

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No.

)

Appeal of )

)

INTRODUCTION

The petitioners appeal a determination by the Department of Social Welfare terminating their ANFC benefits for failure to return a medical form in a timely fashion.

FINDINGS OF FACT

1. The petitioners, who are wife and husband and have three children, receive ANFC benefits based upon the incapacity of the husband. His medical condition is reviewed regularly and to that end he is required to return medical forms verifying his continued inability to work.
2. On October 25, 1996, the petitioner was mailed a computer-generated letter in Waterbury advising him that the Department had not received a medical report form needed to determine his eligibility. He was told that he had to provide it by November 6, 1996, or his case could be closed. The petitioner received that letter and took the forms to his doctor who told him she would fill them out and mail them in to the Department. This apparently was not done because the doctor moved her office to another locale, although the petitioners were at that time unaware of that fact.
3. The petitioner's worker in the district office was notified on November 19, 1996, that no medical form had been received and was directed to take appropriate action. Through inadvertence the worker failed to do that and the petitioners were not made aware of their failure.
4. The petitioners moved on December 1, 1996 and notified the Department of their new address. When the worker realized her error, she sent another notice dated February 12, 1997 to the petitioners at their new address, advising them that medical forms had to be returned by February 24, 1997 or, if the petitioners were able to work, they needed to call and set up a Reach Up appointment to start a work search component. If they failed to do either, they were notified that their benefits could stop.
5. From the time she sent the request on February 12, until the date the report was to be received, the worker initiated no further contact with the petitioners who have no telephone. The worker did see the petitioner on February 19, 1997 when he came to the office to report he had not received his last ANFC check because for some reason his mail was not reaching him at his new address. The worker issued a new check but did not recall when she saw him that she had sent the medical forms to the petitioner and

had no discussion about it. She did not recall because she has a large caseload and feels she is under no obligation per Department policy to make further contacts with respect to requests for verification.

6. When the verification was not received by February 28, 1997, the worker sent out a closure notice to the petitioners dated February 28, 1997, which informed them that their ANFC grant would close on March 16, 1997 because "you did not provide all the required information." It further provided in a handwritten addendum that "you failed to complete and return incapacity forms and return or call me to set up Reach Up appointment to start work search component if you are able to work".

7. The petitioner says he did not receive the request for verification and first learned of it when he got the closure notice. There is no reason to doubt this assertion which was made under oath. He appealed the denial by coming into the office on March 1 and received continuing benefits. He came in to the office on March 13 with a legal aid lawyer and said he thought he had sent those forms in November of 1996 when they were requested and that he couldn't understand who the new forms were for. He also expressed some confusion over another letter he did get from the Department dated February 6, 1997, telling him that his wife had to participate in Reach-Up. At the time of his March 1st visit, he was given a new medical form and told to fill it out and bring it back but was not given a new deadline.

8. On April 3, 1997, the date of the hearing, the petitioners still had not returned the medical form. The husband explained that he had trouble getting an appointment with the doctor (a new one), had not been able to do so until March 29, 1997, and that he had attended that appointment and left the form with the doctor to fill out. He said he had verified that the form was filled out that same day and that he would pick it up at his appointment on April 7, 1997 and return it to the office.

9. The Department put the case log regarding phone conversations with and about the petitioner for the last two years into evidence to show that he had a history of not responding to requests for information from the Department. The case log did show that he missed a DET appointment in April of 1996 which he attempted to explain but which resulted in a sanction. The log did not show that he had failed to provide any of his medical verifications other than the one currently at issue. In fact, the case log only mentioned verification once and that was to show that the petitioner had supplied at least two forms verifying his medical condition in June of 1995, and was about to provide a third.

### ORDER

The decision of the Department is reversed.

### REASONS

Under the ANFC program, verification of medical facts is required as a condition for continuing eligibility in the incapacity category. W.A.M. 2211.2. However, the regulations also state a denial or closure of benefits can only result from a "refusal of information or action necessary to establish eligibility." W.A.M. § 2211.

It is not at all clear from the facts in this case that the petitioner refused to provide medical verification. The petitioner thought he had provided the information in October of 1996, and was not notified by the Department that it had not been received through worker error. The second notice was not received by the petitioner and the first date he knew with any certainty that something was required of him was March 1, 1997 when he received the termination notice. He was not provided a form or told to get one in

when he came in to appeal the decision. The petitioner only got the new form on March 13, 1997, when he came into the office for an appointment. He took it to his doctor at an appointment scheduled about two weeks later and the form was being turned around within that week. The petitioner had not been given a deadline to provide that form on March 13, 1997.

Although chronic failure to answer requests for information, can create a presumption of refusal to cooperate,<sup>(1)</sup> there is nothing in the evidence here that would suggest such a situation. What exists here is a failure to return information, which failure cannot even be squarely attributed as the fault of the petitioner. Since no refusal to provide information can be found, the petitioner's ANFC was improperly closed and should be reinstated. If the petitioner has still not returned the form, it is incumbent upon the Department to insure that he is duly notified of the time by which it must be received and the consequence which will ensue before he can be assumed to have refused to cooperate in providing the verification.

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1. See e.g. Fair Hearing No. 10,217 where the petitioner did not attend three scheduled interviews and was specifically warned before the third interview that her failure to attend would cause the Department to "assume" that she was refusing to cooperate.