

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,979

)

Appeal of )

)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare terminating her ANFC benefits. The issue is whether a juvenile court order transferring legal custody of the petitioner's children to the Department of Social and Rehabilitation Services (SRS) and SRS's placement of the children in foster care terminates the petitioner's eligibility for ANFC.

FINDINGS OF FACT

The facts are not in dispute. The petitioner receives ANFC for herself and her three children. In April, 1993, the petitioner voluntarily placed her children with SRS because she was going into the hospital and did not have backup care for them. The petitioner was in the hospital

for two weeks. When she was released she went to stay with a friend. Unfortunately, she did not contact SRS.

After several weeks in which it did not hear from the petitioner and did not know her whereabouts, SRS filed a CHINS petition in juvenile court. On April 25, 1994, the court entered a Detention Order transferring legal custody of the children to SRS until further notice.

SRS placed the children in foster care and applied for ANFC in their behalf. When the Department learned that the children were in SRS custody it terminated the petitioner's ANFC, effective June, 1994. The children have received ANFC-foster care payments since that time.

Since the Detention Order the petitioner has had severe psychological difficulties both in ordering her life and in pursuing the CHINS proceedings. A "merits hearing" has not yet been held, and the children have remained in foster care under SRS custody. As of the date of the fair hearing (September 26, 1994) no further court proceedings had been scheduled.

The petitioner maintains that she needs her ANFC grant to establish a suitable home where the children can be returned to her. At the hearing the petitioner was advised to apply for medicaid and general

assistance for herself in the likely event that her ANFC would be terminated if the children remained in foster care.

ORDER

The Department's decision is affirmed.

REASONS

In the consolidated Fair Hearings Nos. 12,265 and 12,296 the Board exhaustively examined the issue of continuing ANFC benefits in cases in which children have been removed from an ANFC parent's home and placed in SRS custody. The Board held that at the point that "legal custody", as it is defined in the CHINS statutes, is "transferred" by the juvenile court from the recipient parent to SRS, and SRS then places the child in foster care, the recipient parent is no longer eligible for ANFC based on both the definition of "temporary absence" under the state and federal regulations and the prohibition in the federal statute and regulations on concurrent dual payments of ANFC for the same child. Inasmuch as the instant matter is indistinguishable from these cases, the Department's decision is affirmed.

###