

efforts to locate this individual.

In October, 1989, the petitioner, who had returned to Vermont, reapplied for ANFC. In filling out the various application forms the petitioner again indicated that "A" was the father of her child. While the petitioner was being interviewed during the application the Department's intake worker contacted the support enforcement division, which informed the intake worker of the earlier blood tests that had excluded "A" as the father of the petitioner's child. The worker told the petitioner of this and gave her another support referral form, instructing the petitioner to "go home and think about" who could be the father of her child.

The worker told the petitioner that she could not be included on the ANFC grant unless she provided this information. The petitioner made no mention of the other individual she had named on the ANFC application she had made several months earlier. Unfortunately, the support enforcement division also did not mention this individual to the intake worker.

The intake worker heard nothing more from the petitioner for several weeks, until the petitioner called her to inquire about the status of her application. The worker told the petitioner that she would grant ANFC for the petitioner's child, but that because the petitioner had not followed through on establishing paternity, the petitioner's needs would not be included in the grant. Upon receiving

the written notice of this action, the petitioner filed this appeal.

A few days later, the petitioner met with a review specialist at the same district office. At this time the petitioner filled out a support referral form listing "unknown" as the father of the child. Although the Department often accepts this type of response on these forms, it had by this time learned of the petitioner's naming the first name of another individual on her earlier ANFC application. Thus, the review worker told the petitioner the Department would not accept "unknown" as sufficient cooperation in pursuit of child support. The petitioner left the district office without the matter being resolved.

Prior to the hearing in this matter, held on December 1, 1989, the petitioner, who had by this time retained legal counsel, filled out a new support referral form, giving the first name of the other individual she had named on her prior ANFC application. Inasmuch as the petitioner also indicated that she would cooperate in the Department's efforts to locate this individual, the Department granted her full ANFC benefits as of that date. At issue in this appeal, however, is the petitioner's eligibility for full ANFC from October 3, 1989, the date of her most recent application, until December 1, 1989. (The petitioner's ANFC grant from October 3, to December 1, 1989 included only the needs of the petitioner's child.)

The following facts are not in dispute:

1. The intake worker orally informed the petitioner that the Department would not accept "A" as the name of the child's father, and the review worker told the petitioner that the Department would not accept "unknown".
2. The petitioner gave neither worker any alternative names.
3. The Department gave the petitioner no written notice of what information the petitioner was expected to provide.
4. The Department did not set a date or place any time limit on the petitioner's "cooperation".
5. The Department had in its files information the petitioner had given several months earlier regarding the first name of the other individual she thought could be the child's father.
6. The Department, at that time, had considered this information to be sufficient "cooperation" on the petitioner's part.
7. The Department, pending further investigation, still considers this information to be sufficient.

The factual dispute in the matter concerns the petitioner's understanding of the oral instructions given to her by the intake worker on the date of her application. It is found that the intake worker, who appears to be

conscientious, gave the petitioner clear oral instructions regarding the Department's non-acceptance of the naming of "A" as the child's father. It is also found, however, that the worker did not set a time deadline for the petitioner to respond and that she did not give the petitioner a written notice of her instructions. Regardless of whether the petitioner understood the intake worker's instructions, and notwithstanding the petitioner's silence for several weeks following her meeting with the worker, there is no basis to find that the petitioner "refused" to cooperate with the Department during this period.

ORDER

The Department's decision is reversed.

REASONS

W.A.M. § 2331.32 sets forth the federally-mandated requirement that ANFC parents, as "a condition of inclusion in the ANFC grant, . . . agree to cooperate in all practical and feasible means of securing support from any absent parent. . . ."¹ The Department contends that the petitioner failed to meet the requirements of this section until the day of her hearing, at which time she gave the Department the first name of the same individual she had named in an earlier application.

As a general matter of determining eligibility under all department programs, W.A.M. § 2122 includes the following provisions:

"The applicant is the primary source of information about his need and eligibility for aid or benefits. Information furnished on the signed application and through interviews may be subject to verification, through documentary or collateral sources, as specified in succeeding sub-sections.

Reliance on the applicant as the primary source of information to establish eligibility recognizes the right to privacy, but also places responsibility on the applicant to furnish necessary information completely and accurately or, when needed, to give consent to obtain such information elsewhere. Department responsibility to assist an applicant to establish eligibility requires careful explanation and interpretation of program eligibility criteria and information needed to assess the applicant's circumstances against such eligibility criteria.

An applicant has a right to refuse to give information, to submit required proof, or to give consent to a collateral contact. Such refusal of information or action necessary to establish eligibility will result in denial or closure of aid or benefits. Willful misrepresentation of applicant circumstances will also result in legal action under fraud statutes. Department staff shall make every effort to assure full applicant understanding of the consequences of refusal to take necessary action to establish eligibility or misrepresentation of individual circumstances." (Emphasis added.)

Also, W.A.M. § 2122.3 includes the provision:

"Refusal to submit necessary verification or to consent to verification of any eligibility factor or to cooperate in investigation necessary to support an affirmative decision of eligibility shall result in a negative decision." (Emphasis added.)

The Board has repeatedly held that mere failure to cooperate does not necessarily constitute a "refusal" within the meaning of the above regulations. Fair Hearings No. 8776, 7677, 7448, 7432, 7038, and 6517. The Board has also emphasized the necessity of clear and unequivocal warning by the Department to applicants and recipients before it can be

concluded that they have refused to cooperate. Fair Hearing No. 8947. Recently, in a case involving an alleged refusal to cooperate in the securing of child support, the Board held that written notice fully informing a recipient of what the Department expects regarding "cooperation" must be given before the Department can sanction the recipient for "non-cooperation". Fair Hearing No. 8997.²

As noted above, there is no evidence in the instant case upon which it can be concluded that the petitioner refused to cooperate with the Department.³ At worst, she failed to follow through on oral instructions. However, the complexity of the petitioner's situation regarding the paternity of her child required the Department to provide the petitioner with written notice of what the Department expected her to do and to give the petitioner a specific time deadline within which to do it. Absent this, it cannot be concluded that the petitioner failed to meet the requirements of § 2331.32, supra. The Department's decision is, therefore, reversed.

FOOTNOTES

¹The regulations also set forth circumstances under which applicants and recipients can be granted a "waiver" of the requirement to cooperate in the pursuing of child support. These provisions are not at issue in this case.

²The Department has appealed the Board's decision in Fair Hearing No. 8997 to the Supreme Court. Unless and until the decision in that case is reversed or modified, however, the Department should expect that the Board will continue to follow the holdings in that case. The Department presented no compelling distinction in the facts

of the instant matter to have the Board deviate from its ruling in Fair Hearing No. 8997. If anything, the conduct of the petitioner in this matter appears far less egregious than that of the petitioner in Fair Hearing No. 8997.

³The petitioner did not strike the hearing officer as a particularly sophisticated individual. At the hearing the petitioner alleged that she thought the Department knew all along about the individual she had named on her previous ANFC application, and that that is why she did not name him again prior to the date of the hearing. While the testimony of the worker and the petitioner casts considerable doubt on this assertion, the hearing officer deems it unnecessary to determine the reasons or motives behind the petitioner's period of silence--other than to conclude that this silence did not constitute a "refusal" to cooperate. Compare Fair Hearing No. 8947. It is also unnecessary to determine whether the petitioner's prior naming of the other putative father was sufficient "cooperation"--despite her subsequent silence.

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