

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 14,582

)

Appeal of )

)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare to close ANFC, Food Stamps and Medicaid benefits for failure to meet residency requirements. The issue is whether the petitioner is a resident of the State of Vermont for the purposes of receiving ANFC, Food Stamps and Medicaid benefits.

FINDINGS OF FACT

1. The petitioner has a minor son, [R. M.], who was born on October 27, 1995.
2. Petitioner has lived in Vermont for the bulk of the past four years. She was seasonally employed at the [place of employment] in [town] during the 1994-95 ski season. At the end of the ski season, May of 1995, the petitioner left Vermont for New Jersey. She was pregnant at the time and left to live with her parents in New Jersey until after her son was born.
3. The petitioner returned to Vermont in January 1996 to visit friends and to pursue a child support action that she had filed in New Jersey under the Uniform Reciprocal Support Enforcement Act (URESAs). While in Vermont, petitioner again accepted employment at the [place of employment] where she worked from February until April 1996 when it closed for the ski season.
4. In March 1996, the petitioner contacted the District Office of the Department of Social Welfare in Rutland to obtain information concerning her potential eligibility for ANFC, food stamps and Medicaid. At the time, petitioner indicated that she lived in New Jersey but was visiting a friend in Vermont.
5. The caseworker, explained to the petitioner that she would need to establish residency in Vermont in order to be eligible for benefits but did not explain in specific terms what was required to establish residency.

6. In April 1996, the petitioner applied for ANFC, food stamps and Medicaid. She indicated that she was living with a roommate at [address] in [town], Vermont and that she was sharing living expenses. The caseworker, based on information provided by the petitioner, determined that she had extinguished her New Jersey residence. She then asked the petitioner to provide other forms of documentary evidence in support of her application. These included her child's birth certificate, her social security card, a signed statement from the roommate regarding shelter costs and food purchases, a shelter statement from the landlord, support forms, her last pay stub, evidence of the balance in her checking account and a closure letter from New Jersey for Medicaid. [Petitioner's Exhibit 1].

7. The caseworker believed that the petitioner was currently living in Vermont, had given up her apartment in New Jersey and therefore she did not consider residency to be an issue at the time of the petitioner's application for benefits.

8. The petitioner subsequently supplied the caseworker with all required documentation including a closure letter from New Jersey which indicated that petitioner's case was terminated on April 30, 1996. [There is a second notice dated May 1, 1996. The reason for the two notices is unknown]. Both notices essentially state as the reason for termination that petitioner has moved out of state of New Jersey. [Petitioner's Exhibits 2 and 3].

9. Petitioner was found to be eligible for ANFC, food stamps and Medicaid based on the information she provided to the caseworker in April 1996.

10. On September 26, 1996, the petitioner appeared at the district office in Rutland for a routine six-month case review. At that time, the petitioner indicated that she had been to court in July 1996 for child support. The caseworker requested a copy of the court order which the petitioner did not have but promised to send.

11. The following day, the caseworker requested and obtained a copy of the order from the Office of Child Support. The court decision and order, which was filed in the Family Court in Rutland County on September 9, 1996, addressed the issue of the petitioner's domicile as it pertained to the URESA action filed by the petitioner in New Jersey. The court determined that it had jurisdiction over the matter as petitioner's domicile was New Jersey not Rutland County, Vermont. [State's Exhibit 1]. The court made this finding based on facts presented by the petitioner at a hearing that occurred on July 1, 1996.

12. Based on the findings of the Family Court, the caseworker consulted with her supervisor and it was determined that the petitioner was not a resident of the State of Vermont and therefore a notice was sent to the petitioner on September 27, 1996 closing her benefits due to her failure to meet the residency requirements applicable to the ANFC, food stamp and Medicaid programs. [State's Exhibit 2].

13. On October 1, 1996, the petitioner requested the instant fair hearing.

14. During the period of time at issue in this case, April 1996 through September 1996, the petitioner lived in Vermont for all but approximately three non-consecutive weeks in July 1996. During that period of time, she left Vermont to visit family in New Jersey and to move her belongings out of her friend's apartment in Cape May, New Jersey.

