

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 14,808

)

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 a family court order transferring legal custody of the petitioner's children to the Department of Social and Rehabilitation Services (SRS) and SRS's placement of the children in foster care terminates the petitioner's eligibility for ANFC.

FINDINGS OF FACT

The facts are not in dispute. The petitioner receives ANFC for herself and her four children. On January 17, 1997, SRS filed a CHINS petition in Family Court, and the Court entered an order transferring legal custody of the children to SRS until further notice.

SRS placed the children in foster care and applied for ANFC in their behalf. When the Department learned that the children were in SRS custody it terminated the petitioner's ANFC.<sup>(1)</sup> The children have been in foster care and have received ANFC-foster care payments since that time. A merits hearing was held in Family Court on February 10, 1997, and a status conference was held on March 12. At both times the custody of the children with SRS and their placement in foster care was continued.

ORDER

The Department's decision is affirmed.

REASONS

In several past fair hearings the Board has exhaustively examined the issue of continuing ANFC benefits in cases in which children have been removed from an ANFC parent's home and placed in SRS custody. See, e.g., Fair Hearings Nos. 12,265 and 12,296. The Board has held that at the point that "legal custody", as it is defined in the CHINS statutes, is "transferred" by the family court from the recipient parent to SRS, and SRS then places the child in foster care, the recipient parent is no longer eligible for ANFC.

The ANFC regulations require an "eligible parent" to live in the same "home", "household", or

"residence" as an "eligible child". W.A.M. §§ 2242.2 and 2302.1. W.A.M. § 2302.12 defines "home" as follows:

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

Inasmuch as the petitioner's children in this matter are not living in the petitioner's home, and the petitioner no longer has the legal responsibility for their care and control, it must be concluded that the petitioner is no longer eligible for ANFC. Therefore, the Department's decision is affirmed.

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1. The petitioner's ANFC benefits have been continued pending the outcome of this fair hearing.