STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,332

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for ANFC. The issue is whether the petitioner's daughter's failure to graduate high school prior to her nineteenth birthday was due to a disability.

This case returns to the Board following a preliminary ruling by the Board on a separate eligibility issue. In an Order dated July 24, 1996, the Board ruled that the petitioner had left his last job for good cause under the ANFC regulations and remanded the matter to the Department to determine whether the failure of the petitioner's daughter to graduate high school before her nineteenth birthday was due to a disability. At some time following this Order the petitioner informed the Board that the Department had not found him eligible for ANFC on this basis.

The matter was continued for at least two more months to allow the petitioner and his wife (hereinafter referred to collectively as "the petitioners") to obtain additional evidence of their daughter's medical history and school records. At a hearing held on November 13, 1996, the petitioners indicated that they were at an end point in their ability to obtain additional evidence and that they would rest their case on the documents and testimony they had presented at their prior hearing (held on June 5, 1996) and the limited documents they had been able to obtain since that time.

As noted in the Board's prior Order in this matter, the petitioners applied for ANFC on March 26, 1996. Based on that application date the earliest they could have qualified for ANFC under any circumstances would have been April 10, 1996.[(1)] The petitioners' daughter, who was eighteen years old and the only child living with the petitioners on the date of their application, turned nineteen on May 2, 1996; and under any circumstances the family would have been ineligible for ANFC as of that date.[(2)] Thus, the maximum period of ANFC eligibility at stake in this proceeding is a closed period of less than a month--April 10 through May 2, 1996.

FINDINGS OF FACT

The petitioners testified that their daughter suffers from a kyphosis of her spine. The scant medical

records submitted by the petitioners (which consist only of doctor's office notes from June and July, 1991) show that she was doing "very satisfactorily" in school as of June, 1991, when she was entering ninth grade and that surgery was anticipated later that year.

According to the petitioners' testimony, the daughter underwent a "series" of back operations in late 1991, and was tutored at home before returning to school in April, 1992. The petitioners testified that she was then placed in a special "Life" program, the details of which the petitioners have been unable to furnish.

After the 1992-93 school year, the daughter was placed in a regular academic school program as a junior. A letter from her school dated June 7, 1993, shows that as of June, 1993 (the end of what should have been her sophomore year), she had 10.5 of the 20 credits necessary for high school graduation, and was thus on track to graduate in two more years.

The petitioners allege that after their daughter was enrolled in the regular school program for the 1993-94 school year some of her previous credits were called into question, and she ended up losing some of those credits. However, other than a March, 1994 record of a meeting with school officials that verifies some confusion by school officials over her credits, the petitioners submitted no evidence as to how that confusion was resolved or whether the loss of credits, if any occurred, was the result of their daughter having missed time at school two years before.

At any rate, the petitioners allege that their daughter entered the 1995-96 school year at age eighteen as a "fifth year senior", but that she only had to take a few courses to graduate in June of that year (one month after her nineteenth birthday). However, despite having been given ample time to do so, the petitioners produced no school records or other evidence from which it can reasonably be concluded that their daughter's failure to graduate in June, 1995, was due to medical problems she had had in her freshman year or thereafter. Based on the evidence presented it cannot be found that the daughter's failure to graduate high school by age nineteen was due to any disability she may have been under at any time in her high school career.

ORDER

The Department's decision is affirmed.

REASONS

The Department does not dispute that if the petitioners' daughter's failure to graduate high school prior to her nineteenth birthday was due to a "disability", as defined by the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C. § 794, or Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12132, the Vermont Supreme Court's decision in Howard et al v. Dept. of Social Welfare, 163 Vt. 109 (1994), reinstating the Human Services Board decision in Fair Hearing Nos. 11,260 et al, requires that the petitioners be found eligible for ANFC as long as their daughter is eighteen years old and remains a full-time student.[(3)]

A disability is defined under Section 504 and the ADA as "a physical or mental impairment that substantially limits one or more of the major life activities," or "a record of such impairment". 28 C.F.R. § 35.104. The regulations expressly recognize specific learning disabilities and emotional problems as

impairments and learning as a major life activity.

Even based on the limited medical evidence presented in this case, it could reasonably be concluded that the petitioners' daughter has a disability under the ADA and Section 504. However, as noted above, there is virtually no evidence that the daughter's disability was directly responsible for her falling behind in her high school graduation requirements during her freshman and/or later school years. The limited evidence presented shows that the daughter was doing well at the beginning of her ninth grade year, and that she appeared to have more than half of the credits necessary to graduate when she completed her sophomore year. Although something happened to her credit status in her junior year, and she in fact did not graduate in four years, there was no documentation presented as to what effect, if any, her medical status may have had on those events.

Thus, it cannot be concluded that the factual burden of proof required of the petitioner under Howard et al, supra, is met. Although that factual burden in these cases is not necessarily heavy (see, e.g., Fair Hearing No. 13,241), it is held that it must include at least some verification from medical or school sources that it was the student's disability that impeded or interrupted her normal progress toward high school graduation. Absent this evidence, the Department's decision in this matter is affirmed.

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1. See W.A.M. § 2226.1.

2. See W.A.M. § 2301.

3. See W.A.M. § 2301.