15. The petitioner admits that she is registered to vote in New Jersey, has a New Jersey driver's license, registers her car in New Jersey, receives some of her mail in New Jersey, has a bank account in New

Jersey, and still has some of her personal belongings in storage in New Jersey. At the time of the court hearing in her child support matter, in addition to the above facts, the petitioner indicated to the court that she occupied an apartment in New Jersey with a roommate, spent approximately 75% of her time in New Jersey, that she intended to return to New Jersey at the end of the summer and that she had no intention of becoming a permanent resident of Vermont.

16. The petitioner has lived continuously in the State of Vermont since January 26, 1996, with the exception of the three scattered weeks in New Jersey during July 1996. She has a post office box in Vermont, shares rent on an apartment in Rutland, and is likely to be employed at the [place of employment] in town] beginning in December 1996.

17. The petitioner does not own a home in New Jersey. When she last lived in New Jersey, she had moved in with her parents from May 1995 until December 25, 1995. She then moved in with a friend for approximately one month (December 25, 1995-January 26, 1996). When she came to Vermont, petitioner left many of her belongings in her friend's apartment in New Jersey. For part of the time that she has lived in Vermont since January 26, 1996, she sent money to her friend in New Jersey to cover storage costs for her belongings but this ceased when she could no longer afford to do so. During the month of July 1996, the petitioner removed her belongings from the friend's apartment and put them into storage in New Jersey and in September 1996, the petitioner's New Jersey roommate moved to a different apartment due to a change in jobs.

18. The petitioner has indicated that she intends to return to New Jersey at some point but does not know when, as she has no place to live. She also stated that she does not intend to remain permanently in Vermont but she also has no definite plans to leave Vermont.

### ORDER

The decision of the Department is reversed.

### REASONS

This matter presents complex issues regarding residency and domicile for purposes of receiving ANFC, food stamps and Medicaid. State law, 33 V.S.A. § 1101, requires that a dependent child be a "resident of the state at the time of application for assistance." The Department of Social Welfare closed the petitioner's benefits on September 27, 1996 based on facts found by a judge in the petitioner's URESA action and the court's conclusion that petitioner was domiciled in New Jersey.

The terms "residence" and "domicile" are often used interchangeably but actually have quite different legal meanings.

Admittedly the terms "residence" and "domicile" have similar meanings. They are frequently used interchangeably because they usually refer to the same place. "Domicile," however means living in a locality with the intent to make it a fixed and permanent home, while "residence" simply requires bodily presence as an inhabitant in a given place. [citations omitted]. Wolinsky v. Bradford Nat. Bank, 34 B.R. 702, 704 (D. Vt. 1983).

Because residence requires only a physical presence, a person may have more than one residence at a time. For example, a person could have a country residence and a city residence or a summer residence

and a winter residence. A person may have only one domicile, however, because that requires an intention to make a place one's home indefinitely or permanently.

As stated previously, the Department of Social Welfare based its decision to close petitioner's benefits on findings, conclusions and an order from the Rutland County Family Court in petitioner's URESA action in which the Court concluded that petitioner was a domiciliary of the State of New Jersey. One of the major Vermont Supreme Court cases in this area, and one of the cases cited by the Family Court in its order, is Walker v. Walker, 124 Vt. 172, 200 A.2d 267 (1964). The Court in Walker describes domicile for purposes of a divorce action in the following terms:

Domicile is a concept which is important in many legal relations and, although it is a single doctrine, inevitably some of its definitive aspects show variations as its application differs. [citation omitted]. In divorce matters in this jurisdiction domicile is defined as a place where a person lives or has his home, to which, when absent, he intends to return, and from which he has no present purpose to depart. Tower v. Tower, 120 Vt. 213, 221, 138 A.2d 602. The two elements of domicile are residence and intention. [citation omitted]. To make a change in domicile effective there must be a move to the new residence and dwelling there, coupled with an intention of remaining there indefinitely. Neither residence alone, nor intention, without more, is enough. Miller v. Miller, 88 Vt. 134, 136, 92 Atl. 9, L.R.A. 1915D, 852. An essential ingredient of the intent to acquire a new domicile is the intent to give up the old domicile. Town of Georgia v. Town of Waterville, `07 Vt. 347, 352, 178 Atl. 893, 99 A.L.R. 453. [emphasis added].

