

L. D.,
Petitioner,
v.
PASSAIC COUNTY BOARD
OF SOCIAL SERVICES,
Respondent.

Initial Decision: November 14, 1984 Final Agency Decision:
December 20, 1984

Approved for Publication by the Division of Public Welfare: January
10, 1985

SYNOPSIS

Petitioner appealed from the determination of a local county welfare board that she was not eligible for benefits due to excess resources in the form of a veterans contributory fund of \$1,750.

The administrative law judge assigned to the case found that petitioner had served in the army and had accumulated a fund of contributions amounting to \$1,750 under the provisions of the Post-Vietnam Era Veterans Education Assistance Program; these funds would be eligible for a matching grant from the Federal Government if used for educational purposes. The judge determined that these were not educational loans or grants and thus, pursuant to *N.J.A.C. 10:18-3.38(b)* the funds would have to be liquidated before petitioner could be eligible for AFDC Benefits.

Upon review this initial decision was accepted by the Director of the Division of Public Welfare. The Division noted that the case also involved a determination as to Food Stamp Benefits. The Director found that these retrievable contributions were clearly a resource under *N.J.A.C. 10:81-3.37(b)*, that these funds were nonexempt resources since they did not fall into the category of educational loan or grant and that the funds were liquid assets within the meaning of *N.J.A.C. 10:87-4.3*.

Bernice C. Karg, Esq., for petitioner
Steven Dorsey, Income Maintenance Supervisor, and Ceil Jacques,
Income Maintenance Worker, for respondent

McGILL, ALJ:

Petitioner appeals from an administrative determination of the Passaic County Board of Social Services to deny benefits under the Aid to Families with Dependent Children Program (AFDC) due to excess resources in the form of a veterans contributory fund of \$1,750. 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.*

At issue is whether contributions of \$1,750 for educational purposes made while the petitioner was in the army should be considered a resource.

Steven Dorsey, Income Maintenance Supervisor, testified that an application was filed on August 6, 1984 for benefits for L.D. and her child. L.D. has an account with the Veterans Administration in the sum of \$1,750. *N.J.A.C. 10:81-3.38* provides that eligibility will be denied if the client does not attempt to gain access to resources. A letter was introduced into evidence in which the Bureau of Local Operations of the Division of Public Welfare advised that such funds should be counted as a resource. If the applicant attempted to gain access, benefits would have been granted while she was attempting to do so.

Ceil Jacques, Income Maintenance Worker, testified that she took the application and that the petitioner admitted that she had the fund amounting to \$1,750. L.D. contributed to the funds while in the military. The petitioner objected to liquidating the funds. The witness called the Veterans Administration and was told by a Mr. Braugh that the funds were available for educational purposes only and that the government would match the funds two-for-one. However, the amount of the contributions could be withdrawn in which case the petitioner would lose the opportunity to obtain two-for-one matching funds for education.

L.D. testified that she was in the Army from 1980 to 1983. In accordance with the provisions of the Post-Vietnam Era Veterans Education Assistance Program, she made contributions totalling \$1,750. She intended to go to college in September, but decided not to do so because she was told that if she dropped out, she would lose the matching funds. L.D. intends to go to college next semester. At present, she cannot pay her rent but is looking for work.

After consideration of the entire record, I **FIND:**

1. Petitioner served in the army from 1980 to 1983 and accumulated a fund of contributions amounting to \$1,750 under the

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provisions of the Post-Vietnam Era Veterans Education Assistance Program.

2. The petitioner will be eligible for two-for-one matching funds provided the funds are used for educational purposes.
3. The petitioner plans to enter Passaic County Community College next semester.

The agency relies on *N.J.A.C.* 10:81-3.38(b), which provides in part as follows:

1. When a resource (or a claim pursuant to *N.J.A.C.* 10:81-3.40(b)2) is applicable to a parent and the parent fails or refuses to cooperate in its liquidation (or to sign an Agreement to Repay), the entire family will be ineligible for assistance.

The petitioner cites a number of regulations attempting to create an analogy to loans and grants for education which are exempt resources in accordance with *N.J.A.C.* 10:82-3.2(b)8. The difficulty with this argument is that the funds contributed by the petitioner are not educational loans or grants. The regulations, *N.J.A.C.* 10:82-3.1 *et seq.*, obviously contemplate that persons will use their own resources prior to receiving assistance. While it would be unfortunate if the petitioner were to lose the benefit of two-for-one matching funds, none of the exceptions in *N.J.A.C.* 10:82-3.2 appear to be applicable. It follows that the petitioner is required to liquidate this resource in order to be eligible for AFDC benefits.

