

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 14,613

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Appeal of )

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare terminating her ANFC benefits. The issue is whether the petitioner has "eligible children" in her "home" within the meaning of the pertinent regulations.

FINDINGS OF FACT

The facts are not in dispute. In July, 1995 the petitioner was granted custody of her two minor children pursuant to a divorce decree, and sometime thereafter she applied for and was granted ANFC benefits.

In September, 1996, SRS investigated a report that the petitioner's children had been abused. During the course of the investigation one of the children made a written statement to SRS. SRS took no action in the matter, but made the child's statement available to the child's father, the petitioner's ex-husband.

On October 4, 1996, the father filed an ex parte Relief From Abuse Petition in Vermont Family Court and was granted an order of "temporary custody" by the Court, which also enjoined the petitioner from having any contact with the children. At another Family Court hearing on the case on October 10, 1996, the petitioner entered into a Temporary Stipulation and Order (approved by her attorney) whereby she agreed that the father would continue to have the "physical rights and responsibilities" of the children and that she would have visitation two weekday afternoons a week, all day on Saturdays, and alternate Sunday mornings.

Shortly thereafter, the Department informed the petitioner that her ANFC benefits would be terminated effective November 1, 1996, because she no longer was living with or had custody of her children. At a fair hearing held on November 6, 1996, the petitioner informed the hearing officer that a status conference in Family Court was scheduled in her case on November 19. The parties also represented that the children's father had applied for ANFC after obtaining custody of them, and that the Department had granted his application effective November 5, 1996. The petitioner's ANFC benefits have continued during the pendency of this hearing.

In a letter dated November 20, 1996, the petitioner's attorney informed the hearing officer that at the previous day's status conference the Family Court had allowed the petitioner increased visitation rights with the children pending a hearing to determine parental rights that has been scheduled for December 5, 1996. In the meantime, however, the care and custody of the children remains with the father.

The petitioner continues to maintain her home for the children in the hope and expectation that custody of them will be returned to her, and she argues that her ANFC should not be terminated at least until her custody rights are determined through a final hearing.

### ORDER

The Department's decision is affirmed.

### REASONS

This appeal compels the Board to again revisit the issues raised in Fair Hearings 12,265 and 13,567, and subsequent cases that were based on those decisions. As noted in those decisions, the Vermont ANFC regulations generally require an "eligible parent" to live in the same "home", "household", or "residence" as an "eligible child". See W.A.M. §§ 2242.2 and 2302.1, *infra*. The Board in those cases determined that a parent not living with his or her child, either through SRS or another parent having been given temporary legal custody of that child, no longer qualifies for ANFC as an "eligible parent".

The Board's decisions in those cases was partly based on a federal statute and regulation that prohibited making ANFC payments to more than one household for the care of the same child. The petitioner in this case points out that those federal provisions were effectively repealed by the recent federal welfare "reform" provisions that eliminated most federal oversight of and mandates for state welfare programs. See P.L. 104-193, 110 Stat. 2105 at Sec. 103. The petitioner argues that the Board should reconsider its holdings set forth in the above-cited cases in light of the facts of this case and the recent changes in federal law.

The Board's prior decisions, however, were based primarily on provisions in Vermont law regarding child custody and on Vermont's state ANFC regulations. Those provisions, which are still valid under federal law, are discussed below.

W.A.M. § 2302.13 defines "home" as follows:

A "home" is defined as the family setting maintained, or in process of being established, in which the relative or caretaker assumes responsibility for care and supervision of the child(ren). However, lack of a physical home (i.e. customary family setting), as in the case of a homeless family is not by itself a basis for disqualification (denial or termination) from eligibility for assistance.

The child(ren) and relative or caretaker normally share the same household. A "home" shall be considered to exist, however, as long as the relative or caretaker is responsible for care and control of the child(ren) during temporary absence of either from the customary family setting.

Also pertinent is W.A.M. § 2224, which defines "family separation" as follows:

A recipient of ANFC assistance, or an individual acting on behalf of a caretaker unable to do so, shall notify the District Director of any physical separation of the caretaker and child(ren) which continues or is expected to continue for 30 days or more. Eligibility shall continue when the following conditions are met:

1. The recipient relative or caretaker or, in cases of subsequent separation of parents receiving assistance as a two parent family, the other recipient parent continues or supervises continuing care and supervision of eligible child(ren); and
2. A home is maintained for the child(ren) or for return of the relative or caretaker within six months; and
3. Eligible family members have continuing financial need. . .

As emphasized by the Board in Fair Hearing No. 12,265, the crucial language in the above regulations, at least insofar as these cases are concerned, is the phrases "is responsible for the care and control of the child(ren) during temporary absence of either from the customary family setting" and "continues or supervises continuing care and supervision of eligible child(ren)." As the Board pointed out in Fair Hearing No. 12,265 (at pp. 5-6):

If it could be concluded that the petitioners in these cases, following the (orders) that were entered by the (court) regarding their children, continued to have the "responsibility" for or the right to "supervise" the care and control of their children, it must be concluded that they remained eligible for ANFC under the above regulations. See Johnson v. Comm. of Pub. Welfare, 414 Mass. 572 (1993). However, if their custodial rights of "supervision" and "responsibility for the care and control of the children" were, in effect, terminated, it must be concluded that once the children were taken from their homes the petitioners were no longer eligible for ANFC.

Based on Vermont law the Board concluded in that case that a transfer of custody even on a "temporary" basis relieved the parent who lost such custody of the legal right to exercise care, control, and supervision of the affected children and, therefore, precluded that parent being eligible for ANFC for those children. Like the parents in the prior fair hearings, the petitioner herein is undoubtedly facing a difficult situation in losing her ANFC benefits during a what-she-hopes-will-be-temporary hiatus of her children from her home. At this juncture, however, there is no indication that the children's return to her home is at all imminent--or even likely.

Moreover, there is no question in this case that the children's father, as their sole "custodial" parent, now qualifies for ANFC for the care and supervision of those children in his "home". Although the federal statute may no longer specifically prohibit "dual payments", it would still be incongruous to read the above state regulations as allowing, or even contemplating, the payment of simultaneous ANFC grants to two separate households for the care and support of the same children.

Therefore, despite recent changes in the federalist aspect of state welfare programs, inasmuch as the Vermont ANFC regulations regarding eligible children remain essentially unchanged, it must be concluded that the Board's holdings in Fair Hearings 12,265 and 13,567 are still pertinent. Accordingly, the Department's decision in this matter is affirmed.

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