

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,212

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare terminating her eighteen-year-old child's ANFC benefits because the child is not expected to graduate from high school before her nineteenth birthday.

FINDINGS OF FACT

1. The petitioner is the mother of four children, and, until recently, the three youngest of those children received ANFC benefits as minor dependents of the petitioner.
2. On April 19 of this year, the oldest of the three ANFC eligible children turned eighteen. The petitioner reported to the Department that her eighteen-year-old was still in high school but was a junior and was not expected to graduate from high school until just after her nineteenth birthday in June of 1994.
3. Based on this information, the Department notified the petitioner that her eighteen-year-old would no longer be eligible for assistance, and reduced the family's ANFC grant accordingly.
4. The petitioner's eighteen-year-old daughter does not have a disability and is not a child involved in special education. Her progress through school was delayed a year by a decision made early in her educational career that she needed to repeat a year of schoolwork. Since that time she has done well in school and was, until recently, a very successful student.
5. The petitioner is concerned that the lack of money will put pressure on her daughter to leave school

and find a job. She already believes the situation has had a serious impact on her daughter's social and emotional life. She expressed her belief that cutting high school students off of public assistance will undermine their efforts to become educated and self-supporting and asks for reconsideration of the reduction.

### ORDER

The Department's decision is affirmed.

### REASONS

The Department's regulations concerning this much-debated area of welfare law clearly prohibit the receipt of benefits by anyone over eighteen years of age who is not a full-time student scheduled for graduation before her or his nineteenth birthday:

Eligibility criteria relative to age are established by law (33 V.S.A. 2701 as amended) for children under the ANFC program, as follows:

An individual qualified under the age criterion as a child if he or she is under 18. In addition, an 18 year old child is eligible if he or she is a full-time student in a secondary school or an equivalent level of vocational/technical training and is expected to complete high school or the equivalent program before reaching his or her nineteenth birthday. Children who are eligible for ANFC on the day before their eighteenth or nineteenth birthday remain eligible for ANFC for the full calendar month during which their eighteenth or nineteenth birthday occurs.

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W.A.M. § 2301

The petitioner does not argue that the above regulation violates federal or state law or was invalidly promulgated, the only grounds upon which the Board could review the application of this regulation to her. This regulation has been reviewed by the Board in the past which has upheld its validity, at least in the context of a non-disabled child. (Cf. Fair Hearing No. 11,260; No. 11,648 in which the Board reached different conclusions regarding the regulation's applicability to disabled children, but was subsequently over-ruled on that decision by the Secretary of the Agency, whose final decision is now on appeal.)

The Board is constrained by regulation to uphold decisions of the Department which are consistent with its valid regulations. 3 V.S.A. § 3091(d) However much the Board as a whole or any of its members may agree with the petitioner regarding the wisdom of this regulation, it is not the Board's province to rewrite policy. The petitioner

is directed to her state and federal legislators as a more appropriate means to achieve that end.

The petitioner should be aware that it is not unusual for schools to design special accelerated programs which will allow an eighteen-year-old student to complete the courses needed for graduation prior to the date of her nineteenth birthday. If the petitioner is interested in this possibility, she should contact her

school administrators without delay and notify the Department of her intention.

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