

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 8997
)
Appeal of)

INTRODUCTION

The petitioner appeals the sanctioning of her ANFC grant based upon her alleged refusal to cooperate with the Department in obtaining child support.

FINDINGS OF FACT

1. On March 19, 1986, the petitioner first applied for ANFC for herself and her year old child.

2. At the time of her application, the petitioner was asked to fill out and sign a form assigning her right to support of her child to the Department, which she did.

3. On the form, the petitioner was asked to fill in a blank stating from whom she had a right to support which she filled with the word "unknown". She also checked off a box which said she would "cooperate in pursuit of support and did not request a waiver."

4. The petitioner filled in "unknown" either because she had just filed a paternity suit against P.B. and did not know if she would be awarded support or she wished to protect his identity. In either event, the petitioner believed P.B. was her child's father and she had filled in his name of the child's birth certificate. At that time, P.B. had not denied

his paternity and had been paying \$100 per month in support. She filed the action because she wanted \$200 per month but he refused to pay.

5. On April 17, 1986, the petitioner's income maintenance worker received a memo from a worker in the support enforcement Department informing her that the petitioner failed to provide paternity information. Although the worker felt that this message should have triggered sanctions on the grant, she was too busy to take action at that time.

6. On June 12, 1986, the petitioner filled out a new assignment form in which she put the name of P.B. as the person from whom she had a right to receive support. During the pendency of the lawsuit, P.B. had begun to pay child support of \$100 per month.

7. In spite of this statement, on July 18, 1986, the petitioner's grant was sanctioned for non-cooperation. Because at that same time the petitioner voluntarily closed her grant due to her employment, she did not appeal the sanction.

8. In October of 1986, blood tests performed pursuant to the paternity action excluded P.B. as the father of the petitioner's child. Based on extensive testimony at the hearing by a professor of pathology who performed the test, it is found that the tests were properly and accurately performed and that the results are highly reliable.

9. In July of 1987, the petitioner reapplied for ANFC benefits and reported that the blood testing had excluded P.B. There is no evidence that she was asked to fill out a new support collection authorization at that time. Because the petitioner reported that she was "fighting" the results of the tests, she received a full ANFC grant and was not sanctioned at all through that ANFC period which lasted until May of 1988.

10. In July of 1988, the petitioner again applied for ANFC. The Department presented no evidence that the petitioner was asked to fill out a support assignment form as part of her application. However, because the petitioner had no money to go on with her paternity suit it was determined that she would be sanctioned for non-cooperation. That sanction remained in effect until November 1988 when the petitioner voluntarily closed her grant due to her re-employment. The petitioner did not then appeal the sanction because she had some other employment income.

11. Sometime during her last grant period, the petitioner and her worker had a conversation about the father of petitioner's child. During that conversation, the petitioner was asked if could think of anyone also who might be the child's father. When the petitioner said she could think of no one else. She was advised that she could state "unknown" and be found eligible. The petitioner replied that the father was "known", that it was P.B., and that she would not lie about it by saying unknown or picking another

name.

12. In late November 1988, the petitioner reapplied for benefits. At that time the petitioner was not asked to fill out any support assignment forms. Based on a conversation with her superior, the worker reopened petitioner's grant with the sanctions on. On December 23, 1988, the petitioner received a notice stating that she would be sanctioned by having her needs removed from the grant for "refusal to help get support".

ORDER

The Department's decision is reversed.

REASONS

An applicant for ANFC is required as a condition of eligibility to cooperate with the Department and assist it in identifying and locating the absent parent and in obtaining child support. W.A.M. § 2331.32¹ If that cooperation (or cooperation with any necessary information) is refused, the department may deny eligibility W.A.M. § 2211 The regulations require that "Department staff shall make every effort to assure full applicant understanding of the consequences of refusal to take necessary action to establish eligibility. . ." W.A.M. § 2211

In order to be disqualified for refusal to cooperate, then, the applicant must first fully understand what the "necessary action" required of her is, and, then, take or fail to take some action which can reasonably be interpreted

as a refusal (as opposed to inability or inadvertence) to comply with the request. See Fair Hearing No. 5738. Finally, the Board had held that the applicant must be warned in writing that her failure to provide the information by a certain date could result in her denial. Fair Hearing No. 8947.

This appeal involves an ANFC application made in November of 1988 and granted in December with sanctions. The evidence clearly shows that at no time from the date of application in November onward was the petitioner clearly and specifically asked to take any action which she has not carried through. If the Department wanted the petitioner to cooperate in obtaining child support, it made no formal request to further that end. The petitioner was not even asked to fill out a child support assignment form.² Logic dictates that an applicant must first be asked to do something before she can refuse to do it. Because this basic step was not taken, the Department has no basis to reach the conclusion that the petitioner should be sanctioned for non-cooperation.

Because many issues were raised in this appeal which may soon return to this forum, it is worth making a few observations regarding this process. If the Department should request that the petitioner fill out a form providing the name of the child's father, and does not consider the name of P.B. to be an acceptable answer, the Department must make that clear to the petitioner and inform her fully as to

what information is expected. Also, the petitioner should be aware that no matter how strongly she feels that P.B. is her child's father, the results of the blood testing makes it legally impossible for the Department to pursue him for child support. With these facts in mind, the parties with some effort should be able to resolve this matter.

FOOTNOTES

¹The regulations provide for a "good cause waiver" which is not at issue here.

²The fact that the petitioner may have provided an assignment form on prior applications does not relieve the Department from the legal requirements of requesting the needed information at each application. Nothing should be assumed about the petitioner's responses from information given in past applications.

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