

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,236

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her request for a waiver of the requirement that she cooperate with the Office of Child Support Enforcement (OCSE) in attempting to collect child support from the absent parent of her child. The issue is whether there is "good cause" for the petitioner's refusal to cooperate within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner is the mother of a 15-year-old son and receives ANFC for herself and her son. The boy's father is currently under a court order to pay \$32.25 a month in child support. OCSE wants to modify the support order to collect more support, and seeks the petitioner's cooperation in filing requisite income affidavits and appearing in court to testify as to her circumstances.

The petitioner has resisted cooperating with OCSE because she and her son have a stable relationship with the father, who visits his son regularly; and the petitioner does not want to upset this relationship. In the past, the father has said "hurtful things" to the boy, and the petitioner fears this will happen again if the father perceives that she is pursuing more support from him.

ORDER

The Department's decision is affirmed.

REASONS

Any person who receives ANFC automatically assigns his/her rights to support to the Department and is expected as a condition of eligibility to cooperate in establishing paternity and collecting child support benefits unless he/she has "good cause" for failing to do so. W.A.M § 2331.32.

"Good cause" is defined in the Department's regulations, in pertinent part, as follows:

To show that cooperation may be "against the best interests of the child" the applicant or recipient must produce some evidence that cooperation in establishing paternity or securing support is reasonably anticipated to result in any one of the following:

1. Serious physical or emotional harm to the child for whom support is being sought.
2. Physical or emotional harm to the mother or caretaker relative which is so serious it reduces her ability to care for the child adequately.

Note: Physical or emotional harm must be of a serious nature in order to justify finding of good cause.

W.A.M. § 2331.33

These regulations closely track those found in the federal regulations at 45 C.F.R. § 232.42. As the Board has noted in several past cases, a determination of reasonable anticipation of harm is a factual decision which must be made on "a case by case basis on the weight, sufficiency and quality of the gathered evidence. The final decision requires a subjective judgement on the part of hearing examiner." Bootes v. Cmmr. of Penn. Dept. of Public Welfare, 439 A. 2d 883, 885 (1982). When the criteria for this exception were set by the Department of Health and Human Services (at that time known as the Department of Health, Education and Welfare), it was expected that it would be an exception used in those few extraordinary circumstances where the parent or child faced a risk so real that it would outweigh the emotional, physical and financial benefits of the child's receiving parental support. See 43 Fed. Reg. 2176, (January 16, 1978).

In discussing the evidence necessary to support a request for a waiver W.A.M. § 2331.34(2) includes the following:

Whenever the waiver request is based in whole or in part upon the anticipation of emotional harm to the child, the mother or the caretaker relative, the present emotional state and health history of the individual subject to emotional harm must be considered as well as the extent of involvement of the child in the establishment of paternity or support enforcement activity to be undertaken. A finding of good cause for emotional harm may only be based upon a demonstration of an emotional impairment that substantially affects the individual's functioning.

In this case, it must be concluded that the "emotional harm" the petitioner alleges will occur is not anywhere near the likelihood and severity contemplated by the above regulations. Therefore, it must be concluded that the Department's denial of the petitioner's request for a waiver is in accord with the above regulations. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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