

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,714

)

Appeal of )

)

INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare not to pay her entire ANFC monthly allotment on the first of each month.

FINDINGS OF FACT

1. The petitioner is the mother of two small children who works part-time and also receives an ANFC payment of \$586 per month. She receives no child support payments as her ex-husband is currently incarcerated.
2. The petitioner's ANFC check is paid in two monthly installments with 60%, or \$352, paid on the first of each month and the remaining 40%, or \$234 paid on the sixteenth of each month.
3. The petitioner asked the Department to pay her the entire check on the first of each month because it makes it easier to pay all her bills which are due near the first of the month. At one time during her tenure on ANFC she received checks at the beginning of the month and found it much easier to manage.
4. The Department denied the petitioner's request for once monthly payments relying upon its regulations which require two payments except for persons receiving child support payments. ANFC payments to families receiving child support are made once per month simultaneously with the payment of the child support. This distinction was made pursuant to state law which the Department believes requires such a simultaneous payment. The simultaneous payment was adopted by the state so ANFC families who also work and receive child support could better "assess the impact of receiving a combination of earned income and child support payments" and "encourage ANFC parents to pursue work options more aggressively."

ORDER

The decision of the Department is affirmed.

## REASONS

Regulations adopted by the Department with regard to method of payment for ANFC checks provide, in pertinent part, as follows:

### Method of Payment

. . . Payment will be made as follows:

1. Assistance groups not receiving direct child support payments shall be in the 60-40 percent payment cycle and receive their grant amount in two payments. They will receive 60 percent at the beginning of the month to cover the first 15 days of the month and 40 percent on or about the 16th to cover the remainder of the month.
2. Assistance groups receiving direct child support payments shall be in the 100 percent payment cycle and receive one payment at the beginning of each month to cover the entire month.

W.A.M. 2232

The second paragraph was added on July 1, 1994, pursuant to Section 6 of Act No. 106, the Welfare Restructuring Demonstration Project Act which requires:

...the commissioner of social welfare shall pay directly to families receiving ANFC and participating in the restructuring authorized by this act, any child support collected on their behalf. Support income in excess of the federally-set exclusion shall be used to reduce ANFC. Court-ordered child support paid to the office of child support services within any calendar month shall be disbursed to the family...simultaneously with a supplementary ANFC payment corresponding to the applicable ANFC payment standard.

The Department argues that this payment method was adopted by the legislature pursuant to concerns about encouraging parents to work and non-custodial parents to pay child support. In support of its contention, the Department offers an excerpt from a working paper generated during the welfare restructuring discussions which it says explains the decision to make monthly payments to those who receive child support:

Under the current system, the ANFC parent gets to keep the first \$50 of the monthly support payment while the remainder is retained by DSW as reimbursement toward the ANFC benefit. Thus, the parent doesn't get the satisfaction of receiving the total amount. If the parent wants to go to work, it puts him or her at a disadvantage when trying to assess the impact of receiving a combination of earned income and child support payments. In addition, the noncustodial parent doesn't see his/her efforts go directly to the children; so the incentive to 'make a difference' is diminished by giving it to "the department."

This initiative personalized the child support payment for both parties, treats ANFC families in the same way as everyone else, and would encourage ANFC parents to pursue work options more aggressively.

This change would be cost-neutral as child support money sent to the family in excess of the first \$50 would be counted dollar for dollar in the ANFC budget and would reduce the ANFC benefit by that amount.

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The petitioner does not receive child support and so is paid in accordance with paragraph number one of W.A.M. 2232. She does not argue that the directives in paragraph number one are not being followed in her case nor that it is illegal for the Department to pay recipients in two monthly installments. Rather she argues that it is "discriminatory" to treat ANFC recipients who get child support differently from those who do not.

Certainly ANFC recipients who get child support and ANFC recipients who do not get child support are treated differently under the above regulation. However, there is nothing in law which would prohibit the different treatment as long as the treatment bears some rational relationship to a legitimate state goal. <sup>(1)</sup> LeClair v. Saunders, 627 F. 2d 606 (2nd Cir., 1980); Heisse v. State of Vt., 519 F. Supp. 36 (D.C. Vt. 1980). The policy makers at DSW and the legislature seem to think that persons who pay and receive child support will be more inclined to proceed on that course if their ANFC payment (made in lieu of the support payment retained by the state) reflects as closely as possible the entire amount of the child support payment retained. To that end, they have required that ANFC payments be made simultaneously with child support pass-through payments (the \$50 allowed by federal law) in one lump sum.

It is certainly a legitimate goal of DSW to encourage the payment of child support to ANFC recipients. Although it is not possible to say whether the method chosen will actually effectuate that goal, it cannot be said that the method is an unreasonable one. Even if the petitioner were able to show that it was an unreasonable method, it would follow that persons receiving child support payments would also be paid in twice monthly installments, not that all other ANFC recipients would receive one monthly installment.

The petitioner can point to no superseding regulation or statute which requires that she be paid in one monthly installment. It must be concluded that the general provision regarding such a method of payment is legitimate and that it was properly applied to her. The decision of the Department is, therefore, affirmed. See 3 V.S.A. § 3091(d) and Fair Hearing Rule No 17.

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1. No suspect class (ANFC recipients who do not receive child support) or fundamental right (once per month payment of ANFC benefits) is at stake here so as to trigger any form of scrutiny higher than a reasonableness test.