

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,253
)
Appeal of)

INTRODUCTION

The petitioner appeals the Department of Social and Rehabilitation Service's (SRS) decision to terminate his day care subsidy.

FINDINGS OF FACT

1. On February 1, 1992, the petitioner, who is the single parent of a four year old child, was found eligible for a day care subsidy by the Department of Social and Rehabilitation Services.

2. The petitioner customarily works in the construction business but has been unemployed for almost a year and expects to be eligible for unemployment compensation through August of 1992. During the past year, he has looked for construction work for approximately ten to fifteen hours per week and has engaged in training as a bidder with his former employer for no compensation, for about five hours each week. He is hopeful that his former employer, for whom he had worked almost seven years, will recall him to work in the next month or so.

3. During those hours when the petitioner works as a bidder-trainee for his former employer, the employer pays the

cost of his child care. In addition, SRS agreed to pay for thirty half days, at a rate of two days per week in order for the petitioner to look for work. He was notified by the Department that it was expected that the thirty half days would be exhausted on April 23, 1992.

4. The petitioner did in fact receive thirty half days of child care payments. On April 13, 1992 the petitioner was notified by SRS that his payments would cease as of April 23, 1992. The petitioner appealed that decision and the Department was subsequently reversed on appeal both for failure to produce evidence at the hearing and due to the insufficiency of the notice which did not state a ground for closure. See Fair Hearing No. 11,202. On May 8, 1992, a new closure notice was sent to the petitioner proposing that his benefits be cut as of May 15, 1992. That notice stated that the action would be taken because he no longer meets the service need of seeking employment found at Regulation No. 4031. The petitioner appealed that determination.

5. On June 2, 1992, the Commissioner provided the petitioner with a letter indicating that he had reviewed the Department's decision. A copy of that letter is appended hereto as Exhibit One and incorporated herein by reference.

6. The petitioner does not dispute that he received at least thirty half days of subsidized day care. He appeals because he believes he needs additional help. He

has been able to find little work on his own because of the weak economy and his employer has been unable to rehire him for the same reason. His child has been in day care at a licensed facility for two years, first full-time and, since January, on a part-time basis. The petitioner fears that if he takes the child out of the facility which maintains a waiting list, and thereafter returns to work he will not be able to return the child to the facility, a result which he feels would be disruptive for his child.

7. The credible testimony of the Department's representative was that she was unaware that any consideration had been given to the petitioner for an extension of the regulatory maximum time coverage.

ORDER

The decision of the Department is reversed and remanded to the Commissioner for consideration of whether day care benefits should be extended beyond the coverage limit set forth in the regulations.

REASONS

The regulations promulgated by SRS governing child care payments provide the following terms of coverage:

Days and Hours of Child Care Services

Authorization of child care services for eligible families shall be limited to the following days and hours of care for each service need:

. . .

5. Seeking Employment - Not to exceed thirty Half Days or fifteen Full Days (unless extended by the Commissioner or his/her designee).

4035.4

Child Care Services, Reg.

Revised 11/1/90

Reg 4033, entitled Service Need, also states that "A service need for a primary caretaker seeking employment shall be limited to thirty Half Days or fifteen Full Days. Service need is limited to once in a twelve month period".

The petitioner has demonstrated a service needs of seeking employment and has been found financially eligible.

The petitioner's termination is based solely on the fact that he has admittedly exhausted the maximum number of hours and days allowed in the regulation for his service need. As such, the petitioner's day care subsidy would have to be found to be properly terminated if the Commissioner had declined to extend the maximum. However, there is no evidence in this case that the Commissioner or anyone acting in his behalf actually considered whether to extend the maximum coverage.

The regulation above clearly implies that the Commissioner (or his designee) has the discretion to extend the maximum coverage. That discretion anticipates that the Commissioner will consider the facts of the petitioner's situation and make a decision either to extend or not to extend that notice. Neither the termination or review notice in this matter indicates in any way that an extension was considered. The Department's witness in fact testified that she was unaware that any consideration had been given to this case for granting an extension of the coverage.

As the regulation contemplates consideration for an extension for the number of days of child care for persons seeking work, the Department has a duty to consider the extension question and to exercise its discretion to grant or not to grant the extension before a termination takes place. Therefore, the matter should be remanded to the Commissioner for further consideration and the exercise of his discretion.

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