

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 14,914

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Appeal of )

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare removing her needs from her and her children's ANFC grant. The issue is whether the Department correctly determined that the petitioner had failed to cooperate in collecting child support from the father of the children.

FINDINGS OF FACT

The facts are not in dispute. The petitioner and her four children are recipients of ANFC. Several months ago the petitioner contacted the Office of Child Support (OCS) to request that it seek a modification of her present child support order of \$50.00 a month. OCS started the process and filed the necessary motions in family court.

A hearing on the petitioner's motion to modify was scheduled by the family court on February 11, 1997. OCS notified the petitioner of the hearing date well in advance. The petitioner was aware of the hearing date, but at that time she was also involved in an eviction proceeding. In response to that proceeding the petitioner had planned on moving to another apartment well before the family court hearing.

However, sometime before the hearing date in family court, the arrangement for the petitioner to move to the new apartment fell through. On February 6, 1997, she was served by a sheriff with a writ of possession and given 3 days to move out. On February 8, a Saturday, she located a place she could move to, but she did not have the money to do so immediately. On February 10, a Monday, she applied for emergency assistance at the Department to allow her to move into the new place. Her application was not granted until late that afternoon, and she spent the rest of that day and night moving herself and her four children into the new apartment.

The family court hearing was scheduled the next morning, but in the stress of moving the petitioner forgot all about it. When she did not appear in court, her case was continued for 120 days. The petitioner forgot to call OCS, and OCS did not attempt to contact her when she did not appear in Court.

OCS then sent a notice to the Department stating that the petitioner should be sanctioned because she refused to cooperate with OCS by not appearing in court. On March 3, 1997, the Department, without any further inquiry or decision on its own, notified the petitioner that her ANFC grant was being

reduced due to the removal of her needs from the grant because she "did not cooperate in securing child support from an absent parent".

The petitioner stated at the fair hearing that she is disappointed that she forgot about the modification hearing, and she is willing to go back to court whenever a new hearing date can be arranged.

At the fair hearing the Department did not contest the petitioner's version of the facts and circumstances. It maintained, however, that its only role in the matter is to implement the decision by OCS.

### ORDER

The Department's decision reducing the petitioner's ANFC grant is reversed.

### REASONS

W.A.M. § 2331.32 provides as follows:

#### Cooperation

In all cases, the applicant or recipient parent or other caretaker shall be required, as a condition of inclusion in the ANFC grant, to agree to cooperate in all practical and feasible means of securing support from any noncustodial parent unless good cause for refusal to cooperate is claimed and the decision is pending or granted. Areas in which the applicant's active cooperation is required include, but are not limited to:

1. Identifying and locating the parent of a child for whom aid is claimed.
2. Establishing the paternity of a child born out of wedlock for whom aid is claimed.
3. Obtaining support payments for the applicant or recipient and for a child for whom aid is claimed.
4. Obtaining any other payments or property due the applicant or recipient or the child.
5. Appearing at times and places as requested to provide information or give witness at a judicial hearing.
6. Paying to the child support collection agency any child support payments received after an assignment of support has been made.

The regulations that follow the above section deal only with good cause for a recipient's initial refusal to cooperate in the collection of child support. There are no regulations specifically addressing the situation herein--when a recipient allegedly fails to follow through with a procedure in the collection process after an initial agreement to allow the Department to pursue child support.

The above notwithstanding, however, there is nothing in the regulations that specifies or suggests that the Department must blindly implement OCS's determination that the petitioner had failed to cooperate; and woodenly defend that position at the fair hearing.<sup>(1)</sup> Suffice it to say that the decision in this matter

is Draconian. There is no evidence that the petitioner ever did not "agree to cooperate" with OCS. The Department's decision is reversed.

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1. At the hearing, held on April 11, 1997, the Department declined the opportunity to examine the petitioner and challenge her representations as to the facts of the case.