

deduction in cases in which the payment for care remains within the same ANFC household. In both cases, the district office then informed the petitioners that the deduction would no longer be allowed, thus reducing their ANFC grants. The department also informed the petitioners that the department considers them to have been "overpaid" ANFC in those months in which the district office "erroneously" allowed them this deduction. Thus, the department has determined that both petitioners must "repay" these overpayments via reductions in their ongoing ANFC benefits.

ORDER

The department's decision disallowing the dependent care deduction is reversed.

REASONS

W.A.M. § 2253.4 provides the following as an "exclusion" from earned income:

Dependent Care Expenses

Dependent care expenses necessary to enable the individual to retain his or her employment will be deducted up to a maximum of \$160.00 per month for full-time employment per dependent child or incapacitated adult in the assistance group and up to a maximum of \$150.00 per month for part-time employment. Dependent care expenses will be allowed as paid up to the maximum on the basis of a signed statement by the provider of services. If a recipient's dependent care expenses are below the maximum, transportation to and from the dependent care facility may be deducted as part of the expense. If dependent care is required for reasons other than employment: e.g., at risk or for training purposes, the client shall be referred to SRS.

The dependent care expenses used in the budget

computation for the payment month shall be actual expenses paid during the budget month.

The department appears to concede that it is "necessary" for both petitioners to have child care provided by someone while they are working. (See Stipulation, July 12, 1989.) The petitioners maintain that the department must grant a child care deduction for any expenses an ANFC recipient pays for child care when such care is necessary. The department argues that the regulation allows a child care deduction only in circumstances in which day care expenses are necessary to enable the individuals to retain his or her employment. Thus, the department argues, households like the petitioners', in which child care is provided by other individuals included in the households' ANFC grant, do not qualify for the deduction.

At first blush, the regulation (supra) does appear to refer to "dependent care expenses necessary . . . " (emphasis added), rather than to care that is "necessary". Inherent in the department's position, however, is the factual assumption that when child care is provided by other family members in the household (in these cases, by older siblings), it is not "necessary" for the household to incur an "expense" related to child care. The stipulations of fact submitted by the parties do not resolve this question-- i.e., the Board does not know (but doubts) that the petitioners would concede that it is not, in fact, "necessary" for them to pay their older children in order to have those children provide care for the younger children

when the petitioners are out of their homes at work. In view of the governing federal statute and regulation, however, the Board does not deem it necessary to attempt to resolve this question.

The federal statute, 42 U.S.C. § 602(a)(8)(A)(i), provides, in pertinent part:

(State agencies) shall disregard from earned income . . . an amount equal to expenditures for care in such month for a dependent child . . . receiving aid to families with dependent children and requiring such care for such month, to the extent that such amount . . . does not exceed \$160.00. (Emphasis added).

Unlike the state regulation (§ 2253.4, supra), the above statute requires a child care allowance when "such care" is required. It does not sanction or direct state agencies to separately determine, or (as is arguably the case here) to speculate, whether the claimed expense for child care is "necessary".

The federal regulation, 45 C.F.R. § 233.20(a)(11)(C), supports the above reading of the statute. In pertinent part (and with emphasis added), it provides:

For the purposes of eligibility determination, the State must disregard from the monthly earned income of each individual whose needs are included in the eligibility determination:

. . . An amount equal to the actual cost, but not to exceed \$160.00 . . . for the care of each dependent child . . .

Like the statute (supra), the above regulation makes no mention of an inquiry into, or an assumption regarding, whether a family's claimed child care "costs" are

"necessary". It requires a child care allowance whenever such cost is "actual".

It is well-settled law that states are not permitted to establish standards of AFDC eligibility that are more restrictive than federal statutes. King v. Smith, 392 U.S. 309, 88 S.Ct 2128, 20 L Ed 2d 1118 (1968). It is also well-settled that interpretations of remedial statutes by agencies that are contrary to the "plain meaning" of those statutes are not binding on reviewing authorities.

Grenafeg v. D.E.S., 134 Vt. 288 (1976).

In support of its position herein the department argues that if the petitioners are allowed a child care deduction they would be in a "more advantageous position", income-wise, than families who must pay persons outside the family for child care. As a general matter, the department also alleges that "verification" of child care expenses is more difficult when another family member is providing these services. At best, however, these concerns raise policy considerations with which reasonable minds can (and the petitioners and certain members of the Board do) disagree. (See Department's Memorandum, June 6, 1989, pp 3-4 and Petitioner's Memorandum, July 17, 1989, pp 3-4.) Even accepting, however, the department's characterization of the results that achieve from allowing individuals in the petitioners' situation a child care deduction, it certainly cannot be concluded that such results are so "absurd" or "irrational" that the "plain meaning" of the statute in

question should not be controlling. See Grenafege, Id.

In the instant cases the department does not maintain that the petitioners do not, in fact, pay their older children at least \$160.00 per month to care for the younger children when the petitioners are out of the home. Nor does the department maintain that it is inappropriate for the petitioners to do so. And, as noted above, the department concedes that child care is "necessary" for the petitioners to maintain employment out of their homes.³

In light of the above, it must be concluded that the petitioners qualify for a child care deduction within the plain and unambiguous meaning of the federal statute and regulation (supra). To the extent that the department applies W.A.M. § 2253.4 in a manner that precludes eligibility for the deduction for families who pay other household members to provide necessary child care, it is inconsistent with federal law.⁴ The department's decisions in these matters are, therefore, reversed.

FOOTNOTES

¹The parties waived oral hearing. The facts were stipulated and legal arguments were set forth in memoranda submitted by the parties, copies of which were attached to the recommendation. The board noted that additional facts and positions were "clarified" in response to interrogatories posed to the parties by the hearing officer.

²It appears that both petitioners received the maximum deduction available under the regulations--\$160.00 per month (see W.A.M. § 2253.4, infra).

³In fact, the department concedes that if the

petitioners herein hired individuals outside their household to provide the child care presently being provided by their older children, this would qualify as a "necessary" child care expense under the regulations. (See Department's Memorandum, July 25, 1989.)

⁴In order to clearly reflect federal requirements, W.A.M. § 2253.4 should probably be amended to begin: "Expenses for dependent care necessary . . ."--rather than the present: "Dependent care expenses necessary . . ." (see supra).

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