

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 10,999  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare terminating her ANFC benefits. The issue is whether the petitioner had an "eligible child" in her home during a period of time in which her daughter had been removed from her home by SRS pursuant to a finding by the juvenile court that her child was in need of care and supervision (CHINS).

FINDINGS OF FACT

The facts are not in dispute (and are set forth in the parties' memoranda). On January 10, 1992, the juvenile court, after an "emergency detention hearing", found that the petitioner's nine-year-old daughter (the petitioner's only child) was a child in need of care and supervision (CHINS), and it transferred legal custody of the child to SRS, who immediately placed the child in the home of her grandmother (the petitioner's mother). Because the petitioner admitted the allegations in the CHINS petition (that she had struck her daughter while intoxicated), no "merits hearing" was held (see infra).

The child stayed with her grandmother in "foster care" under SRS supervision for several weeks while the petitioner underwent an intensive alcohol treatment program. The petitioner visited her daughter with increasing frequency and regularity during this time. In a letter to the petitioner's attorney, dated February 24, 1992, the child's SRS social worker stated that she anticipated that SRS would place the child back in the petitioner's home "sometime in late March".

On March 19, 1992, the juvenile court, after a "disposition hearing", continued SRS's custody of the child. The next day, however, on March 20, 1992, SRS placed the child back in the petitioner's home.

On January 15, 1992, five days after the emergency detention hearing, the Department notified the petitioner that her ANFC benefits would end on January 31st because her daughter was no longer living with her. The Department then began paying ANFC-foster care benefits to the child's grandmother as of February 1, 1992, but it reinstated ANFC to the petitioner as of March 20, 1992, when SRS returned the child to the petitioner's home. Thus, this case only concerns the petitioner's eligibility for ANFC during the "closed period" of February 1 through March 20, 1992.

ORDER

The Department's decision is affirmed.

REASONS

An "eligible child" is defined in W.A.M. § 2241.1 as one "who meets all ANFC criteria of need, age, residence, and deprivation of parental support". W.A.M. § 2242.2 defines an "eligible parent" for ANFC as "an individual who . . . lives in the same household with one or more eligible . . . children." W.A.M. § 2302.1 includes the following provision regarding "residence":

Federal and State law (section 406 of the Social Security Act; 33 V.S.A. 2701 and 2702) require that, to be eligible for public assistance (ANFC), a dependent child shall be living with a relative in a residence maintained as a home by such relative(s), unless the child is committed by a Juvenile Court to the care and custody of the Commissioner of Social Welfare and placed in foster care (ANFC-FC).

A relative may apply and be found eligible to receive ANFC on behalf of a child who is not yet in the home; receipt of such assistance shall be conditioned on the child's coming to live with the relative within 30 days after receipt of the first payment.

"Home" is defined by W.A.M. § 2301.12 as follows:

A "home" is defined as the family setting maintained, or in process of being established, in which the relative assumes responsibility for care and supervision of the child(ren). However, lack of a physical home (i.e. customary family setting), as in the case of a homeless family is not be itself a basis for disqualification (denial of termination) from eligibility for assistance.

The child(ren) and relative normally share the same household. A "home" shall be considered to exist, however, as long as the relative is responsible for care and control of the child(ren) during temporary absence of either from the customary family setting.

W.A.M. § 2248 provides:

Eligible children placed in foster homes at State expense have their basic requirements met through vendor payment covering allowances for board, clothing, incidentals, personal spending and special needs made to one of the following:

1. A licensed foster home (family home, family group home, professional group home); or
2. A relative, other than a parent, whose home fully meets applicable licensing standards, but does not require a formal license because placement is limited to "related" child(ren).

Payments are made by the Department of Social and Rehabilitation Services (SRS) under Title IV-E. SRS notifies DSW since Title IV-E recipients are automatically eligible for Medicaid. (See PP&D opposite M300-399 and P-2412 for procedures).

Since by State statute, parents are legally responsible for support of their minor children, no vendor payment shall be allowed on behalf of a committed child placed in the home of his/her parent(s). A financially needy parent may apply for and, if eligible, receive ANFC assistance on behalf of such child(ren).

In addition to the above, federal statutes and regulations provide that ANFC benefits cannot be paid to more than one household for the same child at the same time. 42 U.S.C. § 609(a) and 45 C.F.R. § 233.90(c)(2).

