

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Revenue Recapture
Hearing for Thomas Egerman, 4128 19th
Ave. S., Minneapolis, Minnesota 55407

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER**

The above-entitled matter came on for hearing before Administrative Law Judge Allen E. Giles commencing at 1:30 p. m. on February 13, and again at the same time on March 19, 1998 at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota. The hearing was held pursuant to a Revenue Recapture Act Notice of Hearing dated January 22, 1998.

Bonnie L. Williams, County Advocate, Economic Assistance - Adult Division, 400 South 5th Street, Minneapolis, Minnesota 55415-1452, appeared on behalf of Hennepin County (County or Claimant Agency). Thomas Egerman, 4128 19th Avenue South, Minneapolis, Minnesota 55407, appeared pro se at the hearing.

The record closed on March 31, 1998, upon receipt of documents and argument from Claimant Agency.

NOTICE

This order is a **final decision**. It is subject to judicial review as set forth in Minn. Stat. §§ 14.63 to 14.68 (1996). Any appeal must be filed with the Minnesota Court of Appeals and served upon the other party within thirty days of the receipt of this Order.

STATEMENT OF ISSUES

Whether Hennepin County has established that Thomas Egerman was overpaid AFDC benefits in the amount of \$437; and

Whether Hennepin County, as a Claimant Agency, has satisfied the prerequisites for revenue recapture of the allegedly overpaid AFDC benefits under the procedures for collection set forth in the Revenue Recapture Act, Minn. Stat. §§ 270A.01-270A.12.

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. In 1993, George Egerman was a high school student who resided with his parent, Thomas Egerman, at 4128 19th Avenue South in Minneapolis, Minnesota. As

George's parent, Thomas Egerman received a monthly AFDC check from Hennepin County totaling \$437 in support of George as a dependent child.

2. In the Spring of 1993, George was a high school Senior scheduled to graduate in June of 1993. Eligibility for the AFDC monthly payments would cease when George graduated from high school.

3. Hennepin County issued an AFDC payment on July 9, 1993 for the July monthly benefit. After sending the check, Hennepin County believed that it had made an error. Hennepin County assumed that George graduated from high school as scheduled in June, and as a result, the Egermans were no longer eligible for AFDC payments after the month of June. Ex. 4.

4. George did not graduate from high school in June 1993 as scheduled. Instead of graduating from high school, George obtained a GED certificate at some later date after the Summer of 1993.

5. Beginning in July 1993, Hennepin County mailed notices to Thomas Egerman ("Notice of Overpayment") stating that his household had been overpaid AFDC benefits for the month of July 1993. The letter indicated that Thomas Egerman owed this amount because of an error that the County made. The notice stated as follows:

The agency failed to take timely action on a change. (AUTH: 7,25). Your household has been overpaid \$437 in AFDC benefits for 7/93 because this agency failed to close your case timely as you were no longer eligible for AFDC.

Ex. 4.

6. The "Notice of Overpayment" was mailed to Thomas Egerman's address on the following dates: July 9, 1993, May 30, 1996, July 1, 1996, July 29, 1996, August 28, 1996. Exs. 4-10. These letters stated that eligibility was lost because "George is no longer considered a dependent child." However, these letters do not inform Thomas Egerman that the County's error was based on the assumption that his son graduated from high school as scheduled in June.

7. Hennepin County submitted Thomas Egerman's debt to the Minnesota Department of Revenue for the purpose of revenue recapture. In a letter dated June 3, 1996 to Mr. Egerman ("Revenue Recapture Notice"), Hennepin County stated that the County had submitted an account of his debt to the Minnesota Department of Revenue for the purpose of making a claim against any state income tax, property tax or renter's credit refund which Thomas Egerman may be entitled. The Revenue Recapture Notice explained that the \$437 overpayment would be collected by reducing any refund managed or operated by the Minnesota Department of Revenue. The Revenue Recapture Notice stated as follows:

If a refund is due you, the Department of Revenue will send \$437 or your entire refund, whichever is less, directly to us. We will apply the money to your debt. There will also be a fee of \$10 each time Revenue Recapture is offset.

