

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 9987  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals the Department of Social and Rehabilitation Services denial of her application for subsidized child care.

FINDINGS OF FACT

1. Until recently, the petitioner and her husband were both gainfully and well-employed. However, in the last four months, the husband's contracting business fell off due to slow demand and the petitioner's employment as a real estate agent was reduced in hours. The family declared bankruptcy in June and fell behind on their mortgage payments.

2. The petitioner has two children aged seven and nine who are both in school full-time. They are in an after-school day care program sponsored by the YMCA at school which they have been in for several years. The day care slots are limited to twenty-five and those slots are much sought after.

If a slot is given up, it is possible that it will be quickly filled by another child. The petitioner has no other day care prospects for her children.

3. On or about August 7, 1990, anticipating the beginning of the school year and the after-school program, the

petitioner applied for a day care subsidy for the \$62.00 per week after-school program. She was denied that day for being over income. She appealed that denial.

4. The petitioner called the Department again on August 15, to report that her hours had been reduced and was told to fill out a new application.

5. On August 19, 1990, the petitioner filled out a new application showing that she worked twenty-five hours per week (12:30 - 5:30) at \$6.00 per hour. She reported that her husband worked approximately 40 hours per week for \$9.00 per hour.

6. On August 24, 1990, the petitioner lost her job but did not report that fact to SRS until later. The family was subsequently found eligible for Food Stamps, Fuel Assistance, and the school lunch breakfast program.

7. On September 4, 1990, after getting no response to her August 19, 1990 application, the petitioner called the Department to ask for day care, and reported the total loss of her job. She was asked to send in a work search plan and was told she would receive a return call on her eligibility.

8. On September 11, 1990, the petitioner still having received no response to her application, called to explain her need to keep her day care slot and reported that she had a job interview the next day at 3:30 p.m. which she could not change to another time. The SRS supervisor found the family income eligible and approved three hours of child

care subsidy for each child for the next afternoon only, so the petitioner could attend her job interview. This subsidy was approved as an "exception" since there was some confusion about her application in the office and the supervisor thought she may have been misled about her eligibility.

9. On that same day, the petitioner received a letter generally denying her second application but authorizing one day of care on September 12, 1990, as had been promised on the telephone. No further reason for the denial was given.

The petitioner appealed that decision as well, believing that her income was still at issue.

10. On September 24, 1990 the Commissioner's review letter notified the petitioner that she had not been denied the second time for income purposes, but because subsidies for child care to facilitate a parent's employment search are not available when the children are school age and attend school on a full time basis.

11. At the time of the hearing, the petitioner's children were attending the after-school program due to the Director's indulgence because the petitioner as yet had been unable to pay for it. She had requested and been turned down for a tuition scholarship by the YMCA based on the program's lack of funds. She was still looking for a job but had no definite interviews lined up and was trying to get unemployment compensation which was being contested by her employer.

ORDER

The Department's decision is reversed and remanded for payment of up to thirty days of day care subsidy (retroactively, if necessary), which may be extended beyond thirty days in the discretion of the Department.

REASONS

The Department relies on Social Services Regulation 4032.1 to deny the petitioner subsidized child care to facilitate her search for employment. That regulation provides in its entirety:

Service Need

Service need is broadly established when day care is necessary to support a family goal of "self-support" or "protection."

Need for day care to support a goal of self-support or protection is evidenced in the following family situations:

In a family in which only one parent is a resident of the home, that parent must fit one of the following categories. In a family in which both parents are residents of the home, each parent must fit one of the following categories:

- a. Employed;
- b. In training (see list of acceptable training programs below);
- \*c. Incapacitated;
- \*d. The parent of a child in need of protection by the Department of SRS;
- e. In need of child care services as a support to the family;
- f. Seeking employment (support will not exceed 30 days unless extended by the Commissioner).

- \* A Service plan in accordance with department case planning procedures for child protective services will establish eligibility on the basis of c or d (above). The SRS caseworker is the case manager and coordinates

the case plan with community agencies. SRS will make every effort to ensure that the provider chosen can offer those specialized services specified as a part of that service plan.

Acceptable training programs are as follows:

- a. Work training programs sponsored by the Department of Social Welfare;
- b. Work experience or Work Study Programs;
- c. High school (public or private);
- d. College (up to four years support [48 calendar months], if enrolled in an undergraduate degree program);
- e. ABE (Adult Basic Education);
- f. Start-up self-employment activities;
- g. Job Training Partnership Act Programs (JTPA);

Other training activities may also be acceptable with the approval of the Commissioner or his/her designee.