It appears that this standard was utilized by the Family Court judge in determining that the petitioner was still a domiciliary of New Jersey. The Court found that she had an apartment in New Jersey, which established the necessary physical presence (along with petitioner's testimony that she spent 75% of her time in New Jersey) and also found that she had not demonstrated an intention to give up her old domicile in New Jersey or to reside permanently in Vermont. Thus she met both the residence/physical presence and intention elements of the definition of "domicile" as of the July 1, 1996 hearing date in her URESA action. Dougherty v. Nalbach, Docket No. F27-2-96 RuR (Rutland County Family Court), Findings of Fact, Conclusions of Law and Order, p. 5 (September 9, 1996) (Gartner, J.). [State's Exhibit 1].

As the Supreme Court points out in Walker v. Walker, supra, the concept of "domicile" varies, as its application differs from one area of law to another. For example, residency for school purposes is defined as being "synonymous with domicile." 16 V.S.A. § 1075(a)(3). In order to be on the checklist to vote in a particular town in Vermont, one must be a resident which "shall mean a person who is domiciled in the town as evidenced by an intent to maintain a principal dwelling place in the town indefinitely and to return there if temporarily absent, coupled with an act or acts consistent with that intent... A person may have only one residence at a given time." 17 V.S.A. § 2122.

What these statutes demonstrate is that an individual could be considered to be a resident of a town or state for some purposes but not for others depending on whether domicile is incorporated as part of the definition of "residence" under a particular statutory scheme. The answer to the question in this case necessarily depends on the definitions of residency which are used to establish or maintain eligibility for ANFC, Medicaid and food stamps under the applicable state and federal laws and regulations. The Department of Social Welfare is taking the position in this case that domicile is incorporated in the definition of residency for purposes of establishing eligibility for these programs. For the reasons stated hereafter, the Board concludes that domicile is not a component of the definition.

The federal regulation, 45 C.F.R. § 233.40, which implements the Social Security Act including Aid to Families with Dependent Children, defines residence stating [in relevant part]:

(a) *Condition of plan approval.* A State plan under title I, IV, A, X, XIV, or XVI of the Social Security Act may not impose any residence requirement which excludes any individual who is a resident of the State except as provided in paragraph (b) of this section.<sup>(1)</sup> For purposes of this section:

(1) A resident of a State is one: (I) Who is living in the State voluntarily with the intention of making his or her home there and not for a temporary purpose. A child is a resident of the State in which he or she is living other than on a temporary basis. Residence may not depend upon the reason for which the individual entered the State, except insofar as it may bear upon whether the individual is there voluntarily or for a temporary purpose; or (ii) Who, is living in the State, is not receiving assistance from another State, and entered the State with a job commitment or seeking employment in the State (whether or not currently employed). Under this definition, the child is a resident of the State in which the caretaker is a resident... [emphasis added].

The Welfare Assistance Manual (WAM) §2302 describes the residency requirements for eligibility for ANFC and Medicaid. That sections provides [in relevant part] that:

State law (33 VSA 1101) provides that, to be eligible for ANFC an individual shall be a resident of Vermont at the time of application for such assistance. A "Vermont resident" is defined as an individual who is domiciled voluntarily within Vermont regardless of the duration of such domicile. (To be "domiciled" is to be physically present in Vermont and to have an intent to make Vermont one's home, that is not to be in the State for a temporary purpose, or with respect to a child, the state in which he or she is living on other than a temporary basis.)...

\* \* \* \*

A resident can also be one who is living in the State, and is not receiving assistance from another State and entered the State with a job commitment or seeking employment in the State (whether or not currently employed)...

\* \* \* \*

Residence in Vermont is retained until abandoned. "Abandonment" of Vermont residence is defined as a move outside Vermont with the intent to domicile outside Vermont.

\* \* \* \*

A recipient of public assistance shall retain Vermont residence during temporary absence from Vermont for any of the following purposes:

1. Visiting;
2. Obtaining necessary medical care;

3. Obtaining education or training sponsored under a program of Vocational Rehabilitation, Work Incentive or higher education. [Emphasis added with exception of the word "not"].

