

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,137

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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 grant based on a lack of deprivation factor for either of her two children.

FINDINGS OF FACT

1. The petitioner is the mother of two small children and the recipient of ANFC benefits in the Group 3 category. The father of the petitioner's older child is not present in her home, but the father of her younger one is present and is a full-time student.⁽¹⁾ The petitioner and the father of her younger child are not married.
2. On December 26, 1995, the petitioner was mailed a notice dated December 22, 1995, which stated that her \$605 per month grant (which covered all four persons in her household) would be closed as of January 1, 1996, because "neither parent" of her child was absent from the home resulting in no ANFC-eligible children in her care. The petitioner appealed that decision and received continuing benefits for the month of January, 1996.
3. The petitioner does not dispute the Department's characterization of her younger child's father as a full-time student. He attends college full-time with a full course load and also works part-time, earning about \$270 per month. Between his school hours and his work hours the petitioner does not have the time to participate in work search programs. He is not interested in cutting back his hours because he wishes to complete his college degree program as soon as possible. He is scheduled to graduate in June of 1996.

ORDER

The Department's decision terminating the petitioner's ANFC grant is reversed with regard to the termination of the grant for herself and her older child. The decision is affirmed with regard to her younger child and his father's eligibility except that the date of ineligibility should be amended to read

January 5, 1996, instead of January 1, 1996, and benefits should be paid accordingly.

REASONS

When both parents are in the home, the ANFC eligibility of their child can only be established if one parent is incapacitated or the principal wage earner is unemployed. W.A.M. 2330. In this matter, the youngest child's father was not incapacitated, so his child is only deprived of parental support if he meets the definition of unemployed parent found in the regulations. Those regulations require among other criteria, that full-time students cannot be unemployed parents unless they meet the following criteria:

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6. If a full-time student, as defined by the school, meets the following criteria:

- a. Does not have a high school diploma or its equivalent; and
- b. Is not in postsecondary education; and
- c. Is scheduled to attend classroom training at least (20) hours per week and actually attends an average of at least (16) hours per week each month.

NOTE: Applicants or recipients who are full-time students, as described above, and are 25 years or older are eligible as principal earners in ANFC-UP assistance groups only so long as granting eligibility to full-time students who are 25 years or older does not put the Reach Up program at risk of losing enhanced federal funding per 45 CFR 250.74.

W.A.M. 2333.1

The petitioner's younger child's father is in postsecondary education on a full-time basis. Given this fact, he cannot meet the definition of unemployed parent. The evidence indicates that because of his schooling and work schedule, he does not have time to take part in Reach Up employment activities. He feels his efforts are better spent earning his degree. It must be concluded under those facts that he is unlikely to meet the exception in the Note. If the petitioner feels that he might meet that criteria, which is only vaguely presented in the regulations, she should reapply. However, the Department's determination that the younger child's father cannot qualify as an unemployed parent because of his student status is supported by the regulations.

Contrary to the statement in the notice of termination, the petitioner's older child's father is certainly absent from the home. However, the Department relies on its "assistance group" regulations (adopted to receive federal financial participation), arguing that those regulations require the categorical eligibility of the older child to be linked to and identical to that of his sibling. The wording of that regulation provides as follows:

Assistance Group

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 W.A.M. 2330-2339 and who qualify under the ANFC age criteria, as defined in policy. 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

The petitioner's older child does meet the ANFC categorical eligibility criteria because his father is not present in the home. His mother must be included in the assistance group with him because she lives in the home with him. However, the petitioner's younger child, who is a half-sibling of the older child, does not need to be included in the group because he does not meet any of the deprivation factors in W.A.M. 2330-2339.⁽²⁾ The status of "full-time student" does not create any deprivation factor for a child under the regulations. Therefore, neither the younger child nor his father need to be included in the assistance group consisting of the older child and his mother. There is nothing in the evidence which indicates that the older child and his mother are financially or otherwise ineligible. Therefore, the grant should have been recalculated to include only the older child and the mother, not terminated entirely.

Finally, under the Department's regulations governing "Notice of Decision", the notice terminating the entire group's assistance must be mailed "no less than ten days prior to the effective date of the proposed action." W.A.M. 2143. Ten days prior to the effective date of this action would have been December 22, 1996. Although the notice was generated on that date, the evidence clearly shows that it was not mailed until December 26, 1996. Therefore, the earliest any adverse action could be taken on this notice was January 5, 1996. The petitioner should have continued to receive her benefits up to that date.

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1. The petitioner represented at the hearing that her younger child's father had moved out of the house as of February 1, 1996, a fact which is not disputed by the Department. This matter, then is a decision for a closed period of time, namely January of 1996.

2. 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. 2330-2339