

On July 20, 1989, a police detective called the petitioner's address to talk with F. The call was made after midnight. F answered the phone and gave the impression that he had been awakened by the call.

On August 16, 1989, the same detective and several other police officers went to the petitioner's apartment at about 10:00 a.m. with a search warrant to look for stolen property. F answered the door and vehemently protested the police officers' presence in the apartment. The petitioner was in the shower but emerged after a few minutes.

During the search the detective mentioned to F that he had been in touch with the Department of Social Welfare concerning the case. At that point, F told the officers that he did not live there, and he attempted to leave.

The search of the petitioner's apartment continued, however. In the petitioner's bedroom the officers noticed a few items of men's clothes and some personal items with F's name on them in a dresser drawer. Some of the items the officers were searching for (and which had been specified in the search warrant) were found in the petitioner's purse. As a result, the petitioner has been charged criminally. To date, no charges have been filed against F.

The petitioner has consistently maintained, as she did at the hearing (held on October 26, 1989), that F does not "live" at her apartment. She admits, however, that he "visits" frequently. The petitioner also maintains that except for two occasions--one of which was the night the

detective called--F never stayed the night at her apartment.

The petitioner's sister, who has been staying with the petitioner since August, also stated that F didn't spend the night. F's mother testified that F received his mail at her (F's mother's) address, and that F was not "living" with the petitioner. In addition to the oral testimony, the parties stipulated to the admission of the following written statement by the petitioner's mother:

"I (name) to my knowledge know (F) does not live with my daughter (petitioner). I go over there all the time. I sometimes sleep over. I have never seen (F) sleep there. I know he visits his daughter once in a while."

None of the petitioner's witnesses, however, could state with any certainty where F did live. The hearing officer finds it highly incredible not only that the petitioner (who admitted her relationship with F was "friendly") and F's mother (who received F's mail) would not know any of the places where F "lived", but also that they could not find--much less produce as a witness--someone who did. Their testimony that F "moves around" rang hollow.

Seriously undermining the petitioner's credibility in this matter is the strong evidence of her complicity in F's lifestyle and probable criminal activities. Even if it could be found that F didn't regularly spend the night at the petitioner's apartment, there is no evidence whatsoever that this was at all a factor in his relationship with the petitioner and in the amount of care, support, and guidance he gave the child. Regardless of whether, and how often, F

spent the night elsewhere, it simply cannot be found that the petitioner and F were "separated" within any reasonable meaning of that term. Based on the testimony of the petitioner and her sister, it is clear that F came and went from the petitioner's apartment virtually as he pleased, and that when he was there, which was virtually every day, he interacted freely with the petitioner and the child.¹

Although the Department's direct evidence (the testimony of the police officer) that F lived with the petitioner was, indeed, minimal, it cannot be concluded that the petitioner credibly rebutted it.² Based on the testimony and demeanor of all the witnesses, it is found that whatever "absence" is found to have existed was a contrivance by F and the petitioner primarily for purposes of ANFC eligibility, and was not a true factor in the relationship of F to the petitioner and the child.

ORDER

The Department's decision is affirmed.

REASONS

W.A.M. § 2331 includes the following provisions:

"Continued absence of a parent refers to physical absence of parent from the home for one of the following reasons, the nature of which interrupts or terminates the parent's functioning as a provider of maintenance, physical care or guidance for the child.

. . .

Absence of the father of children born out of wedlock.

As the Board has repeatedly stated, "absence" under the

above definition is normally established whenever one parent does not reside with the other. However, when, as here, evidence is strong that the parents alleged "separation" is contrived, the Board has looked to the relationship of the parents to each other and to the question of how the "absence" itself, affects the degree of support, care, and guidance the allegedly-absent parent provides for the child. See Fair Hearings No. 8869, 8774, 8427, 6877, and 6111.

As discussed above, the petitioner's "separation" from F in this matter appears to be a sham. Even if it could be found that F did not regularly spend the night at the petitioner's apartment, there is no credible evidence that F's level of support, care, or guidance for his child was at all affected by this factor. The Department has, therefore, met its burden of proof that F was not "absent" from the petitioner's home within the meaning of the above regulations. The Department's decision is affirmed.

FOOTNOTES

¹The petitioner and F's mother testified that for the past two or three weeks F had been in jail. At the hearing the petitioner was advised to reapply for ANFC on this basis. See W.A.M. § 2331(6). It is unknown at this time whether the petitioner did reapply and, if so, what action resulted.

²F's mother testified that F, because of his chronic drug use, had few clothes and possessions. Thus, the ownership of the mens clothes seen by the police at the petitioner's apartment and the relevance of whether F used the personal items found in the petitioner's drawer were not deemed crucial to the question of F's "absence".

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