

20110352

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

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North Dakota Department of
Human Services.

STATE OF NORTH DAKOTA



vs.

Appellant +
~~Cross-Appellee~~

Supreme Ct. No. 20110352

Williams Cty. No. 52-2011-CV-00567

Edward Ennis.

Appellee +
~~Cross-Appellant~~

APPEAL FROM THE DISTRICT COURT
WILLIAMS COUNTY NORTH DAKOTA
NORTHWEST JUDICIAL DISTRICT

HONORABLE DAVID W. NELSON

BRIEF OF APPELEE

Edward Ennis, pro se
612 Score St.
Ray, ND 58849-4938
Phone 701-570-2981
Appellee, pro se

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(1) Can the Department refuse to exclude principal cost paid in 2010 for a 2000 Chevrolet truck (\$5,280.00), (8th blank down with footnote #4), when compiling its 2010 Income Tax Guideline (worksheets p.3), found in the Certification of Record to the District Court, Doc.#2 (hereinafter R. 97), pages 95-101 and ADDENDUM (Add.97)?

(2) Did the District Court err in not awarding costs to Ennis?

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STATEMENT OF ISSUES:

- (1) Can the Department refuse to exclude principal cost paid in 2010 for a 2000 Chevrolet truck (\$5,280.00), (8th blank down with footnote #4), when compiling its 2010 Income Tax Guideline (worksheets p.3), found in the Certification of Record (R. 95-101) to the District Court, Doc.#2 (at R. 97 and ADDENDUM (Add.97)?
- (2) Did the District Court err in not awarding costs to Ennis?

STATEMENT OF THE CASE

This is an appeal under N.D.C.C. ch. 28-32 from NW District Court (Williams County), reinstating an Administrative Law Judge's ("ALJ") recommended findings and reversing the Executive Director of the ND Department of Human Services ("Department") order affirming Williams County Social Service Board denial of benefits. This case is defended/prosecuted by Appellee Ennis, pro se, a non-lawyer, and thus prays for lenient procedural and pleading standards.

I. Statement of Facts.

Ennis' facts are repetitious to the ALJ findings found in Appendix of Appellant pp. 7-15 and also in the Certificate of Record on Appeal to the District Court, Doc #2 (hereinafter "R."), R.162-171, and hereby incorporates same.

Ennis does not agree with the Department's facts in its Brief of Appellant pp.1-4.

The Department was not "anticipating" Ennis' 2011 income and expenses (R. 48-49), but

(1) was using the 2010 tax return (R.23, lines 17-25, R.26, lines 4-5, and R.36, line 11, to complete the 2010 income tax guideline worksheets (R.& Add. 95-101),

(2) in order to complete VII. Income Computation (R.& Add.100),

(3) and arrive at monthly earned income for 2010 (R.& Add.100, VII.A.6.).

In order to “anticipate” 2011 income, the Department would have had to use (which it was not using) “an anticipated income self-employment worksheet that may be helpful when *income tax forms are not used.*” (3-pages not in Record, but found referenced (first paragraph “Attached are...”) R.& Add.95. Lower page Under *SNAP* in 430-05-30-55-40), is the location of forms pp.1-3, see R.& Add.95. The “Anticipated Self-Employment Worksheet 2010” pp.1-3 is attached in Add. 101a-101c.

The Department was using the “2010 Income Tax Guidelines”, R.& Add.95, 96-101, worksheets in their entirety, but failing to complete page 3, Gross Income..., R.& Add.97, specifically blank #8 (Payments on the principal...), and footnote #4. Where the truck principal paid in 2010 of \$5,280.00 should have been entered. The Department testified at R.26, line 4-5, “That computation sheet is how we determine your actual benefit.” Further, that the Department has used that method for the past three years R.7, lines 21-25 and R. 8, lines 1-4, and R. 34-36.

In the past years, the Department incorrectly omitted principal payments on the worksheets R.& Add. 97, as a deductible expense R.33, lines 16-19; but was overlooked and not an issue, because Ennis’ income has not been as much. R.35, lines 18-19.

Communications from Arlene Dura, R.142, 143 and Casey, Joe R.144 are not federal directives (Brief of Appellant p.12, 16), or federal orders, but hearsay (R.21, line

4). The Department failed to provide testimony from these individuals at the telephonic hearing or provide any valid authoritative evidence.

ARGUMENT

(1) Common sense dictates that some allowance must be provided in Federal regulation and Department policy for a deduction/exclusion of the principal costs of a truck purchased in 2010, for business use, from gross income. 7 C.F.R. 273.9(a) through 7 C.F.R. 273.11(b), (R. 145-8); Department policy 430-05-30-55-15 (R.130 at R.131, 135), and the Department's worksheets (R.& Add. 97), 8th blank down, and footnote #4 all address the deduction/exclusion of the 2010 truck purchase from gross income.

