 19, 1981, which was sufficient time for the CWA to recalculate the family's entitlement for September 1981. This was clearly a CWA administrative error and as such the overpayment for September 1981 is not recoupable. *N.J.A.C.* 10:82-2.19(b).

The August 1981 overpayment, likewise, does not qualify as willful withholding despite the fact that employment was not reported for 28 days. This conclusion derives from the definition of willful withholding contained at *N.J.A.C.* 10:81-4.23(b). The regulation identifies the changes which must be reported as those relating to income and resources. In this matter respondent's income changed on September 6, 1981, when she received her first pay. Respondent reported this change to the CWA on September 19, 1981, some 13 days later. Since the information was reported within 14 days as required by *N.J.A.C.* 10:81-4.24(a), respondent cannot be determined guilty of willful withholding of information with respect to her August 1981 AFDC grant.

Based upon the facts and pursuant to the previously cited regulations, I **CONCLUDE** that respondent did not receive AFDC overpayments as a result of willful withholding of information relating to income from employment. Thus respondent is precluded from recoupment of overpayments granted by the CWA in August and September 1981.

Therefore, petitioner's action reducing respondent's AFDC grant from \$522 to \$470 is **REVERSED** and any recoupment already taken is **ORDERED** refunded.

After reviewing this Initial Decision, the Division of Public Welfare, on April 25, 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 reducing assistance for purposes of recouping assistance overpayments is reversed.

The AFDC payment shall be reinstated at the prereduction level and a corrective payment shall be issued in the amount of recoupment already taken.