

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,636

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare denying her application for ANFC based upon the inclusion of income made by the father of some, but not all, of her children to determine the eligibility of the entire household. The petitioner in addition objects to her random assignment to Group 3 under the Welfare Restructuring Act.

FINDINGS OF FACT

1. The petitioner lives with her five children and the father of her three youngest children. Her younger children's father is a seasonal worker who is unemployed in the winter and typically gets about \$953 per month in unemployment compensation. In the past, the petitioner's family has not been eligible for ANFC in the winter because the father's unemployment compensation made him and his children ANFC eligible as well and his income was counted as part of the older children's assistance group and was found to be excessive. Until this year, during periods when he was employed, his three children were taken off the grant and the petitioner was able to get ANFC assistance for her two older children.
2. In April, in anticipation of the younger children's father going back to work on May 1, 1995, the petitioner reapplied for assistance for her two older children. She was told at that time that she had been randomly assigned to Group 3 as part of the Welfare Restructuring Project and that as a member of that group, she was required to include her three younger children and their father in her assistance group even though the father was working. The inclusion of the younger children's father and his income (\$2,365 per month gross) caused the family to be over income.⁽¹⁾ The petitioner was notified of that fact in a notice dated May 4, 1995.
3. The petitioner does not argue that the Department's calculations were erroneous. Rather she argues that the income of her three youngest children should not be counted when their father is working and that her inclusion in Group 3 as part of an experiment is unethical because it was done against her will and is causing great hardship for her family. She states that the father of her three younger children cannot afford to support her older two children.

ORDER

The decision of the Department is affirmed.

REASONS

Under the Department's regulations, extant for some period of time,

An "assistance group" is defined as one or more individuals whose requirements, income and resources are considered 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 are also deprived of parental support and who qualify under the ANFC age criteria, as defined in policy. The parent(s) of each and every child included in the ANFC assistance group must also be included in the ANFC assistance group if he or she lives in the home with the children.

W.A.M. 2242

The definition of a child who is deprived of parental support includes only children who had a parent who was either, dead, absent from the home, incapacitated or unemployed. See W.A.M. 2230. Prior to July 1, 1994, an unemployed parent was one who was either out of work or was working part time. W.A.M. 2333.1. A parent who worked full-time, that is more than 100 hours per month, could not be considered unemployed. W.A.M. 2333.1(3). On July 1, 1994, the Department implemented the Welfare Restructuring Act which divided all recipients into three randomly assigned groups and revised some of the regulations, particularly those dealing with work, for persons assigned to Groups 2 and 3. For recipients in Groups 2 or 3, the 100-hour work limitation was dropped, effectively turning the definition of unemployed parent on its head and allowing fully employed parents to meet the definition of "unemployed parent" for purposes of the deprivation factor. W.A.M. 2333.1(3).

As the father of half-siblings of children already in the assistance group, the petitioner's youngest children's father's income must now be included in the assistance groups eligibility calculations because his children are deprived of parental support under the above regulation, even when he is working full-time. If the Department's regulation is valid in so defining unemployment, and the petitioner does not argue to the contrary, the Department's inclusion of the youngest children's father in the assistance group and his income in determining eligibility is correct.

The petitioner does argue that random assignment to an experimental group against her will with disparate treatment being afforded to that group is "unethical". This is an interesting argument from a philosophical point of view but does not offer any ground for overturning the Department's action by this Board which can only invalidate the groupings if they are found to contravene state or federal law.

There is nothing in the regulations describing the Welfare Restructuring Project, see W.A.M. 2208.1, which appears to patently offend federal or state law. In that regulation, the Department cites Section 1115 of the Social Security Act as its authority to "establish different policies for randomly selected assistance groups to support an evaluation that compares the outcomes resulting from the policies that

can be implemented only under the authority of federal waivers with the outcomes resulting from policies that are required or permitted under applicable federal law and regulations". No suggestion has been made by the petitioner that the Department is acting outside the authority of its federal waivers in implementing the Groups, the regulations applicable to the Groups, or the method of assigning persons to the Groups. As such, the Department's decision to make this group assignment and impose its requirements must be upheld by the Board. 3 V.S.A. § 3091(a). Fair Hearing Rules No. 19.

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1. The petitioner was also found to be over income for Food Stamps, a result which she expected and does not appeal. The family apparently survived the year by receiving Food Stamps in the winter for the entire group while the father was unemployed, and by receiving ANFC for the two oldest children when the father of the younger three was employed in the summer months.