

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,130

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her husband an exemption from participation in Reach Up. The issue is whether the petitioner's husband's attempts to start his own jewelry business qualify him for an exemption from participating in the job search requirements of Reach Up.

FINDINGS OF FACT

The facts are not in dispute. The petitioner applied for ANFC in September, 1994. As the designated "unemployed parent" her husband was required to register with Reach Up. The petitioner's husband had been attempting to establish his own business making and selling jewelry. However, at that time he was realizing little, if any, income from this endeavor.⁽¹⁾

Based on this lack of income Reach Up refused to grant the petitioner's husband an exemption from the usual requirement (see infra) that unemployed parents participate in an eight week "Job Search" program. The petitioner appealed this decision, claiming that his attempt to start his own business should exempt him from seeking other work.⁽²⁾

ORDER

The Department's decision is affirmed.

REASONS

Welfare Assistance Manual (W.A.M.) § 2343.2 includes the following provisions:

The nonexempt principal earner in a family which has applied for ANFC on the basis of the principal earner's unemployment is required to participate in job search as defined in 2346.8 immediately and for

an initial period of eight consecutive weeks. Job Search during this eight-week period involves a minimum of 20 hours of program activities per week. To participate satisfactorily in job search, the principal earner must attend and carry out job-search activities each week for at least three-fourths of the hours during which these activities are scheduled.

To meet this requirement the principal earner must report in person to the local Department of Employment and Training office within two working days to begin his or her job search, unless he or she is a minor parent (see below). The two-working-day requirement may be waived if the principal earner demonstrates good cause or the Department of Social Welfare or the Department of Employment and Training cannot meet this requirement. The principal earner must accept any suitable unsubsidized job offered to him or her. . . .

The "Exemption Criteria" for the above provisions are set forth in W.A.M. § 2344.1. The only provision in that section that remotely applies to the petitioner's husband's situation is the following:

4. A person working 30 hours or more per week at federal or state minimum wage, whichever is higher.

At no time has the petitioner's husband realized income from his jewelry business that approaches the minimum wage for a thirty-hour week. Although there may be a policy argument (albeit, in the hearing officer's view, an extremely weak one) that individuals in the petitioner's husband's situation should be given some leeway to develop fledgling businesses, the regulations clearly do not allow for an exemption on this basis.

Inasmuch as the Department's decision requiring the petitioner's husband to participate in Job Search is in accord with the regulations the board is bound by law to affirm it. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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1. As of the date of the hearing, February 8, 1995, the business still was making little, if any, money.
2. The petitioner's appeal of the subsequent decision by the Department to terminate his ANFC is pending in a separate fair hearing.