

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 10,877  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals the Department of Social Welfare's decision to deny her child support waiver request based on her alleged failure to show that pursuit of child support would result in serious physical harm to her child.

FINDINGS OF FACT

1. The petitioner who is an ANFC recipient assigned her rights to collect child support for her daughter to the Department of Social Welfare in July of 1991. The child's natural father was never married to her mother and has not legally acknowledged paternity or been adjudicated to be her father.

After meeting with a child support specialist for the purpose of obtaining information needed by the Department to pursue support, the petitioner became concerned that pursuing support would mean that her child would be forced to have contact with her natural father, a situation which the mother considers potentially dangerous for the child.

3. On October 28, 1991, the petitioner filed a support waiver request alleging that serious physical or emotional

harm<sup>1</sup> to her child would occur if she cooperated with the Department in obtaining support. That request was accompanied by a letter from a friend purporting to witness certain events. The request is attached hereto as Exhibit One and is incorporated by reference herein.

4. The petitioner's request was forwarded to the chief of field operations in Waterbury who has eighteen years of experience with the Department and whose job it is to investigate and rule on such requests. On November 8, 1991, she took the above report to the district office and spoke with both the petitioner's worker and supervisor to see if there was further evidence available. She also learned from the worker that the events set forth in the request occurred over nine years earlier and that there had been no further contact since that time between the petitioner and the child's father.

5. On November 13, 1991, the field operations chief determined that the petitioner had not produced evidence that serious physical or emotional harm would result to the child if the petitioner were required to cooperate in obtaining child support. She based her decision on the remoteness in time of the last contact between the parties and the lack of police, court or hospital records concerning the allegations.

6. The petitioner disagrees with the Department's determination and testified quite forcefully and sincerely of her concern for her child. Her daughter is now nine years old and has not been seen by her father since her birth. The petitioner states that the child's father did not want to have a relationship with the child and has not communicated with herself or the child since March of 1982.

The petitioner fears that the pursuit of child support will necessarily lead to visitation rights in the child's father.

She fears such visitation because she believes that the child's natural father may have molested two small children when he was fifteen years old and thinks he would do the same thing to her daughter. She also fears for her daughter and herself because he had physically abused her during their relationship over nine years ago. She stated that he "beat me up" and tried to throw her down the stairs once and that she was frightened of him although she never took the action of getting a court order against him. At the time of this occurrence, the child's father was himself only seventeen or eighteen years old. The petitioner believes from hearsay reports that he has since married and has two children. The petitioner's assertion of his beating her on one occasion was corroborated by the petitioner's mother.

ORDER

The Department's decision is affirmed.

REASONS

Welfare Assistance Manual (W.A.M.) § 2331.31 provides,  
in pertinent part:

In all cases, the applicant or recipient parent or other caretaker relative shall be required, as a condition of inclusion in the ANFC grant, to agree to cooperate in all practical and feasible means of securing support from any absent parent, unless good cause for refusal to cooperate is claimed and the decision is pending or granted.

"Good cause" is defined in W.A.M. § 2331.33 as follows:

To show that cooperation may be against the best interests of the child the applicant or recipient must produce some evidence that cooperation in establishing paternity or securing support is reasonably anticipated to result in any one of the following:

1. Serious physical or emotional harm to the child for whom support is being sought.
2. Physical or emotional harm to the mother or caretaker relative which is so serious it reduces her ability to care for the child adequately.

NOTE: Physical or emotional harm must be of a serious nature in order to justify finding of good cause.

. . .

W.A.M. § 2331.34 ("Request for Waiver") includes the following provisions:

An applicant requesting a waiver of the cooperation requirement must provide evidence of a good cause circumstance or must furnish sufficient information to permit the department to determine the circumstances

. . .

Acceptable evidence upon which the Department will base a determination of good cause includes, but is not limited to, documents such as law enforcement records, court documents, criminal records, birth certificates, medical records, social service, child protective services or psychological records, records of adoption proceedings, sworn statements from individuals, other than applicant or recipient, with knowledge of

circumstances. (Statements must be sworn to before a person authorized to take sworn statements such as a notary public, justice of the peace, country clerk, etc.)

. . .

Where a claim is based on the applicant's or recipient's anticipation of serious physical harm and, therefore, evidence is not submitted in support of the claim, and if the IMS believes the claim to be credible, the claim will be investigated by the IMS, assisted by Support Enforcement Specialist if appropriate, to determine if the applicant or recipient has good cause for refusal to cooperate.

In this case, the burden is upon the petitioner to provide evidence supporting her position that it is reasonable to anticipate that the pursuit of child support would cause her and her child serious physical harm. Fair Hearing No. 5216. The petitioner has presented in support of her contention that she fears serious physical harm in that the child's father "beat me up" on one occasion almost ten years ago when he was a teenager. The petitioner has not seen him since and presented no evidence that he has threatened her in any way since that time. On this record, it must be concluded that the petitioner failed to produce sufficient persuasive evidence that would support the granting of her request for a waiver. The evidence produced is too scant and too remote in time to conclude that cooperation will likely cause her serious physical harm.

As to harm to her child, the evidence is seriously deficient as well. The petitioner's belief that her child's father molested children in the past is sheer rumor and was not corroborated in any way. Even if these events were

true, however, it must be assumed that any attempt by the father to establish visitation with or custody of the child would be reviewed by a Court which would consider this evidence and make a decision in the best interests of the child. 15 V.S.A. § 652. With this protection in mind, it is even more difficult to conclude that the petitioner's cooperation is likely to lead to physical harm to her child. The Department's decision to deny the waiver in this case should be affirmed.

FOOTNOTES

<sup>1</sup>Although the petitioner used the term "emotional" harm in her request, all the evidence she presented and arguments she made are of anticipated "physical" harm.

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