The confusing part of the above definition is the use of the word "domicile" as part of the definition of "residence." The language of the regulation, "[T]o be 'domiciled' is to be physically present in Vermont and to have an intent to make Vermont one's home, that is not to be present in the State for a temporary purpose..." tracks the language of the definition of "residence" that is contained in the federal regulation but the federal regulation does not use the word "domicile."

"The State of Vermont in choosing to participate in the federal ANFC program, cannot administer its state program in conflict with federal laws, statutes or regulations controlling such welfare programs." In Re Appeal of Fowler, 130 Vt. 176, 178, 288 A.2d 463 (1972); Borkman v. Commissioner of Social Welfare, 128 Vt. 561, 268 A.2d 790 (1970). The Department's regulation is consistent with the federal regulation in that it adopts the federal definition of "residence" as its definition of "domicile" but use of the word "domicile" within the regulation causes confusion over the standard that is actually being applied.

As stated previously, if the word "domicile" is given its common law meaning, it would require an intention on the part of the petitioner to remain in Vermont permanently or at least indefinitely. This would go beyond what the federal regulation permits. The WAM regulation however adopts the lesser federal standard by stating that an individual must "have an intent to make Vermont home, that is not to be in the State for a temporary purpose." There is no reference in this standard to an intention to remain permanently or indefinitely, hence the conclusion that the standard set by the federal regulation is less than that required to establish a domicile.

The hearing officer is unaware of any cases which discuss whether, under existing federal law, a state may impose a domicile requirement as its standard for residency for purposes of eligibility for ANFC or Medicaid. The only case found that addresses this issue at all, Green v. Department of Public Welfare of State of Delaware, 270 F.Supp. 173, 177-178 (D. Del. 1967) raised the issue and then choose not to resolve it.

Finally, it is possible that the legislature intended the statute's "durational residency requirement" to serve the purpose of confining assistance to domiciliaries of Delaware. A domiciliary under Delaware common law is defined as one who is physically present in Delaware with an intention to remain indefinitely... [footnote omitted]. In light of the often immediate need of these persons for food, clothing and shelter, we think that the one year period is a constitutionally unreasonable test for determining the "intention" aspect of domicile, assuming such was its purpose. More accurate alternatives are available to ascertain an individual's true intentions with exacting the protracted waiting period with its dire economic and social consequences to certain individuals living in the State. In view of this conclusion we do not reach the difficult question whether it is a constitutionally valid purpose for a state to restrict public benefits to its own domiciliaries. [emphasis added].

Since the Board concludes that the federal definition and its state counterpart establish a lesser standard than domicile, it is also not necessary to decide this difficult constitutional issue in this case either.

It is possible to argue that the language relating to being in the state for a temporary period necessarily implies that there must be an intention to reside permanently. "Temporary" and "permanent" are not necessarily mutually exclusive concepts, however, as it is not accurate to say that one who is not in a

place permanently must by definition be there temporarily. The word "temporary" generally implies a brief or time-limited period. For example, someone who is vacationing in Vermont would be here for a temporary purpose, as would someone who was merely visiting friends or relatives. Whether one is in the state temporarily depends on the facts and circumstances of the given situation. In this case, certain facts belie the temporary nature of petitioner's residence. First, she is sharing rent on an apartment. Second, she has been in the state more or less continuously for 10 months and has lived in the state for several years in the past. Third, petitioner has had no place to live in New Jersey since July 1996 even if she were to return there. Finally, the petitioner has been employed in Vermont, whether seasonal or not, and expects to be employed again in the near future. All of these facts indicate more than a "temporary" residence in Vermont even if the petitioner has no intention to reside in Vermont permanently.<sup>(2)</sup>

The petitioner established a "home" for herself and her son at 11 Temple Street in Rutland as that concept is commonly understood prior to applying for benefits. She did not own a home in New Jersey but did have an apartment there that she could return to until sometime during July 1996. Thus while petitioner had more than one place to live from April to July, she had established a home/physical presence in Vermont at the time she applied for benefits. The caseworker verified this information as part of her application.