Service Need shall be limited to the days and hours during which:

1. No regular public school program is available for the eligible child; and
2. No parent is available to provide adequate and necessary supervision.

For the Purpose of establishing "Service Need" it shall be assumed that every unemployed parent is available to provide care.

Service need for day care shall not be considered established in situations where "24-Hour In-Home Child Care" (See section 4013) or "Voluntary Care Agreement" (See section 2020.1) is appropriate.

Social Services Regulations § 4032.1

The petitioner's family has been found to be financially eligible for a day care subsidy. The petitioner's husband is employed and the petitioner is seeking employment so the family has presented evidence under the regulations that day care is needed to support a family goal of self-support. Furthermore, the petitioner is seeking assistance only for those hours in which no regular

public school program is available for her children. The regulation does not further limit the circumstances under which day care need can be established, other than to restrict payments to job seekers to a thirty day limit with discretion in the Commissioner to extend it. A review of the Department's other day care regulations shows no other restriction or eligibility.

Based on the above, it must be concluded that the petitioner has established both a "Service Need" and financial need and, thus, the eligibility of her family for a subsidy. The Department's regulations allow payment of a day care subsidy for an eligible family as follows:

Days and Hours of Day Care Services

Authorization of day care services for eligible families shall be limited to the following days and hours of care:

Purpose of Care

1. To enable eligible families to maintain employment or training.

Maximum Authorization

Neither more or less than the days and hours actually required to support employment or training (including sufficient travel time between the day care facility and the place of employment or training and/or to secure reasonable hours of rest or sleep following employment or training). Such travel time cannot, however, exceed two (2) hours per day.

. . .

Social Services Regulations § 4034

The above regulations requires the petitioner to demonstrate that she actually needs the after school care to support employment. In this case, she has unquestionably done so. Although she may not need after school care every day to attend interviews, her children will almost certainly lose their child care "slots" if she does not continue to pay her day care provider while she looks for another job. If she loses her child care, her ability to obtain employment is, obviously, seriously compromised.

The importance of maintaining child care arrangements while looking for employment was specifically recognized by the Department in a "policy memoranda" presented at hearing and attached hereto as Exhibit No. 1. The Department relies on that "policy memoranda" to exclude the petitioner because it limits payments to new day care applicants seeking employment to five half days per week/per child. The Department adds that it has a further "unwritten policy" of not paying for half-days for children who are in school full-time.

The Department's written "policy" violates its regulations insofar as it does not allow any eligible family to show that it actually needs certain hours to facilitate employment. It also violates the regulations insofar as it restricts eligibility to thirty days only (without further discretionary extension) and once per twelve months as

neither of those restrictions exist in the regulations. Even so, the written "policy" presented by the Department, which requires an automatic authorization in certain circumstances, in fact supports, rather than excludes, the petitioner's application as she is seeking less than five half days, (namely five days of three hours each) for each of her children. Even under this unduly restrictive written policy, then, the petitioner is eligible. The only "policy" which excludes her is an oral "policy" of denying payment for after school care for job hunters which conflicts with both the written regulation and the written policy. As such, it acts as no legal bar to the petitioner obtaining services once she has demonstrated her need for them under the regulations, as she has here.

This matter should be remanded for payment of up to thirty days of day care subsidy for the after school program as needed (which may be paid retroactively, if necessary). After thirty days, the payments may be terminated only after review and the exercise of the Department's discretion. The thirty day restriction, the job plan requirements and the Commissioner's discretion together are adequate to insure that only those who are actually seeking employment, receive subsidies.

Finally, for the sake of this petitioner and other applicants, it must be noted that the lack of a prompt response to the petitioner's applications (the Department apparently has no time guidelines) and the poor quality of

the notices in this case are not only offensive to and frustrating for the petitioner but have serious implications for her due process rights. The petitioner not only had to doggedly track down Department personnel to determine her eligibility, but also arrived at the hearing believing (with good cause) that she had been denied based on the family's income, and for no other reason. In addition, as the evidence shows, she was subjected to unwritten policies which were misrepresented both to her and to the hearing officer as the Department's "regulations" when those policies were actually directly contrary to the Department's regulations, or actually supported the petitioner's application. The citizens who are the intended beneficiaries of this program deserve and have a right to better treatment from the Department than the petitioner received here.

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