

of an affidavit from the city police officer who investigated the above-reported incident. The affidavit includes the following:

This officer is employed as a full time patrol officer for the city of [city] Vermont and was assigned to work from 2200hrs on 07-02-91 until 0600hrs on 07-03-91. This incident occurred on 07-03-91 at approximately 0210hrs.

At approximately 0210hrs this officer was dispatched to a report of a domestic dispute at [petitioner's address] located within the city of [city] Vermont, Apt. #2.

At approximately 0211hrs this officer arrived at [address] and found [petitioner] DOB06-10-68 in the first floor apartment with blood coming out of her nose. [Petitioner] advised that her boyfriend, [R.W.] DOB 12-19-65 was still in her apartment upstairs and so was her 18 month old child.

This officer went upstairs to [petitioner's] apartment and found [W.] standing in the living room after he opened the front door and let P.O. Anderson and this officer inside. [W.] led P.O. Anderson into the baby's bedroom and she picked the baby up out of the crib and took the child downstairs at the request of [petitioner] At this point this officer looked around the apartment and observed broken glass on the coffee table and blood on the kitchen floor and livingroom floor.

This officer then placed [W.] under arrest for simple assault (domestic abuse).

[Petitioner] stated in a written statement given to P.O. Anderson that on "7/3/91 at approximately 0030 hours, [R.W.] came home. [R.W.] lives with me, he is my boyfriend. He had been drinking and he told me he wanted to break up with me. We started to argue. The cops were called. The cops asked if everything was alright and we said yes, we were arguing. The cops left and we started arguing some more."

[Petitioner] continued saying, "He threatened that he was going to have my kids taken away from me. He also called me a slut and a whore. He sat down on the couch next to me and we started to argue some more. I had my one month old baby girl in my arms. He went into my son's bedroom and I told him get out of there because my son was sleeping. He told me 'I don't have to do anything I don't want to, this is my fucking house.' I had followed him into my son's bedroom. He then hit me in my nose with his fist. It hurt. My nose started to bleed."

[Petitioner] said she then hollered to her father

and ran downstairs to where her father lives. She ran into the bathroom and threw up. Then the police arrived again.

[Petitioner] was transported to the [city] Regional Medical Center by Regional ambulance Service to be treated for what is believed to be a broken nose.

I could smell some alcoholic beverage coming from [R.W.] and I had asked him if he had been drinking and he said yes.

Based on the above information, I lodged [R.W.], DOB 12-19-65, at the [city] Community Correctional center for Simple Assault - committed as Domestic Violence, T 23 VSA 1023.

The worker also obtained from District Court information that R.W. had told the Court that he earned \$800.00 a month.¹

There is no dispute that R.W. is the father of the petitioner's two children. Based on the information it had obtained from the Court, the Department on July 19, 1991, notified the petitioner that it was closing her ANFC and food stamp benefits because the father of the petitioner's children was not absent from the home. The petitioner appealed this decision.

At the hearing (held on September 24, 1991) the above-cited documents and information constituted the sum and substance of the Department's case. The petitioner appeared pro se.² A witness for the petitioner testified that she is at the petitioner's house at least every other night, and that R.W. does not live there. The petitioner stated that R.W. comes by to visit the children but that he lives with his mother at another address.

The petitioner's presentation at the hearing was cursory, lacking in detail, and, at times, contradictory.

However, neither the petitioner nor her witness were deemed so incredible that their testimony can be viewed as support for the Department's conclusions.

It does not appear that the Department made any investigation in this case beyond its contact with the District Court. At most, the Department's evidence establishes that on the night of July 3, 1991, and perhaps for a few nights immediately prior to that date, R.W. had been staying at the petitioner's apartment. However, any further conclusions regarding R.W.'s presence in the petitioner's household must necessarily be based on inference and speculation. The hearing officer and the board deem this insufficient to sustain the Department's burden of proof in this matter.

ORDER

The Department's decision is reversed.

REASONS

W.A.M. § 2331 provides, in part:

Continued absence of a parent refers to physical absence of a 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:

. . .

5. Absence of the father of children born out of wedlock.

For food stamps, a single 'household' is deemed to be present when parents are "living with" their children.

F.S.M. § 273.1(a)(1)(c). A disqualification occurs when the

income of the parent in question, when added to the other household income, exceeds the household maximum. See F.S.M. § 273.10.

Because this case involves the termination of benefits, the Department has the burden of proving that the father of the petitioner's children was not absent from the petitioner's home during the period in question. Fair Hearing Rule No. 12, F.S.F.H. Rule No. 10. In this case the information contained in the newspaper and the police affidavit certainly gives rise to suspicious (indeed, strong ones) concerning R.W.'s living arrangements--but not much more. See Fair Hearing No. 7038. In and of themselves, they do not conclusively establish that R.W. "lived with" the petitioner for any significant length of time. The Department did not establish how long prior to July 3, 1991, R.W. had lived with the petitioner, or that after July 3rd he ever returned to the petitioner's apartment. A just-as-reasonable conclusion from the evidence is that a short-lived attempt at reconciliation by R.W. and the petitioner ended in violence on July 3, 1991--a scenario that would not necessarily disqualify the petitioner from ANFC or food stamps based on "absence". See W.A.M. § 2331.2 and Fair Hearings No. 10,172, 6576 and 5952.

For these reasons the Department's decision is reversed.

FOOTNOTES

¹On its notice of decision to the petitioner, the Department indicated that "gross earned income" was

\$1,000.00 a month. This discrepancy was not explained at the hearing.

²A hearing was initially scheduled on August 27, 1991. At that time the petitioner appeared without legal representation. Although her benefits were continuing, the hearing officer continued the hearing and advised the petitioner to go to Legal Aid. On September 24, 1991, the petitioner again appeared without representation, but stated that she wanted to proceed with the hearing.

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