

1990

## Mendez v. The State of Utah : Unknown

Utah Court of Appeals

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R. Paul Van Dam; Attorney General; Richard Hummel; Assistant Attorney General; Attorneys for Appellee.

Michael E. Bulson; Attorney for Appellant.

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### Recommended Citation

Legal Brief, *Mendez v. Utah*, No. 900151 (Utah Court of Appeals, 1990).  
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JUN 5 1991

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June 3, 1991

Mary T. Noonan, Clerk  
Utah Court of Appeals  
400 Midtown Plaza  
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Salt Lake City, Utah 84102

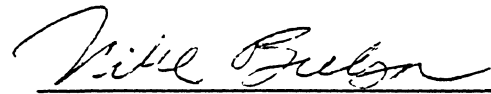
RE: Mendez v. State of Utah; Case No. 900151-CA

Dear Ms. Noonan:

Enclosed is a copy of the decision in Woods v. Dept. of Health and Social Services for the State of Wisconsin, Case No. 90 CV 65 (Wisc. Cir.Ct., Branch 3, Winnebago Co., Nov. 2, 1990) which is relevant to argument made in appellant's brief at pages 18 - 22. Please have this decision associated with the record.

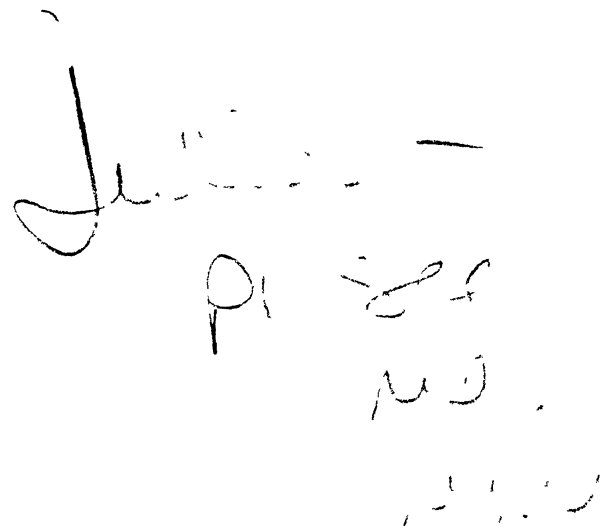
Very truly yours,

UTAH LEGAL SERVICES, INC.

  
MICHAEL E. BULSON  
Attorney at Law

meb/cw  
Enclosures:9

cc: Richard Hummel



11/2/90  
STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 3

WINNEBAGO COUNTY

44,382

-----  
Steven T. Woods, on behalf of  
himself and his minor children,  
Petitioner,  
vs.

Department of Health and Social  
Services for the State of  
Wisconsin

Case # 90 CV 65  
DECISION  
FOR REMAND

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RECEIVED

and

Outagamie County Department of  
Social Services,

Respondents.

MAR 14 1990

WISCONSIN DEPARTMENT OF  
HUMAN SERVICES

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Mr. Woods timely petitioned for review of a decision of the Wisconsin Department of Health and Social Services (DHSS) dated October 30, 1989, pursuant to sec. 227.52 and 227.53, Wis. Stats. That decision was the result of a fair hearing requested by the petitioner to review a decision of Outagamie County Department of Human Services (OCDHS).

The attorney for DHSS who conducted that hearing found:

that petitioner and his family received AFDC beginning June 1, 1984;

that on that date petitioner's wife owned life insurance with a cash surrender value of \$614.85, which increased to \$919.51, including a dividend balance, by Nov. 28, 1986;

that, as of July 29, 1984, petitioner owned life insurance with a cash surrender value of \$504.84;

that, as of January 15, 1986, the Woods owned additional insurance on the life of their daughter with a cash surrender value of \$245;

that petitioner was declared eligible for SSI effective June 1, 1985, but did not begin to actually receive benefits until August, 1986.

He concluded that:

from June 1, 1984 through July 31, 1987, the cash surrender values of life insurance policies owned at any given time exceeded the \$1,000 asset limit of \$1,000,;

the family had been overpaid AFDC in the amount of \$5,069 between June 1, 1984 and August 1, 1986;

that OCDHS was required to recover that amount, regardless of the cause of the overpayment.

He ordered that the petition for review be dismissed.

The standard for review of that decision is set forth in sec. 227.57. The court reviews solely upon the record, and may reverse or remand if there was a material error in procedure, if the agency has erroneously interpreted the law, if the agency's finding is not supported by substantial evidence in the record, or if the agency's exercise of discretion is outside the range of discretion delegated to the agency by law.

Petitioner argues that respondents should be equitably estopped from recovering the alleged overpayment, essentially arguing that the respondent erred as a matter of law in holding that OCDHS was required to recover the overpayment, regardless of the cause. He further argues that the respondents erred as a matter of law in considering petitioner's assets in making its determination after he was declared eligible for SSI but before he began to receive benefits.

Respondents refused to consider the estoppel issue on grounds that recovery of overpayments is mandated by state and federal statutes and rules. The right of the state to recover AFDC payments is purely statutory. State ex rel. Reible, 91 Wis 2d 394, 395 (CA 1979). An administrative agency has only those powers which are expressly conferred or necessarily implied from the statutory provisions under which it operates. Brown County v. H&SS Department, 103 Wis. 2d 37, 43 (1981).

The general power of the respondents under the statutes to recover overpayments is not challenged. The issue raised is whether non-statutory limitations on the power to recover overpayments may be considered.

It is clear that, even where the statutory power to act is established, an agency may be estopped from using that power where its own actions provide a basis for the estoppel. Dept. of Revenue v. Moebius Printing Co., 89 Wis. 2d 610, 634 (1979).

I conclude that the record shows facts from which it might be found that petitioner has established action by OCDHS, reliance by petitioner, and detriment to him by such reliance, the ordinary elements of the defense of estoppel. However, I am not in a position to review possible credibility issues.

Moreover, in the special instance of application of estoppel against state agencies, a determination must be made balancing the public interest at stake against the injustice that might be caused if the estoppel doctrine is not applied. State v. City of Green Bay, 96 Wis. 2d 195, 210 (1980).

Since the court may only review on the record, and since the respondents' refused to consider the issue, there is no finding to review as to the elements. The record contains no evidence as to the possible impact on the public interest, despite claims in respondents' brief that such impact might be substantial. 'I

conclude that the department erred as a matter of law in its refusal to consider that defense.

Accordingly, the matter will be remanded for further consideration of the estoppel issue.

Since on remand the issue of inclusion the value of petitioner's policy value may affect the issue of recoupment, the court will address it.

Petitioner became eligible for SSI effective June 1, 1985, but did not begin to receive SSI benefits until August, 1986.

42 U.S.C. 602(a)(24) provides that the state's plan must provide that an individual receiving SSI benefits shall not be regarded as a member of the family for the purpose of including his income and resources in determining the amount of AFDC benefits to be paid to the family.


I conclude that the statute is not ambiguous, and that "receiving" has the normal, dictionary meaning of "to get, acquire from an outside source", "to take, as something that is offered, sent, paid or the like; to accept." That comports with the legislative intent of providing funds for persons who cannot meet the minimum needs of living. An unassignable expectancy puts no food on the table.

Eligibility for benefits, without receiving them, does not qualify as "receiving", and I conclude that the respondents were correct in including petitioner's insurance values as a resource in determining eligibility until August, 1986.

The matter is hereby remanded to the DHSS for further action consistent with this decision, and this action for review is dismissed.

Dated this 2nd day of November, 1990

By the Court,

  
Thomas S. Williams  
Circuit Judge