Based upon the above, I **CONCLUDE**:

1. The contributions of \$1,750 to the Post-Vietnam Era Veterans Educational Assistance Program constitute a resource which must be liquidated.
2. Since the petitioner has refused to liquidate the resource, she is ineligible for AFDC benefits in accordance with *N.J.A.C.* 10:81-3.38(b).

Accordingly, the administrative determination of the Passaic County Board of Social Services is **AFFIRMED**.

**FINAL DECISION BY THE DIRECTOR OF THE DIVISION OF
PUBLIC WELFARE, AUDREY M. HARRIS:**

The initial decision shows that petitioner made application to the Passaic County Board of Social Services (PCBSS) for AFDC benefits* on behalf of herself and her child; that she made a contribution

* As shown by the record of denial in this case, and as is pointed out in petitioner's letter of exception, dated November 29, 1984, there was, in addition to denial of AFDC, denial of Food Stamp eligibility, an issue which should have been, but was not, decided by the ALJ.

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in the amount of \$1,750 to a fund pursuant to the provisions of the Post-Vietnam Era Veterans Education Assistance Program; that pursuant to this program, the petitioner would be eligible for matching funds in the ratio of two to one, were she to use the funds for educational purposes only; that petitioner may, at her option, withdraw her contributory share of \$1,750, upon which she would forfeit her right to the matching funds; that petitioner is not attending college or, apparently, otherwise qualified presently to receive payment of matching funds from the program; and that the petitioner has failed or refused to withdraw her contributory share from the fund. On the basis of the foregoing, the PCBSS, treating the contributory share of \$1,750 as a resource of the petitioner in excess of the maximum amounts allowed by the programs, denied AFDC and Food Stamp eligibility. For AFDC purposes, the maximum allowable non-exempt resource is \$1,000, 45 *C.F.R.* 233.20(a)(3); *N.J.A.C.* 10:82-3.1(d), and for Food Stamp purposes, the maximum is \$1,500, unless a household member is age 60 or over, in which case the maximum is \$3,000, 7 *C.F.R.* 273.8(b); *N.J.A.C.* 10:87-4.13.

The administrative law judge (ALJ) affirmed the action of the PCBSS, upon his conclusion that, as a matter of law, petitioner's contributory share of \$1,750 constitutes a "resource" within the meaning of *N.J.A.C.* 10:82-3.1, and that it was not exempt from consideration under the regulations providing for same, *N.J.A.C.* 10:82-3.2(a) *et seq.* As *N.J.A.C.* 10:81-3.38(b) requires a finding of ineligibility for AFDC when a parent fails or refuses to liquidate a resource, the ALJ found the Board's determination of ineligibility to be correct. Counsel for petitioner filed a Letter of Exception dated November 29, 1984. As to both AFDC and Food Stamp eligibility, petitioner contends that "no part of Post-Vietnam Era Veterans Educational Assistance . . . should be counted as a resource." Rather, it is her position that the \$1,750 at issue should be exempted as an educational grant, loan or benefit for AFDC and Food Stamp eligibility purposes under *N.J.A.C.* 10:82-3.2(b)(8) and 10:87-5.1 *et seq.*

The state regulation, *N.J.A.C.* 10:81-3.37(b), defining the term "resource" for AFDC purposes is grounded on federal regulation 45 *C.F.R.* 233.20(a)(3). This latter regulation provides:

The amount of real and personal property that can be reserved for each assistance unit shall not be in excess of one thousand dollars equity value . . . excluding only: (1) The home which is the usual residence . . . ; (2) One automobile, up to \$1,500 of equity value . . . ; (3) At State option, basic maintenance items essential to day-to-day living such as clothes, furniture and other similarly essential items of limited value. [45 *C.F.R.* 233.20(a)(3)(i)(B)]

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furniture and other similarly essential items of limited value. [45 *C.F.R.* 233.20(a)(3)(i)(B)]

The same regulation further provides that, in determining AFDC eligibility, resources available for current use shall be considered; income and resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance. [45 *C.F.R.* 233.20(a)(3)(ii)(D)]

Liquid assets are those properties in the form of cash or other financial instruments which are convertible to cash and include savings accounts, stocks, bonds, mutual fund shares, promissory notes, mortgages, cash value of insurance policies and similar properties. [45 *C.F.R.* 233.20(a)(3)(ii)(E)]

Similarly, regulations governing Food Stamp eligibility, 7 *C.F.R.* 273.8(c), *N.J.A.C.* 10:87-4.3, define liquid resources as assets "such as cash on hand, money in checking or savings accounts, savings certificates, and funds in IRA and Keogh accounts."

