

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,157

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her request for a waiver from cooperation with the Department in its pursuit of child support for the petitioner's grandson. The issue is whether the Department's pursuit of support would result in emotional harm to the petitioner serious enough to reduce her ability to care for her grandson.

FINDINGS OF FACT

The petitioner, who is a sixty-five-year-old widow, has been the sole caretaker of her seventeen-year-old grandson

since his birth. The petitioner receives ANFC for her grandson's support.

The petitioner and her grandson have a stable, but tenuous, relationship with the grandson's mother, the petitioner's daughter. The mother is currently employed full time and is also a full-time college student. She contributes \$100 a month for her son's support.

The Department notified the petitioner that it wished the petitioner's cooperation in a petition to be brought in Family Court to increase the mother's child support obligation. The petitioner requested a waiver because she feels that the filing of court proceedings against her daughter will destroy any existing family bonds and, as a result, render her unable to continue to effectively function as her grandson's caregiver. At the fair hearing in this matter held on May 5, 1996, in addition to the petitioner's and her grandson's testimony, the petitioner's longstanding treating physician and a M.A. therapist who has worked with both the petitioner and her grandson testified in the petitioner's behalf.

The petitioner testified that her daughter is very fragile emotionally and has threatened to seek custody of her son if the Department tries to increase her support obligation. The petitioner is extremely upset and fearful of her daughter's irrationality and believes that her daughter will follow through on her threats. The petitioner doesn't think that she, herself, could hold up emotionally in any court proceedings with her daughter.

Even at the fair hearing, the petitioner was extremely upset. Her fearfulness of the harm to her family

that she feels would ensue if a waiver is not granted was readily apparent. Her testimony regarding her daughter's frame of mind and instability appears highly credible.

The petitioner's doctor testified that the petitioner would be unable to cope with any court proceedings that would threaten the tenuous stability of the present family relationship. He stated that "intellectual" arguments regarding the unlikelihood that her daughter would be successful in obtaining custody are not enough to overcome the petitioner's fears of the disruption to her family that court proceedings would cause. The doctor stated that he is worried that the petitioner's mental health has already deteriorated as a result of the instant appeal. It was his opinion that failure to obtain a waiver would place the petitioner at risk of being able to function as a "parent" for her grandchild, who has physical and emotional problems of his own.

A mental health therapist who has worked with the petitioner's grandson for the last six months, and "occasionally" with the petitioner during that time, testified that the present stability of the family's relationships is crucial to the grandson's emotional development at this time. He stated that he has noticed a deterioration in the petitioner's functioning since these proceedings began and is concerned because the grandson is dependent on the petitioner for financial and emotional support. He stated that it is the uncertainty of the outcome of any court proceedings that is upsetting to the petitioner, and that this negatively affects her health and her ability to function as a source of support for her grandson.

The petitioner's grandson testified that his mother is "unstable" and cannot be expected to act rationally toward him or his grandmother if court proceedings were brought against her. He stated that this matter has already made his grandmother unusually depressed, which he is concerned about because she is usually the source of stability in the family.

The hearing officer deemed the testimony in the petitioner's behalf to be both credible and compelling. It is essentially uncontroverted that if the Department were to initiate court proceedings against the petitioner's daughter⁽¹⁾ it would cause serious emotional harm to the petitioner that would reduce her ability to care for her grandson.

ORDER

The Department's decision is reversed.

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 s/he 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 recipient parent or caretaker which is so serious it reduces her/her ability to care for the child adequately.

NOTE: Physical or emotional harm must be of a serious nature in order to justify a finding of good cause.

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W.A.M. § 2331.33

These regulations closely track those found in the federal regulations at 45 C.F.R. § 232.42. 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 the hearing examiner." Bootes v. Cmmr. of Penn. Dept. of Public Welfare, 439 A.2d 883, 885 (1982).

When the criteria for this exception were adopted 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 waiver, the Department's regulation includes the following:

Whenever the waiver request is based in whole or in part upon the anticipation of emotional harm to the child, the recipient parent or the caretaker, 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.

W.A.M. § 2331.34(2)

In this case, as noted above, the petitioner through her and her grandson's credible testimony, and through uncontroverted medical opinion, has convincingly demonstrated that she meets the above standards for the granting of a waiver from cooperating with the Department in its pursuit of child support from her grandson's mother. Accordingly, the Department's decision is reversed.

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1. Apparently, the grandson's father is chronically unemployed, participates minimally in his son's life, and has contributed very little to his son's support over the years. There is no indication that the Department intends to pursue further support from him at this time, and the hearing did not concern itself with whether the petitioner would cooperate with the Department if it did. Therefore, this decision makes no findings or conclusions regarding the petitioner's cooperation regarding any attempt by the Department to pursue support from the grandson's father. When and if the Department chooses to do so,

the petitioner may appeal any decision regarding her duty to cooperate.