

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,482

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Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare (DSW) denying her request for a waiver of the requirement that she cooperate 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 request to waive cooperation requirements within the meaning of the pertinent regulations.

FINDINGS OF FACT

1. The petitioner is the nineteen year old mother of an eighteen month old child. The petitioner lives with her own mother and receives ANFC benefits.
2. On January 27, 1995, the petitioner asked DSW to release her from cooperating with efforts by that office and the Office of Child Support Enforcement (OCSE) to collect child support from her child's father based on her belief that doing so would lead to serious physical and emotional harm to herself, which would seriously reduce her ability to care for her child.
3. In support of her claim, the petitioner provided DSW with three documents. The first contained information showing that the child's father had been prosecuted for operating a car without the owner's consent and unlawful mischief in mid-1993 and was found guilty on the second charge. Neither allegation involved the petitioner. The petitioner also provided a letter from her physician in which he stated that the petitioner had told him that she was physically abused by her child's father in the early stages of pregnancy and deprived of food by him. It is not clear from the physician's letter whether she told him that recently or at the time of her early pregnancy (January and February 1993) but he did add that he had no records which would corroborate her statement. The final document was a letter from the nurse/coordinator of a teen parent services program which stated that the petitioner had reported during her early pregnancy that the child's father deprived her of food and intimidated her. The nurse added that it was apparent to her then "that the level of stress she endured was extreme."
4. After reviewing the above information, on February 27, 1995, DSW denied the petitioner's request for

a waiver because she failed to provide sufficient evidence to support her claim. The petitioner appealed that decision.

5. In addition to the evidence outlined above, the petitioner presented further evidence in the form of testimony by her mother, her grandmother, her cousin and herself. Based upon that evidence and the evidence already submitted, which was virtually uncontested, the facts in the subsequent paragraphs are found to be true.

6. The petitioner met her child's father, who was then nineteen, in October of 1992, when she was seventeen years old. In November of 1992, the petitioner was living with her grandmother temporarily (for ten days) while her mother was in Florida. During that time the young man came to visit her two or three times at her grandmother's house and during those visits frequently treated her roughly, pushing her around, punching her "in jest", mauling her and trying to take her clothes off. During his last visit, he was asked to leave by the petitioner's grandmother and he did so only after she threatened to call the police. When he tried to return the next day, the petitioner's grandmother told him to stay away from their apartment. She felt at that time that her granddaughter was afraid of him.

7. In December of 1992, the petitioner was persuaded by the young man to leave her family's home and live with him in a home owned by his friends. During this period, the petitioner and the young man established a consensual sexual relationship. Within a short time, the young man began to threaten her and treat her roughly, though he never actually hit her. Shortly thereafter, the petitioner discovered she was pregnant. She went to his place of employment to tell the young man of her pregnancy but she does not recall his reaction. On or about February 19, 1993, the young man forced the petitioner to engage in sexual intercourse against her will, leaving bruises on her arm. The day after that event she left the young man's home and moved in with a cousin. She did not report this incident to the police or seek medical attention.

8. When she arrived at the cousin's home she was hungry, tired, pale, and shaky. The young man came to the cousin's home and demanded that she return with him. When she refused, he became angry and called her insulting names. The cousin accompanied the petitioner when she retrieved her belongings from the young man's home. In response to this event, he crushed a remote control device in his hand and chased the car down the road. The petitioner had difficulty sleeping for the two months she stayed with the cousin and feared that he would come back to get her. He called the petitioner once or twice a week while she lived with her cousin asking her to give him money (she received Social Security benefits) and to come back and live with him. She refused to do either but was always upset by the conversations. He also indicated to her that he wanted DNA testing on the baby to determine if he was the father. After the petitioner had been with her cousin for a few days, the young man did not attempt to visit her again.