The \$1,750 fund at issue is clearly a "resource" within the meaning of the foregoing regulations: It is either "actually available" or a "legal interest in a liquidated sum" which petitioner has "the legal ability to make . . . available for support and maintenance," 45 *C.F.R.* 233.20(a)(3)(ii)(O), and it also fits within the general category of liquid assets described by example in 7 *C.F.R.* 273.8(c) and *N.J.A.C.* 10:87-4.3. There remains, however, the issue as to whether this money must be treated as a countable resource, or whether it falls within the category of a resource which is to be exempted or disregarded in determining AFDC and Food Stamp eligibility.

Because the \$1,750 can be used to generate matching funds for her education in the future, petitioner in effect contends that this sum should be regarded as an educational grant of the type set forth as an exempt resource in the regulations. With regard to AFDC, 45 *C.F.R.* 233.20(a)(3)(iv) exempts from resource or income consideration "loans and grants, such as scholarships, obtained and used under conditions that preclude their use for current living costs" (see also *N.J.A.C.* 10:82-3.2(b)), and 45 *C.F.R.* 233.20(a)(4)(d) provides for disregarding, as income, "any grant or loan to any undergraduate student for educational purposes made or insured under any programs administered by the Commissioner of Education" (see also *N.J.A.C.* 10:82-1.7 and 10:82-1.8). With respect to Food Stamp eligibility, the regulations provide an exemption, both from resource and income consideration, for "reimbursements or allowances to students

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for specific education expenses . . . but not allowances for normal living expenses,” and is further provided that “portions of a general grant or scholarship must be specifically earmarked by the grantor for education expenses rather than living expenses to be excludable as a reimbursement.” 7 *C.F.R.* 273.9(c)(5)(iv). See also, 7 *C.F.R.* 273.8(e)(9), *N.J.A.C.* 10:87-4.8(a)(15), 10:87-5.9(a)(4), 10:87-5.9(a)(5)(iii)(4).

In summary, the foregoing regulations provide a student with an exemption for grants or loans, the use of which is limited to educational purposes. Neither the petitioner, who is not a student, nor the \$1,750 fund meets any of these criteria. Petitioner’s contributory share of \$1,750 is clearly not a loan: as with money in the bank account, it belongs to her. For the same reason, it is not a grant, in the sense of a gift, bestowal, or form of conditional entitlement. Although availability of separate matching funds under the education program is conditioned on their being used for educational purposes, there is no such restriction on petitioner’s access to her own contributory share, and, although there may be a forfeiture of matching funds attached to withdrawal, petitioner nevertheless has the right to obtain the \$1,750 and use it for living costs. In this sense, this sum is little different from a Keogh or IRA account which must be liquidated prior to Food Stamp eligibility under *N.J.A.C.* 10:87-4.3(a)(1). Given these facts, and the clear language of the controlling federal regulations, it must be concluded that, for AFDC and Food Stamp eligibility purposes, petitioner’s retrievable contribution to the fund is a nonexempt resource in the form of a liquid asset within the meaning of these regulations, and that accordingly the Division of Public Welfare is not at liberty to treat it otherwise.

For the foregoing reasons, the decision of the ALJ with respect to denial of AFDC benefits is affirmed.

Although the ALJ did not rule on the issue of the denial of Food Stamp eligibility, the facts adduced at the hearing provide a sufficient basis for the determination, hereby made, that petitioner’s contributory share to the educational program funds of \$1,750 is a nonexempt resource in excess of the resource maximum of \$1,500 provided in *N.J.A.C.* 10:87-4.13 (a)(2).

Accordingly, the determination of the Passaic County Board of Social Services denying Food Stamp Eligibility, is affirmed.