The Board has consistently held that a plain and consistent reading of the above statutes and regulations requires the conclusion, as a matter of both fact and law, that a child can have only one "home" for ANFC purposes, and that that home can only be with the parent, relative, or foster parent who is either "living with" the child or serving as the primary provider of the child's "care and control"--or both. See Fair Hearing Nos. 11,243, 11,182, 10,732, 9521, and

5553. In this case there is no dispute that during the period in question SRS--not the petitioner--had "legal custody" of the petitioner's daughter. (See 33 V.S.A. §§ 5502[1][10] and 5528[a].) Moreover, it is clear that for the most part the child was "living with" her grandmother during this time, and that it was her grandmother--acting as her "foster parent"--who was primarily responsible for her day-to-day care and supervision. The petitioner does not dispute that the grandmother was eligible for ANFC during the period in question.

Much of the petitioner's argument in this matter is based on federal provisions requiring states to make "reasonable efforts" to reunite children placed in foster care with their natural parents. See 42 U.S.C. § 671(a)(15). This Board fully recognizes and agrees that parents dependent on ANFC benefits may find it extremely difficult, if those benefits are terminated, to keep and maintain a home in which they and their children can be reunited. However, the federal statutes and regulations mandating that the state strive to reunite foster children with their natural families are directed at SRS--not DSW. It may well be that SRS has a federally-mandated responsibility to financially assist families in pursuing the goal of reunification. See Fair Hearing No. 11,243. However, it cannot be concluded that this mandate requires DSW to continue making ANFC payments to parents that

do not have care and control of children who live elsewhere. Similarly, the general federal and state statutory goals of ANFC to strengthen and preserve "family life" cannot be used as a basis to override specific statutory and regulatory provisions regarding household eligibility. See, e.g., 33 V.S.A. §§ 101 and 1103.

The petitioner cites at least two cases from other states in which the termination of ANFC was reversed where there had not been a "full adjudicative determination" that parental abuse or neglect had occurred and that foster care was necessary. Kramer v. New Mexico Human Services Dept., N.M. App. No. 12,725 (1992) and Morin v. Commissioner of Public Welfare, 448 NE 2d 1287 (Mass App. 1983). In Kramer, only a "probable cause" hearing had been held. In Morin, only an ex parte "extended temporary emergency order" was in effect. Neither case, therefore, is analogous to the petitioner's situation herein.

In Vermont, when a juvenile court authorizes SRS to place a child in protective custody, it must hold a "detention hearing" within forty-eight hours, and a "merits hearing" within fifteen days thereafter. See V.S.A. §§ 5515-5519. The merits hearing is a "full adjudicative hearing" in that the parents are given notice and the opportunity to be heard and to confront any witnesses. Hearsay evidence is inadmissible and the state must establish its case by a preponderance of

evidence. In re R.B., 152 Vt. 415 (1989). The hearing officer agrees with the petitioner and the cited cases to the extent (and it does not appear that the Department maintains otherwise) that at least until a "merits hearing" is held, it would be premature to conclude that a child being "detained" pending a CHINS adjudication (see 33 V.S.A. § 5515[a]) is anything but "temporarily absent" from his or her parent's home within the meaning of the ANFC regulations. However, once a court in Vermont makes an adjudication that a child is "in need of care or supervision" (CHINS) and it "transfers legal custody" of the child (see 33 V.S.A. § 5502[a][10] and 5528[a]) to SRS (who places the child outside the home), even though a "disposition hearing" must then be scheduled within thirty days (see 33 V.S.A. § 5526) it becomes at best speculative at that point as to when and whether the child will return to his or her parent's home. It is also at this point that another relative or foster parent who has been designated to provide the care and supervision of the child can, themselves, become eligible for ANFC. See W.A.M. § 2248, supra.

In this case, because the petitioner admitted the state's allegations of abuse at the initial "detention" hearing, the court (and, presumably, the petitioner herself) deemed it unnecessary to schedule another actual hearing on the "merits". Therefore, it was at this point that a "full

adjudicative determination" was made that the child in question was CHINS and that legal custody would be given to SRS--who then placed the child with her grandmother. It must be concluded that once this had occurred, even though a "disposition hearing" was not held until March 9, 1992, the Department was acting within the regulations (and consistently with the cases cited by the petitioner) in terminating the petitioner's ANFC grant. For all the above reasons the Department's decision is, therefore, affirmed.

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