

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 9185
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare (DSW) terminating her ANFC benefits. The issue is whether the petitioner's children no longer reside in the petitioner's "home" within the meaning of the pertinent regulations.

FINDINGS OF FACT

In lieu of an oral hearing in this matter the parties have submitted, and the hearing officer and the Board hereby adopt, the following Stipulation of Fact:

1. That petitioner has been a recipient of ANFC for herself and her two children based upon the absence of the children's father.
2. That on April 4, 1989 the children were removed from the petitioner's home by the [name] County Sheriff on an abuse order.
3. That the children were placed in the custody of their father pending resolution of the allegations.
4. That petitioner has (the) children in her home each weekend.
5. That the investigation into the abuse allegations and the children's best interests is ongoing.
6. That, at this time, no change in the present custody situation is contemplated by the court.
7. That the petitioner intends to continue her fight to get the children returned to her.

ORDER

The department's decision is affirmed.

REASONS

In determining whether a child lives in the "residence" of an "eligible (for ANFC) relative" (see Welfare Assistance Manual § 2302 et seq.) a "home" is defined, in § 2302.12, as follows:

A "home" is defined as the family setting maintained, or in process of being established, in which the relative assumes responsibility for care and supervision of the child(ren). However, lack of a physical home (i.e. customary family setting), as in the case of a homeless family is not by itself a basis for disqualification (denial or termination) from eligibility for assistance.

The child(ren) and relative normally share the same household. A "home" shall be considered to exist, however, as long as the relative is responsible for care and control of the child(ren) during temporary absence of either from the customary family setting.

In this case the petitioner admits that her children, as of April 4, 1989, have not resided in her home, that she no longer has legal custody of them, and that no change in the present circumstances is contemplated by the court that issued the custody decree. The petitioner appears to be basing her claim for ANFC on the fact that the children visit with her at her home each weekend, and on her stated intention to "continue her fight" to get them back.

Based on these circumstances, it cannot be concluded that the petitioner meets the criteria of maintaining a "home" for her children within the meaning of that above regulation. Visitation alone--even on a regular and

frequent basis--does not establish the requisite "responsibility for care and supervision" under § 2302.12. Fair Hearings No. 5553, 6345, and 7534. Nor can the mere wishes or intent of the petitioner regarding future custody overcome the uncontroverted evidence as to the present legal and physical status of the children. Fair Hearings No. 5683 and 7337. Therefore, the department's decision must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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