

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 14,274

)

Appeal of )

)

INTRODUCTION

The petitioner appeals a decision of the Commissioner of Social and Rehabilitation Services (SRS) terminating her day care subsidy payments.

FINDINGS OF FACT

1. The petitioner and her husband have three small children for which they are receiving a monthly day care subsidy of approximately \$838.50 through SRS's Child Care Services Division. They have been receiving such payments since September of 1994,<sup>(1)</sup> based upon their income eligibility and their establishment of a service need based upon the petitioner's employment and upon her husband's attendance at college as an undergraduate earning a bachelor's degree.<sup>(2)</sup>
2. During a review in February of 1995, the specialist handling the petitioner's case sought verification of the husband's continued student status. She received information that the husband had been a full-time student in Reno, Nevada since September or October of 1995, but noticed that he was taking graduate seminars. She contacted the petitioner who confirmed that her husband had received his bachelor's degree in August of 1995, and was currently enrolled in graduate school. The petitioners do not appear to contest these facts in their submission and it is thus determined to be an accurate reflection of the facts.
3. The petitioner was informed orally on March 11, 1996, that her husband's graduate school status did not qualify under the "service need" regulations adopted by the child care division. On March 12, 1996, she was mailed a notice that her family was no longer eligible for SRS subsidized day care effective April 1, 1996, for the following reason:

As per Reg. No. 4032-"Service Need" and Section 4031, Definition of Training: Individuals with Bachelor's Degrees or above with a service need of training will not be eligible for training".

Also included on this notice were the petitioner's appeal rights.

4. The petitioner's husband called March 12, 1996, to say that he wanted to appeal the decision and to continue benefits. The continuation was granted and the director conducted a review on March 21, 1996 at which time she concluded that the Department's original determination had been correct. The petitioner herself appealed this decision in writing on March 27, 1996, citing a lack of notice to the family as to the Department's graduate school regulations and pleading hardship because the tuition had been paid until August of 1996 at which time her husband would be returning to Vermont. The petitioner did not claim that she had informed the Department that her husband had graduated from college in August of 1995.

5. Following the appeal, the Department provided the petitioner's husband with copies of rules and regulations as well as a copy of the applicable statute and policy statements. After reviewing those, the husband noted that the hearing would have been unnecessary if he had been provided with these before he went to graduate school. He also argued that the family could establish a "service need" due to his temporary absence from the household under the regulations.

6. The Department relied upon its regulations as well as an SRS policy interpretation dated July 11, 1995, which eliminated "individuals with bachelor's degrees or above with a service need of training" for eligibility for a subsidy under Section 4031. The rationale for this restriction was as follows:

In times of decreasing revenues, the State must target its assistance to families in most need of assistance. Individuals who have successfully completed an undergraduate degree program should have the knowledge and skills to lead to gainful employment.

The program supervisor who issued this clarification

stated that it was targeted at applicants who were seeking second bachelor's degrees and that graduate study had never been included in the training definitions.

#### ORDER

The decision of the Department is affirmed.

#### REASONS

The regulations adopted by the Child Care Services Division require a recipient to meet income eligibility requirements and show a "service need" as a condition to eligibility. CCS Regulation 4032. "Service Need" is defined as follows:

A service need exists when child care is necessary to support a goal of "self-support" or "protection" or "family support".

...

It shall be assumed that each primary caretaker residing in the child's home is able and available to provide child care unless a service need is established due to one of the following conditions:

a. Employment (includes self-employment)

- b. Training
- c. Incapacity
- d. Requires Protective Services Child care
- e. Determined eligible by risk factors for Family Support Child Care.
- f. Seeking employment

Regulation 4033, Child Care Services Regulations, Rev. 11/1/90

"Training" is specifically defined in the statute authorizing child care services at 33 V.S.A. § 3511(6) as "an activity, approved by the commissioner or the commissioner's designee, which is likely to lead to employment or required to maintain employment". In the regulations, the commissioner has approved the following activities:

Any activity which, in the opinion of the Commissioner or her/his designees, is likely to lead to employment within one year of completion of training or which is required to maintain employment. Approved training programs include:

1. Work training programs sponsored by the Department of Social Welfare;
2. Work experience or work study programs;
3. High School (public or private);
4. College;
5. Adult Basic Education (ABE);
6. Job Training Partnership Act Programs (JTPA);
7. Start-Up self-employment activities;
8. Other training programs approved by the Commissioner or her/his designee.

CCS Regulation 4031

In Fair Hearing No. 11,101, the Board agreed with the Department's interpretation of the above regulation as excluding graduate programs of study and upheld the Commissioner's exercise of his discretion to exclude such programs based upon the need to conserve limited resources and the fact that graduate degrees are not needed to obtain employment. The Board concluded that "it is not the intent of the program to maximize everyone's employment potential". *Id.* at page 3. The petitioner has presented no argument that would require the Board to abandon this prior stated principle.

The petitioner does make an argument that she should receive benefits because she and her husband were never made aware by the Department that graduate study was not a covered service need. However, there was no evidence presented that the Department ever misled the petitioner as to the eligibility of graduate studies for child care coverage. It seems rather that the petitioner assumed that further post-graduate study would be covered. There is no evidence that the petitioner informed the Department in a timely manner that her husband had received his bachelor's degree and was entering post-graduate study so that the rule could have been explained to her. Given these facts, it cannot be said that the Department breached its duty to the petitioner nor that she relied on incorrect information supplied to her by the Department.

Finally, the petitioner argues that her husband should have been excluded from the household because of his temporary absence from the home. The provisions which establish a "service need" in this category state that the absence of the parent must be accompanied by an "intention to return to the home within 120 days of the date of application". CCS Reg. 4031. The petitioner's husband has been in Nevada since at least last October, and except for brief visits to Vermont, by her own admission is not due to return until August of 1996, well in excess of the 120 day period. The decision of the Department is affirmed.

###

1. The petitioner herself has been receiving benefits since August of 1993 at which time she was married and already the mother of at least one of her children. However, the Department did not become aware of the existence of her husband in her household until September of 1994.

2. The petitioner did not personally appear at her hearing but instead sent a letter prepared by her husband representing her position. The petitioner's husband requested a last-minute continuance from the originally scheduled hearing date of May 7, 1996 based on his absence from the state and requested a June hearing date. Because benefits were continuing at a level of over \$800 per month, the hearing officer continued the matter but only until May 21, 1996, and advised the petitioner that her husband could testify by telephone. The petitioner, who lives within thirty miles of the hearing site, offered no reason why she could not attend the hearing and it proceeded with only the Department present. However, the Department agreed to the submission of the petitioner's written position as part of the record and was required to present proof supporting its action of termination.