Ex. 2. The letter ended with a statement describing how Thomas Egerman could contest the validity of the County's claim. The paragraph stated in part as follows:

You have the right to request an appeal at which time you may contest the validity of our claim against you. You may not raise any issue in the appeal which has already been reviewed and/or decided by a Court. If you decide to request an appeal, your request must be made in writing, stating the issues and sent to our office within 45 days of the date you receive this letter.

Ex. 2.

8. Thomas Egerman does not recall receiving the Revenue Recapture Notice. If the Revenue Recapture Notice actually came to him, he had no reason to believe that he was adversely affected. At the time the Revenue Recapture Notice would have come to him, he had very little money and did not expect to receive money from any of the sources identified by the letter.

9. In a document dated November 24, 1997, the Minnesota Department of Revenue sent to Thomas Egerman a notice of property tax refund amounting to \$462.

Ex. 3. The Notice of Refund also noticed that Hennepin County recaptured \$437 of the total refund.

10. The Notice of Refund provided the following information regarding the Revenue Recapture Program:

If we have applied your refund to a debt you owe another agency, you may have the right to contest the action at a hearing. However, the right to contest does not apply if:

The refund went to child support debts;

The issue has already been raised at a hearing;

You already had an opportunity to request a hearing, but did not;

The other agency is not required to hold the hearing.

To contest the action, you must write to the other agency within 45 days of the date of this notice. Address questions about the debt to the contact and agency listed on the other side of this statement.

Ex. 3.

11. Thomas Egerman challenged the County's claim and requested a contested case hearing. He wrote on the Notice of Refund that "I wish to officially contest this" Thomas Egerman's appeal and request to contest is dated December 8, 1997, and was received by Hennepin County on December 9, 1997.

12. No action was taken against Thomas Egerman which he believed and understood to be adverse to him until he received the Notice of Refund from the Minnesota Department of Revenue.

13. The hearing in this case commenced on February 13, 1998, at which time Thomas Egerman appeared representing himself and Hennepin County appeared

through Advocate Bonnie L. Williams. At the time of the first hearing, Hennepin County had no witnesses and was unable to provide any testimony in response to Mr. Egerman's denials that he had received the Revenue Recapture Notice. The hearing was continued until March 19, 1998, at which time the County appeared with witnesses.

14. Hennepin County witnesses stated that the Revenue Recapture Act notice letter dated June 3, 1996 was sent to Thomas Egerman in the ordinary course of their business activities. They could not identify a particular individual responsible for actually mailing the notice to Thomas Egerman. The County also was unable to provide an affidavit of service of the document upon Mr. Egerman.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge is authorized to determine whether Hennepin County may recapture revenues using the setoff collection procedures of the Revenue Recapture Act. Minn. Stat. § 270A.09, subd. 3 (1996).

2. Thomas Egerman received proper notice of the hearing and of the County's allegations, and the County has complied with all other relevant, substantive and procedural requirements of statute and rule.

3. Thomas Egerman has not waived his right to challenge the underlying basis for Hennepin County's claim of overpayment. He acted promptly upon learning that he was adversely affected; that is, as soon as he learned that revenue due to him was subject to recapture, he filed an appeal. Therefore, Hennepin County must prove that Thomas Egerman was not entitled to the benefit payment for the month of July 1993.

4. The basis for Hennepin County's termination of the benefit payments was George Egerman's anticipated graduation from high school. Because George did not graduate from high school in June 1993, Hennepin County has failed to prove that Thomas Egerman was ineligible for AFDC payments in June 1993.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED that:

1. Thomas Egerman's Revenue Recapture Act appeal of the County's claim of an AFDC overpayment is hereby GRANTED.

2. The Commissioner of Revenue or Hennepin County shall return or forward to Thomas Egerman any amounts recaptured from Thomas Egerman's tax refund that is the basis of this proceeding.

