

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,533

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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 benefits based on excess family income. The issue is whether the Department correctly included the income of the petitioner's child's father calculating her eligibility for benefits. This Recommendation revises an earlier one (dated June 15, 1995) to more accurately address the bases of the petitioner's grievance, which the petitioner presented to the Board at its meeting on July 12, 1995.

FINDINGS OF FACT

The petitioner lives with her three children and a male companion, who is the father of her youngest child. The petitioner and her older children were recipients of ANFC benefits and were randomly assigned to "Group 3" under the new "welfare restructuring project." The petitioner was shortly thereafter notified by the Department that her youngest child and that child's father had to be included in her assistance group. The inclusion of the father's income made the family ineligible for welfare.

The petitioner protests the inclusion of her youngest child and that child's father in her ANFC group. That child is supported by its father, who works. The petitioner argues that forcing the entire family to be one financial group in effect makes her companion responsible for supporting her older children as well, even though he is not those children's father or stepfather. Termination of the petitioner's ANFC benefits might also mean termination of her college education, which has been funded through the Reach-Up program.

ORDER

The decision of the Department is affirmed.

REASONS

On July 1, 1994, the Department implemented the "Welfare Restructuring Project", a demonstration project which randomly divides recipients into three groups with different eligibility requirements in

certain areas, including work requirements, in order to compare the outcomes and determine which methodology will "enable more ANFC families to achieve self-sufficiency by strengthening families and increasing parental responsibility, by rewarding work and promoting self-support, and by putting a limit on how long families can receive welfare before a parental work obligation begins." W.A.M. 2208.1.

The petitioner was randomly placed in "Group 3" status. Under the restructuring regulations, Group 3 would

. . . have its eligibility for and amount, if any, of ANFC benefits and Reach Up requirements (including the requirement to accept unsubsidized or subsidized employment) determined according to policies designated herein as applying to Group 3 and to all other policies contained herein that are not superseded by the policies that apply to Group 3. Requirements relating to the Reach Up program that were in effect on June 30, 1994, and have not been changed or eliminated by rule subsequent to that date remain in effect for assistance groups assigned to Group 3.

W.A.M. 2208.1(3)

On December 1, 1994, five months following implementation of this restructuring project, the regulations defining "assistance group" for ANFC purposes were revised to read as follows:

An "assistance group" is defined as one or more individuals whose requirements, income and resources are considered as a unit to determine need for ANFC.

An ANFC assistance group must include one or more eligible dependent children. In addition, the assistance group must include all siblings (including half-siblings) who live with the dependent child or children, who meet one of the deprivation factors according to WAM 2330-2339 and who qualify under the ANFC age criteria, as defined in policy. ⁽¹⁾ If the family assignment is Group 2 or 3, a child is considered an eligible dependent child under the unemployment deprivation factor, even if one or both parents are employed full time. The parent(s) of each child included in the ANFC assistance group must be

included in the ANFC assistance group if he or she lives in the home with the children.

W.A.M. 2242

(emphasis supplied to show revisions)

Under regulations formerly in existence, the petitioner's companion and their common child could not be included in the ANFC group unless one of the criteria in footnote one were met. See W.A.M. 2242, effective July 1, 1994, Bulletin No. 94-12. This is still true for persons placed in Group One. ⁽²⁾ However, those in Groups 2 and 3 are exempted from the above criteria. The regulations defining "unemployed parent" were also revised on December 1, 1994, to further underscore the change:

An unemployed parent is either a parent in Group 1 whose minor children are in need because he or she is not working at all or is working part time or a parent

in Group 2 or Group 3 who is working full time, part time, or not at all . . .

W.A.M. 2333.1

The regulations most recently adopted have, in effect, waived the definition of deprivation formerly found in the regulations and broadened the category of unemployed parents to include fully employed parents for recipients who are in Group 2 or Group 3. The petitioner, as a member of a Group 3 family must include all of her children in her ANFC assistance group including her child who is actually being supported by its working father. Under the regulation cited at W.A.M. 2242 above, that child's father must also be included in the assistance group as long as he is living in the home with the petitioner and her children.

Inasmuch as the Department's decision to include the petitioner's youngest child and that child's father in the group, as well as the father's income, is consistent with its revised regulations, the Board is bound by law to affirm. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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1. Eligibility for ANFC requires establishing that a child is deprived of parental support or care for one of the following reasons and that the income and resources available to the parent in custody of the child and the child are insufficient to meet the child's total needs according to Department standards:

1. Death of a parent;
2. Continued absence of a parent;
3. Physical or mental incapacity of a parent;
4. Unemployment - (ANFC-UP).

W.A.M. § 2330

2. See Bowen v. Gilliard, 55 USLW 5079 (U.S. Supreme Court, 1987).