

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,746

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare terminating her ANFC grant because her only dependent child will not graduate from high school before his nineteenth birthday.

FINDINGS OF FACT

1. The petitioner is a disabled woman who lives with her eighteen-year-old son. She receives \$500.87 from Social Security and an ANFC grant of \$411.00 on behalf of her son. The petitioner is bedridden due to central nervous system apnea and is attached to oxygen supports. She relies heavily on her son, who is a high school student, for her daily care.
2. The petitioner's son is enrolled full-time in vocational education through his high school. In addition to caring for his mother, he also has a part-time milking job at a farm. Her son is not disabled in any way but is a year behind his peers due to a series of childhood illnesses which kept him out of school most of his first elementary year, forcing him to repeat it. He expects to graduate from high school in June of 1995.
3. In February or March of 1994, the petitioner's case came up for review when records showed that the petitioner's son would turn eighteen on April 2, 1994. When the petitioner reported that her son would turn nineteen before his expected date of graduation, the worker told her that her ANFC would have to be cut off on April 30, 1994, unless her son could complete his graduation requirements before April 2, 1995. On April 5, 1994, the petitioner indicated that she would like to appeal that decision even before it came to her in writing. Since that time, she has received continuing benefits.
4. The petitioner is concerned that the ANFC termination will mean both that her son will not be able to finish high school and that they will no longer be able to live together. It had been her plan after he completed high school to enter a nursing home where she could receive the nursing care she needs because he would then be able to work and provide his own home. Without ANFC, she cannot afford to provide a home for her son while he finishes high school. She has applied for a Section 8 certificate, but has been placed on a waiting list. She fears that her son will quit school just to keep the rental home they are living in.

5. Because her situation is so desperate, the Department has contacted the school on several dates both to confirm the date of expected graduation and to ask if an accommodation could be made to allow the petitioner's son to graduate a couple of months earlier so the family can retain its ANFC benefits. (This is a method that has been successfully used to continue benefits for a number of students whose nineteenth birthdays occur shortly before the usual school graduation dates.) Although written explanations and requests for assistance have been provided to the son's guidance counselor and specific requests have been made for written responses, two months have passed without an official response from the school. Telephone calls to the guidance counselor by the petitioner and her caseworker have resulted only in an oral indication that it was not possible to make such an accommodation in a vocational program with no further explanation or attempt to ameliorate the situation. Sadly, and much to everyone's surprise, the school's failure to move the matter in some direction, meant that the matter was not under development and a delay of the hearing was no longer justified. In frustration, this matter has been forced to a hearing.

### ORDER

The Department's decision is affirmed.

### REASONS

The Department's ANFC regulations require that certain age standards be met in determining eligibility for benefits:

An individual qualifies 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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The petitioner's child would not have been eligible for ANFC once he turned eighteen unless he were a full-time high school student. He was and continues to be a full-time high school student so he can continue to receive assistance with his living needs only until the day he completes his high school education, so long as that completion occurs at least one day before he turns nineteen. Under this scenario, the petitioner's son must complete all his graduation requirements before April 2, 1995, or he can get no further assistance through the ANFC program and his mother will be liable to repay all the benefits which she has received since April 30, 1994, the last month in which her son should have been eligible. (At this writing some \$1,600.00 worth of benefits.)

The hardship which this regulation inflicts on children trying to finish their high school educations has been remarked upon in the past by the Board (see Fair Hearing

No. 10,123) and will not be belabored again here. This is a valid and binding regulation of the Department as to this child (he has alleged no handicapping condition, cf., Fair Hearing Nos. 11,260, 11,648, and 12,078) promulgated to meet the conditions of federal financial participation in the state ANFC program. See 42 U.S.C. § 606(a)(2), 45 C.F.R. § 233.39(b)(1). As such, the Board cannot

overturn the Department's decision based thereon because it may disagree with the result. 3 V.S.A. § 3091(d). The Board is, therefore, constrained to affirm this decision, however distressing it may be to all the parties, including the Department which was required by law to make the original decision. There is no room in the regulations for an exception.

The only relief which the petitioner can hope to obtain in this matter is through her child's school and or supervisory union. It has been the Agency's experience that schools are not bound by the same rigid rules as the Department of Social Welfare and have generally made accommodations whenever and wherever possible to ensure that their students are able to finish their graduation requirements. Although it may not be possible to accommodate this student, in fairness to him, it would behoove the school to indicate to him in writing that it understands his situation and has done everything possible to accommodate it. The petitioner is urged to share this recommendation with her school guidance counselor, principal and area superintendent as soon as possible to obtain some satisfaction and possibly prevent the imminent termination of her child's living expenses. (If the school can put together an accelerated program for her son by August 31, 1994, it is likely that the termination could be reversed.)

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