

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,430

)

Appeal of )

)

INTRODUCTION

The petitioner appeals the denial by the Department of Social Welfare of his application for ANFC. The issue is whether the petitioner is an "eligible parent" of an "eligible child" within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner is a father of a two-year-old child. He and the mother of the child are separated. The petitioner and the mother entered into a stipulation whereby they have "joint custody" of the child. The stipulation, which was the basis of a Temporary Order entered by the Family Court on August 2, 1993, provides that the petitioner and the mother have joint and shared legal and physical rights and responsibility for the child, but that the child shall reside with the mother every week from "7:00 p.m. Thursday - 7:00 a.m. Tuesday" and with the petitioner "7:00 a.m. Tuesday - 7:00 p.m. Thursday". The mother of the child receives ANFC on behalf of herself and the child.

The petitioner concedes that the child's "primary home" (see infra) is with the mother. The petitioner estimates that under the above schedule he has the child with him about 40 percent of the time. However, the child spends five nights a week at the mother's home and only two nights a week at the petitioner's home.

ORDER

The Department's decision is affirmed.

REASONS

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 VSA 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. § 2302.12 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 by itself a basis for disqualification (denial or 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.

In cases of joint custody the Board has held (and the Vermont Supreme Court has affirmed) that it is the parent that provides the primary "home" for the children who is eligible for ANFC. Fair Hearing No. 5553; Aff'd, Munro-Dorsey v. D.S.W., 144 Vt. 614 (1984); see also Fair Hearing Nos. 11,182 and 9521. Although the petitioner herein shares "legal responsibility" for the child, there is no area of parenting in which the petitioner "predominates", so as to "compensate" for the fact that the mother has physical care of the child 60 percent of the time--including five nights a week. As noted above, the petitioner concedes that the child's "primary home" is with the mother.<sup>(1)</sup>

Inasmuch as federal regulations prohibit the payment of ANFC to more than one household on behalf of any eligible child (45 C.F.R. § 233.90(c)(2)), and the regulations do not provide for "prorating ANFC grants between two household's, the Department's decision in this matter is. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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1. The petitioner does not argue that the mother's ANFC grant should be reduced. He feels the regulations should allow the payment of full ANFC grants to both parents in joint custody situations.