The Department has seized upon the word "anticipated" and elevated it to the premier authority for all their actions. While it may have its place, it is not relevant in this instant action. See facts above. This action started with the worksheets R.& Add. 95-101 and that is where it should end. The principal cost of the 2000 truck of \$5,280.00 should be properly entered on blank 8 (Payments on the principal...), p.3 of worksheets, R.& Add. 97. The rest is purely mathematical arriving at p.6 (R.& Add. 100), VII, A, 6 and taking the corrected figure to R.119.

For additional argument and authority, please see ALJ Recommended Findings and Recommended Order at Appendix of Appellant pp.7-15 or in R.162-171, which Ennis agrees with. N.W. District Court Findings and Order (Appendix 26-27). Also see Ennis' Brief of Appellant, Dist.Ct. Doc #6 and Doc #20, Brief in Support of

The basis of Ennis' eligibility is from the past year's IRS tax forms R. 7-8, 34-35, 37, lines 6-20, 48 lines 8-25, 49, lines 1-14. For example 2010 enables Ennis to receive benefits for the coming year 2011. It does not go back retroactive and reimburse Ennis

for January-December of 2010, but allows eligibility for the coming year of 2011. Thus, in this instant appeal, the basis of Ennis' 2011 eligibility is based on Ennis' income tax filing from 2010 (R. 34-35), and the work sheets completion of the *2010 Income Tax Guideline* (R.& Add. 96-101). See footnote 1.

(2) Costs should be awarded Ennis. The District Court erred in not heeding the command in (NDCC 28-32-50(1)-Actions Against...), of "...court must award..." The District Court "Memo" Doc #18, Court's Order, Doc #~~18~~¹⁹, gave no indication of the Court's awareness of above, and mistakenly cited NDCC 39-20-06, instead of 28-32.

Further the burden of proof of substantial justification is placed on the Department, not Ennis. See Ennis' Brief in Support, Doc #20, p. 1.

For additional facts and argument, please see: Appellant's Costs, Doc #13; Appellant Motion for Award of Costs, Doc #19; Brief in Support, Doc #20; the Administrative Law Judge's Recommended Findings..., Appendix of Appellant, pp. 7-15; and the foregoing in this Brief.

1.
In hindsight, Ennis would like to suggest that the Department should have sought the counsel of Tove Mandigo, Director, Economic Assistance Policy, author of IM 5111 (Add. 95-101c), for education and instruction on completing the 2010 Income Tax Guideline worksheets (Add.95-101c). However, after Joan Amundson, eligibility Worker Supervisor (R.7, lines 15-17), referred Ennis to Arlene Dura, SNAP Director (R.142), and the FNS staff (R. 143-4), with a review by ND Department of Human Resources Executive Director Carol K. Olson and her staff of attorneys (R..152-159 & App.16-23) and present Counsel with the ND Attorney General Department; Ennis can only wonder if Tove Mandigo could have properly instructed the Department.

It is not Ennis' duty and responsibility to run or administer the ND Department of Human Services, the laws the Department is commanded to follow, nor to interpret and instruct the Department of their own policies and procedures, nor to instruct their employees on the performance of their jobs.

Ennis is merely applying for benefits that he is qualified to receive and expects the Department to be informed and fairly administer the federal programs under policies and procedures that the Department has created in an effort to follow federal law.

The state of confusion the Department has is self created and is not substantially justified. Their arguments and authorities are elaborate, but have little to do with the issue being litigated.

Thus, this Supreme Court is requested to order costs for Ennis at the District Court and this forum.

CONCLUSION

For the foregoing reasons and facts, Ennis requests this Supreme Court find the Department's denial of SNAP benefits to Ennis as wholly incorrect, its expansive and baseless arguments as frivolous and entirely without merit; award Ennis his costs of prosecuting and defending this action at both this level and the District Court, and affirm two Judges (ALJ and District Court), previous findings of the 2000 truck principal costs in 2010 be excluded/deducted from that year's income, according to federal regulations and IM 5111 (R.95-101).



Edward Ennis, pro se, Appellee
612 Score Street, Ray, ND 58849-4938; Ph. 701-570-2981

Dated this 6th day of February, 2012.

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

North Dakota Department of)	Supreme Ct. No. 20110352
Human Services,)	
Appellant,)	Williams County No. 52-2011-CV-00567
)	
vs.)	
)	CERTIFICATE OF SERVICE
Edward Ennis,)	
Appellee.)	

CERTIFICATION OF SERVICE

The undersigned certifies that he mailed a true and correct copy of the

- (1) Brief of Appellee
- (2) Addendum of Appellee
- (3) Appendix of Cross Appeal of Appellee

To: Jeanne M. Steiner, AAG,
Office of the Atty. General,
500 North 9th Street,
Bismarck, ND 58501-4509,

by placing same in a postage paid envelope, in the U.S. mails
at Williston, ND, on this 6th day of February, 2012.



Edward Ennis, certifier, 612 Score St., Ray, ND 58849-4938 (Ph.570-2981)