9. In April of 1993, the petitioner resumed living with her mother. She had not seen the young man since February 19, but agreed to meet him for a picnic to discuss the coming child. At the meeting the petitioner argued with him about the child's last name and he became angry and pounded his fists on the table. He did not directly threaten or abuse the petitioner but his angry demeanor frightened her and she left the picnic. Thereafter, she had no further communications either by telephone or in person with the young man. She continued to be afraid of him and to worry that he might try to harm her. His attempts to call her dwindled to about two to three times per month and all the calls were intercepted by the petitioner's mother. The petitioner and her mother attribute his dwindling contact with her to his fear of the petitioner's mother.

10. The petitioner's son was born in late September of 1993. The young man called the petitioner's household about that time to inquire about the birth but the petitioner's mother, who had answered the telephone, told him to stay away and hung up on him. The young man never saw, called or wrote the petitioner again. Neither has he made any attempt to see or contact the child.

11. The petitioner believes, based on information she has from mutual friends, that her child's father still lives in the same general area, about twenty minutes away from her. Although she continues to live with her mother and her mother's male companion who provide protection for her, she fears that an action to collect child support would prompt her child's father to attempt to reinitiate harassing contact with her. She fears, for example, that he will approach her in public when she goes to high school or when she shops or goes to a friend's home. She also fears that he may attempt to establish legal rights of visitation with regard to her child which she does not wish to encourage due to his volatile temperament. However, the petitioner presented no evidence that her child's father was likely or inclined to take such action. She also believes that her child's father has fathered other children out of wedlock and may have had a restraining order placed on him by another woman. However she has no information that he has violated a restraining order or that there have been any attempts to collect child support from him in the past which have exacerbated his violent behavior. She also is not aware that he has made any comments or threats about her to third parties since their relationship ended.

12. The petitioner's mother has stated that she would assist her daughter in obtaining a restraining order if her child's father should recontact her again. The prospect of dealing with that young man again is also very upsetting for the petitioner's mother.

13. Based on the above credible evidence it is found that:

- a. The petitioner was intimidated and physically abused by her child's father during the period of time when she lived with him and that, following her departure from his house, he continued to verbally threaten and harass her for some months thereafter.
- b. The child's father was equally intimidated by her family members, especially her mother, and withdrew from contact with the petitioner upon the demand of her relations, especially when threatened with reprisals.
- c. There are ample grounds for the petitioner to believe that her child's father will be angered by attempts to collect child support and likely will attempt to contact her to express his anger.
- d. The petitioner has family members who have and who can continue to assist her in deflecting attempts by the petitioner to contact her either by telephone or in person. The petitioner also has assistance available to her in obtaining a restraining order should the need arise. Based on past experience, there is no reason to believe that the child's father would resist the demands of her family or violate a restraining order.
- e. The petitioner has shown that reinitiation of contact with her child's father would be an upsetting experience for her. However, the petitioner has not shown that contact with her child's father is likely to result in serious physical or emotional harm to her which would reduce her ability to care for her child adequately.

ORDER

The decision of the Department denying the petitioner's request for a waiver 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 noted in Fair Hearings No. 11,046, and 11,649, 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.

It must be concluded that the facts presented by the petitioner in this matter do not meet the test of "reasonable anticipation" of "serious harm" to the custodial parent established in the regulations. This conclusion is not intended to negate the stress or unpleasantness that may well be the petitioner's lot in

any attempt to establish paternity and to collect child support from a hostile and potentially uncooperative parent. However, the regulations do not protect the custodial parent or even the child from exposure to behavior which may not be beneficial or which may even be harmful to some degree. The regulations represent an attempt to balance negative effects to the parent and child against the important need to establish financial support for the child. The regulations do not contemplate, however, that the parent or child suffer serious harm as the price for the establishment of support. If new or additional facts should develop which show that it is reasonable to anticipate that serious harm will occur, the petitioner is encouraged to make a new waiver request. As it now stands, it must be concluded that the Department's denial of the petitioner's request for a waiver is based on the evidence and in accord with the above regulations. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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