

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 14,345

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision by the Department of Social and Rehabilitation Services (SRS) denying the petitioner's application for subsidized day care payments for her children during hours when public school programs are available to them.

FINDINGS OF FACT

1. The petitioner is the single mother of a seven year old and a ten year old child. She does not send her children to the local public school but rather schools them herself in her home, based on her educational (not religious) principles.
2. From April 29 through June 14, 1996, the petitioner worked two to three weekday mornings from 8:30 a.m. to 12:30 p.m. The petitioner agrees that there was a public school program in her community in operation during those hours.
3. On or about April 29, 1996, the petitioner requested coverage of day care for her children for those hours she worked through the SRS day care Subsidy program. She was denied in a written notice dated the same day because a public school program was available to her children during those hours. The petitioner appeals that decision.

ORDER

The decision of the Department is affirmed.

REASONS

SRS Manual Sections 4032 and 4033 include the following provisions:

4032 - Eligibility Criteria

A child care services subsidy can be authorized to any family if the primary caretaker(s) have a "service need" and meet "income eligibility standards".

#### 4033 - Service Need

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

Services authorized shall be limited to the days and hours during which:

1. No regular public school program is available for the eligible child . . .

The Department's action denying the petitioner coverage for times when a public school program is available to her children fully comports with its regulations above. The petitioner argues, however, that the above regulation discriminates against parents who home school their children. While that may be so, the petitioner does not put forth any reason why the Department may not conserve its funds by limiting the hours it will pay for such services to those during which public school programs don't operate even if it incidentally treats some children unequally.

The petitioner has not claimed that the Department's restriction burdens her fundamental right to practice religion or any other fundamental right guaranteed by the federal or state constitutions, nor does she claim that home-schooled children are a suspect class, either of which claims would trigger strict scrutiny of the Department's rationale. LeClair v. Saunders, 627 F.2d 606, Cert. denied 101 S. Ct. 1418, 450 U.S. 959, 67 L.Ed 2d 383, (2nd Cir., 1980). As such, it is difficult to conclude that the Department's regulation violates her rights as a citizen of Vermont or the United States. As the decision of the Department is in accord with its applicable and valid regulations, the Board is bound to uphold it. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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