This home was more than temporary as the petitioner had no definite plans to return to New Jersey or otherwise leave the State of Vermont. The fact that she expressed an intention at the court hearing to leave Vermont at the end of the summer is irrelevant as that alone would not deprive her of residence since it may or may not come to pass (and in fact, did not), she was still physically present in Vermont and she had changed her status from that of a mere visitor to a co-tenant by her assumption of an obligation to pay rent on the apartment in Rutland. As the regulation indicates (WAM §2302), a Vermont residence continues until abandoned which is defined as moving out of the State and establishing a domicile elsewhere. Based on these facts, it is concluded that for purposes of ANFC and Medicaid, the petitioner was a resident of the State of Vermont during the time period between April and July 1996

The Department of Social Welfare relied very heavily on the petitioner's assertion at the hearing in her URESA action that she spent 75% of her time in New Jersey. This assertion, on the part of the petitioner, however, does not comport with the facts presented at the fair hearing in this matter. In fact, the petitioner testified at the fair hearing that she was physically present in Vermont from January 26, 1996 on and that, in hindsight, she may have exaggerated the time spent in New Jersey. She also stated that she was basing her testimony at the hearing in July 1996 on the time spent in New Jersey during the month of July 1996 (even though the hearing occurred on July 1, 1996 prior to any trips back to New Jersey).

The Board is not insensitive to the fact that the petitioner has, to some extent, manipulated the facts surrounding her "domicile" to fit the circumstances of whatever situation is at hand. As the Supreme Court in Walker v. Walker, supra at 174-75 lamented:

The troublesome aspect of domicile is that it deals not only with acts, but with state of mind. This is difficult enough, but courts must also recognize that legal consequences may tempt parties to seek advantage by misstating intentions and engaging in calculated actions to give apparent support to those misstated intentions. The fact-finding aspects of domicile may then become subtle, indeed. But where the structure of domicile change is fabricated and a discrepancy appears, the situation may be likened to the discrediting effect of a disproved alibi, yielding unfavorable inferences as to motives and intentions.

If the petitioner's domicile were at issue in this case, the Board would agree with the findings of the Family Court with regard to petitioner's New Jersey domicile, but because it concludes that the standard for residency for purposes of ANFC and Medicaid is a lesser standard than that required to establish domicile, the findings in this case support a different conclusion than that reached by the Family Court.

With regard to food stamps, the issue is much less complicated. In order to meet residency requirements with regard to eligibility for food stamps, §273 of the Food Stamp Manual provides [in relevant part] that:

A household must be living in the project area in which it files an application for participation... The State agency shall not impose any durational residency requirements. The State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. Nor shall residency require an intent to reside permanently in the State or project area. Persons in the area solely for vacation purposes shall not be considered residents. [emphasis added].

This regulation specifically states that an intention to reside permanently is not a prerequisite to receipt of food stamps. Thus domicile is not required for food stamp eligibility. The petitioner is and was living in the project area, not New Jersey, when she applied for benefits. She remained in the project area during the entire time period in question and remains to date. Therefore, she is eligible for food stamps and the decision of the Department closing her food stamp benefits is reversed.

Because this case has been decided on the basis of the language of the applicable statute and regulations, it is not necessary to reach the Constitutional issues raised by the petitioner. It is also not necessary to address the overpayment issues.

### CONCLUSION

The standard set forth in the state and federal regulations concerning residency requirements relating to eligibility for ANFC, food stamps and Medicaid is a lesser standard than that used to determine domicile in that it does not require an intention on the part of the petitioner to remain in Vermont indefinitely or permanently. The regulations require physical presence in Vermont and an intention to make a home here on more than a temporary basis. The petitioner was physically present in the State throughout the period in question (with the exception of the time spent visiting in New Jersey), established a home for herself and her son in Rutland, Vermont and was in the state on a more than temporary basis. Petitioner therefore met the residency standard set forth in the applicable regulations and the decision of the Department of Social Welfare to close ANFC, food stamps and Medicaid must be reversed.

# # #

1. <sup>1</sup> Subsection (b) of the regulation allows the state to exclude from benefits persons who are absent from the state for a period in excess of 90 consecutive days regardless of whether a residence has been maintained during the period until the person has been in the state again for 30 consecutive days. This exception does not apply under the facts of this case.
2. <sup>2</sup> The concept of residing "permanently" is a misnomer in any event. The better word is "indefinitely,"

for few individuals can say with absolute certainty that they intend to reside permanently anywhere. One can however intend to be somewhere for the indefinite future, thus indefinite is a more accurate concept in this regard.