

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 10,123
)
Appeal of)

INTRODUCTION

The petitioner appeals the Department's decision to reduce her ANFC grant based upon her oldest child reaching eighteen years of age. The issue is whether that child should continue to receive assistance because he is a full-time high school student.

FINDINGS OF FACT

1. The petitioner is the mother of three children and an ANFC recipient. She immigrated to this country from Germany in 1979, at which time her oldest child, then seven years old, began first grade. Because that child did not speak English he repeated the first grade and did not complete it until he was eight years old.

2. In November of 1990, the petitioner reported to the Department that her oldest child had turned eighteen on November 3, 1990. She asked, however, that he be kept on her grant because he is a junior in high school and will be dependent upon her for support until he graduates in June of 1992.

3. On November 9, 1990, the Department sent the petitioner a notice that her grant would be reduced from

four to three persons because her eighteen-year-old son is ineligible as he "has graduated or is not expected to graduate before the age of nineteen". Her ANFC would decrease in December of 1990, from \$713.00 to \$630.00 but her Food Stamps would increase from \$185.00 to \$222.00.

4. The petitioner asks that an exception be made in her case because of her son's special circumstances. She is concerned that the reduced family income may prompt her son to quit school to seek employment rather than pursue his high school diploma.

ORDER

The Department's decision is affirmed.

REASONS

The portion of the Social Security Act which provides grants to states for aid to needy families with children, specifically defines the term "dependent child" as a child ". . . who is (A) under the age of eighteen, or (B) at the option of the State, under the age of nineteen and a full-time student in a secondary school (or in the equivalent level of vocational or technical training), if, before he attains age nineteen, he may reasonably be expected to complete the program of such secondary school (or such training) . . . ". 42 U.S.C. § 606(a)(2) This definition was added to the Act in 1981 (Pub. L. 97-35 § 2311, 1981), replacing a prior definition of a dependent child which included children under age twenty-one who were attending high school and pursuing a course of study leading to a

diploma or vocational or technical training. (Pub. L. 88-641, 1964). The 1981 amendment both dropped the age from twenty-one to nineteen and required that the program of study not only be pursued on a full-time basis but also be completed prior to attaining age nineteen. That amendment represents a clear and significant narrowing of student eligibility, whose legality has not been challenged in a reported case in the almost ten years since its passage.

The federal regulations, following the statute, specify that:

Federal financial participation is available in financial assistance provided to otherwise eligible persons who were, for any portion of the month for which assistance is paid:

(11) In ANFC, under eighteen years of age; or age 18 if a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and reasonably expected to complete the program before reaching age nineteen.

45 C.F.R. § 233.39(b)(1)

While a state may choose to provide assistance to other groups of individuals, the federal statute and regulations make it clear that the federal government will not contribute to programs which support students under nineteen years of age unless they will complete their programs before reaching age nineteen. Vermont has chosen to restrict its program to those persons for whom they can obtain federal assistance and has adopted a regulation as follows:

Age

Eligibility criteria relative to age are established by law (33 VSA 2701 as amended) for children under the

ANFC program, as follows:

An individual qualifies under the age criterion as a child if he or she is under 18. In addition, an 18 year old child is eligible if he or she is a full-time student in a secondary school or an equivalent level of vocational/technical and is expected to complete high school or the equivalent program before reaching his or her nineteenth birthday. Children who are eligible for ANFC on the day before their eighteenth or nineteenth birthday remain eligible for ANFC for the full calendar month during which their eighteenth or nineteenth birthday occurs. . .

W.A.M. § 2301

The petitioner's son is a full-time student in a secondary school who is not expected to complete his program until after his nineteenth birthday. As such, he is not eligible to receive eighteen-year-old ANFC benefits under the regulation and the Department's determination that her son be removed from her grant is in accordance with the regulation. Therefore, the Department's decision must be affirmed by the Board. 3 V.S.A. § 3091(d).

This decision, no doubt, will create a great hardship for the petitioner who will continue to need to support her son if he is to finish high school. Her contention that this decision places her son at risk for leaving school without his diploma is also quite credible and lamentable. There is much reason to question the wisdom of a federal policy which makes it difficult for the children of low-income families to finish high school or other educational pursuits which might increase their chances of employability. However, unless the federal policy is shown

to be illegal, the Board must uphold its validity even though it may not agree with its effect.

In light of the narrowed restrictions which have been enacted by Congress for supporting eighteen-year-old students, the petitioner may want to discuss with her school officials whether it might be possible, and in her child's interests, to accelerate the completion of courses required for his high school diploma, through summer school or some other means, in order to continue the financial support which he obviously needs.

#