

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 10,208
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department denying her eligibility for ANFC based on the fact that she is unrelated to her two minor wards who reside with her.

FINDINGS OF FACT

1. The petitioner was named the legal guardian of an eleven-year old girl and nine-year-old boy by a Connecticut probate court on October 26, 1990, after the children's father was incarcerated.

2. The petitioner was engaged to the children's father but they did not marry. She is unrelated to the children by blood or marriage.

3. The petitioner moved with the children to Vermont shortly after getting guardianship to remove them from an abusive relationship with other relatives. The petitioner plans to try to legally adopt the children but does not know if that is possible or how long that will take.

4. The children receive Food Stamps, Medicaid, and Supplemental Fuel Assistance. In December, the petitioner applied for ANFC benefits for her two wards, but was denied because she is unrelated to the two children.

ORDER

The Department's decision is affirmed.

REASONS

W.A.M. § 2201 defines eligibility with respect to the state ANFC program as follows:

Eligibility refers to conditions under Federal and State laws and regulations which must be met to receive assistance or benefits under the Federally-aided and State assistance program. Aid to Needy Families With Children (Title IV, Parts A and C).

The federal statute allows payments to a dependent child deprived of parental support or care who is "living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew or niece." 42 U.S.C. § 606. The language of the federal regulations liberally interprets the federal statute:

(v) . . .

- (A) A child may be considered to meet the requirement of living with one of the relatives specified in the Act if his home is with a parent or a person in one of the following groups:
 - (1) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great.
 - (2) Stepfather, stepmother, stepbrother, and stepsister.
 - (3) Person who legally adopt a child or his parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with State law.
 - (4) Spouses of any persons named in the

above groups even after the marriage is terminated by death or divorce.

34 C.F.R. § 233.90(c)(1)(v)

Pursuant to the federal regulations the state program regulations provide:

2302.11 Relative

The following individuals shall meet the definition of "relative" within the limitations of the Social Security Act:

1. Any blood relative, including those of half-blood, and including first cousins, nephews, nieces and preceding generations, as denoted by the prefixes "grand-," and "great-great";
2. Stepparent, stepbrother, stepsister;
3. Any adoptive relative of corresponding degree, upon whom are conferred under Vermont law (15 VSA 448) the same rights, duties and obligations as natural relatives;
4. Any spouse of an individual included in one of the above groups, whether or not the marriage has been terminated by death or divorce.

The relative responsible for care and supervision of the child(ren) shall be a person of sufficient maturity to assume this responsibility adequately. A parent(s) living with his/her (their) child(ren) must be included in the assistance group with the child(ren). Another relative who is living in the same household with the parent(s) and child(ren) and has assumed responsibility for the care and supervision of the child(ren) can only be added to the assistance group if the parent(s) is incapable of providing care and supervision for some reason, such as mental incapacity.

W.A.M. § 2302.11

The statute and regulations are very specific with regard to the persons with whom a child must live in order to be eligible for benefits. Unrelated legal guardians are

not included in that list. Unless and until federal laws and regulations change, the petitioner, as an unrelated legal guardian, will be unable to collect ANFC for her wards who reside in her household.

Constitutional arguments (specifically, the violation of the guarantee of equal protection) have been advanced over the years by advocates with regard to this exclusion, but thus far, those arguments have been rejected by federal Courts and the statute has been held to be constitutional. Those decisions find that the ANFC program was never intended to cover all needy minor children and that the exclusion of children living with a non-relative from the ANFC program is rational in light of the program's goal of preventing the disintegration of families. A copy of the Sixth Circuit Court of Appeal's decision upholding the constitutionality of the statute with regard to children residing with non-relative guardians, Curry v. Dempsey, 701 F 2d 580 (1983), and a copy of the United States District Court for the District of Massachusetts decision which follows the Curry decision, Sadler, et al., v. Atkins, et al., 597 F. Supp. 1204 (1984), which discuss the issue in detail are attached for the petitioner's benefit.

The petitioner should be aware that the Board has recently ruled that non-relative guardians may file applications for financial help under the Department's General Assistance program for their indigent minor wards. Fair Hearing No. 10,170 She is urged to consult with her

attorney regarding the child's potential eligibility for assistance under this program.

#