

application the next day--February 6, 1992.

By notice dated February 28, 1992, the Department denied the petitioner's application because "graduate school is not covered." The petitioner then filed this appeal.

ORDER

The Department's decision is affirmed.

REASONS

Section 4032 of the Department's regulations provides:

A child care services subsidy can be authorized to any family if the primary caretaker(s), have a "service need" and meet "income eligibility standards."

The issue in this case is whether the petitioner has a "service need." This is defined by § 4033 of the regulations, in pertinent part, as follows:

A service need exists when child care is necessary to support a goal of "self-support" or "protection" or "family support."

. . .

It shall be assumed that each primary caretaker residing in the child's home is able and available to provide child care unless a service need is established due to one of the following conditions:

- a. Employment (includes self-employment)
- b. Training
- c. Incapacity
- d. Requires Protective Services Child Care
- e. Determined Eligible by risk factors for Family Support Child Care
- f. Seeking employment.

The petitioner argues that as a student she qualifies under "training."¹ However, § 4031 of the regulations

defines "training" as follows:

Any activity which, in the opinion of the Commissioner or her/his designee, is likely to lead to employment within one year of completion of training or which is required to maintain employment. Approved training programs include:

1. Work training programs sponsored by the Department of Social Welfare;
2. Work experience or work study programs;
3. High School (public or private);
4. College;
5. Adult Basic Education (ABE);
6. Job Training Partnership Act Program (JTPA);
7. Start-Up self-employment activities;
8. Other training programs approved by the Commissioner or her/his designee.

The Department maintains that graduate students, including those in law school, are not included as being in an "approved program" under the above regulations.

33 V.S.A. § 3511 (6) defines "Training" as "an activity approved by the commissioner (of S.R.S.) or the commissioner's designee, which is likely to lead to employment or required to maintain employment." The Department maintains that as a rule college graduates do not need graduate school to obtain employment, that it is not the intent of the program to maximize everyone's employment potential.

The petitioner has not demonstrated that the Department's policy, as embodied in its regulation, is either contrary to legislative intent, arbitrary, or unequal

in its application. As was demonstrated by the recent "freeze" in all such spending, the day care subsidy program is an extremely limited resource. It cannot be concluded that excluding graduate students from the scope of the program is an unlawful, unauthorized, or unreasonable exercise of discretion by the Department in its disbursement of these limited funds. The Department's decision is, therefore, affirmed.

FOOTNOTE

¹In August, 1991, when the petitioner first applied, she was found eligible to be put on a waiting list while funds were "frozen." The Department explained that this was because the petitioner had not yet started classes and could have elected to obtain or seek employment, either of which would qualify as a "service need." See ¶ 4033, supra.

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