

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,538
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare terminating her ANFC benefits. The issue is whether the petitioner's husband is "absent" from the petitioner's home within the meaning of the pertinent regulations.

FINDINGS OF FACT

1. The petitioner and her two pre-school-aged children are ANFC recipients who live in a public housing project. The father of the petitioner's children lives in a trailer in another town, a fact which is not disputed by the Department.

The children's father is mentally disabled and receives Social Security benefits. The children also receive some benefits as his dependents.

2. In September of 1991, the petitioner called her worker to notify her that she planned to marry the children's father and that they might go to live with him in the future at his trailer if it could be made habitable. (It lacked water and sanitary facilities.) On September 27, 1992, she did marry the children's father, a fact which she reported to the Department.

3. Based on that information, the petitioner's ANFC worker determined that the father was no longer absent from the home and that his income must, therefore, be used in determining the family's eligibility. (The family was still categorically eligible for ANFC due to the father's incapacity.) The petitioner's new husband's income when added to her own made the family financially ineligible for ANFC.

4. Following her wedding, the petitioner lived for three days with her new husband. (Her children stayed with their grandmother.) The petitioner soon concluded that she had made a mistake in marrying the petitioner, whom she described as mentally unstable, and went back to her home in the housing project and resumed the relationship she had with her husband before they were married.

5. The petitioner notified her worker of the situation but was informed that the fact of the marriage alone required a presumption that their estrangement no longer existed even if they continued to live apart and behaved as they had before their marriage. On October 9, 1992, the Department mailed the petitioner a notice that her ANFC benefits would cease on October 31, 1992, because the family's income, which now included her husband's income, exceeded Department standards. The petitioner appeals that decision.

6. The petitioner has had a long-term relationship (over ten years) with her husband which included several brief stints of living together with longer stints in between of

separation. Her relationship has been marked by verbal and physical abuse which has resulted on at least one occasion (June of 1989) in a court restraining order. The petitioner describes her husband as suffering from a physical head injury and bipolar mental illness which is treated with Lithium. Most of her problems with him have stemmed from the fact that he refuses to take his medication. In the two years since she has been an ANFC recipient in Vermont, the petitioner has not lived with her husband. Prior to her marriage, he visited her two or three nights per week to shower and watch TV but did not stay overnight unless it was too cold to go back to his trailer. He has never taken any part in caring for the children, who are afraid of him, and is probably unable due to his medical problems to take any role in their care and guidance. (This finding is based not only on the credible testimony of the petitioner but also on the credible testimony of a home educator from an early childhood education program who regularly visits the children.) He has never given the petitioner or the children any money.

7. The petitioner has been ambivalent about ending her relationship entirely with her husband in part because of their long history and her sympathy for his medical condition and in part because he has persistently pursued her. During the summer before they were married, the petitioner's husband began taking his medication and his behavior improved somewhat. At that point the petitioner, hoping that he had

changed, decided to give in to her husband's requests to marry him. The petitioner also felt that a marriage between them might be a good idea since they had children in common. Immediately after the wedding, the petitioner's husband reverted to his old abusive ways and stopped taking his medicine. The petitioner determined at that point to give up the idea of cohabitation and resumed her former relationship with the petitioner. For a while, the petitioner continued to visit her a few times per week as he had previously. However, beginning in early December, the petitioner determined to attempt to break with him and has not seen him in several weeks.

ORDER

The decision of the Department terminating the petitioner's ANFC benefits is reversed.

REASONS

W.A.M. § 2330 requires that in order to be found eligible for ANFC a showing must be made by an applicant that a child in her care is deprived of parental support or care for one of several reasons including continued absence of a parent.

Continued absence of a parent is defined as follows:

Continued Absence of Parent

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:

. . .

3. Informal separation of parents without benefit of legal action.

. . .

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

. . .

W.A.M. 2331

In the petitioner's case, a determination was made when she went on ANFC that the absence of the father of the petitioner's children, who were born out of wedlock, interrupted or terminated the parent's functioning as a provider of maintenance, physical care or guidance for the children. Under the Board's Fair Hearing Rule No. 12 the burden of proving facts alleged as the basis for agency decisions to terminate an assistance grant is on the Department. Therefore, in order to prevail in this matter, the Department must show that the petitioner's husband is either now living in the petitioner's home or is not living in her home but now provides a different level of maintenance, physical care or guidance for the children which is of such an amount and nature that deprivation of parental support and care no longer exists.

The Department agrees in this case that the petitioner and her husband continue to live in different towns. However, the Department produced absolutely no evidence that the level of maintenance, physical care or guidance for the children at

issue has changed in any way. The Department relies solely on the fact of the petitioner's marriage to her children's father to find that deprivation of parental support and care no longer exists. There is no support for that standard anywhere in the regulations. Certainly, many persons who are married and separated from their spouses are eligible for and receive ANFC benefits. The mere fact of marriage proves nothing about the actual maintenance, physical care or guidance being given to a child.

Of course, the fact of marriage itself certainly warranted the Department's looking into the matter to see if the father's provision of the above care had changed. If the Department had looked closely at that situation, it would have discovered that the situation was in fact unchanged in spite of the marriage. Since the level of deprivation remains the same, the petitioner's ANFC benefits must be continued.

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