Dated this 18th day of June, 1998.

ALLEN E. GILES
Administrative Law Judge

Reported: Taped

MEMORANDUM

It would appear reasonable for Hennepin County to have dismissed this matter upon learning that George did not graduate from high school in June 1993. Instead of having the Administrative Law Judge write this Report and Order and do the research connected with the County's argument, all would have been better served (financially) if this matter had been withdrawn by the County. But the Judge recognizes that there may be other reasons unknown to the Judge for pursuing this matter (for example, some mandatory requirement for collection).

The Minnesota Department of Revenue Notice of Refund is dated November 24, 1997. This document fully informed Mr. Egerman of the adverse impact that the overpayment claim would have. Thomas Egerman filed a written request for hearing on or about December 8, 1997, well within the 45-day filing requirement. It is, therefore, appropriate to evaluate the underlying basis for the County's overpayment claim. George did not graduate from high school as scheduled. Hennepin County did not err in sending a monthly benefit for July 1993.

The basic thrust of the County's argument is that Thomas Egerman cannot challenge the underlying basis for the overpayment claim because he failed to act in a timely manner. In support of this claim, Hennepin County presents the following (argument which is reproduced in its entirety here):

Minn. Stat. § 270A.08, subd. 2 (b). Mr. Egerman's appeal of the County's revenue recapture claim and notice should be dismissed as not timely.

Minn. Stat. § 256.73 subd. 9. Provides an administrative remedy for individuals who disagree with a local agency's determination that an AFDC overpayment has occurred. That is, to file an appeal in accordance with section 256.045.

Minn. Stat. § 256.045, subd. 3. Provides a specific period of time for individuals to request an administrative review of an action taken by a local agency on an AFDC case.

Minn. Stat. § 256.045, subd. 5. Decisions and orders of the Commissioner of Human Services are subject to review only by appeal to the District Court of the County responsible for furnishing the assistance.

Mr. Egerman cannot circumvent the authority of the Minnesota Department of Human Services to oversee the AFDC program and review case actions taken by local agencies by simply failing to

exhaust the administrative remedy available to him under Minnesota statute.

Minnesota Rule 9600.2640, subp. 9. Prohibits an individual from challenging "the fact or amount of an overpayment" at a later appeal if the person did not appeal the original notice of overpayment in a timely manner.

The Judge has reviewed all of these statutes and rules (except Minnesota Rule 9600.2640 subpart 9 which the Judge could not find); these provisions are not implicated here. The overriding question is whether Thomas Egerman received adequate and proper notice. On the facts of this case, the Judge does not believe that he did.

Thomas Egerman testified that his son did not graduate from high school as scheduled in June 1993. He also testified that he did not have actual notice of the County's claims or understand the impact of the County's claims until he received the Notice of Refund from the Minnesota Department of Revenue. After listening to Mr. Egerman's testimony, the Judge believes that even if Mr. Egerman had actually received a notice, the underlying basis for Hennepin County's claim is confusing enough to require some further explanation on the part of Hennepin County regarding the basis for the claim of overpayment. Nowhere in the notice is there an explanation of why the Egermans were no longer eligible to receive AFDC benefits. Finally, not until the hearing did he learn that it was the County's assumption that his son graduated in June 1993 that gave rise to the overpayment error.

Under the circumstances, fairness and due process require that Mr. Egerman be allowed to challenge the underlying basis of the overpayment claim.

The Judge does not believe, as Hennepin County claims, that Thomas Egerman is attempting to circumvent the authority of the Department of Human Services. He acted promptly when he learned that he was adversely affected. Indeed, it is Hennepin County who chose not utilize the Department of Human Services hearing procedures to reduce its claim of overpayment to a judgment or order.

AEG