

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 15,374  
 )  
Appeal of )  
 )

INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare to terminate the ANFC grant she receives on behalf of her great-niece for whom she is the guardian and to pay the grant for the great-niece to the family of her half-brother who lives in the same household.

FINDINGS OF FACT

1. The facts are not disputed in this matter. The petitioner raised her nephew as her son. When he in turn had two children and neither he nor the children's mother was able to care for them, the petitioner was appointed "sole legal custodian and primary physical custodian" of those children by a New York Family Court on February 2, 1993. One child receives Social Security disability benefits. The other child, who is now six years old, has received assistance through the ANFC program. The petitioner herself does not receive ANFC benefits.

2. In August of 1997, the petitioner allowed her nephew and his new woman companion to move into her home because they had no place else to live and the woman was expecting a baby. The child was born and the new child's mother applied for ANFC benefits for herself and that child,

which were granted.

3. The petitioner was notified shortly afterward on January 19, 1998, that the ANFC grant of \$213 per month paid to her on behalf of her great-niece would close because "there were no eligible children in her home." She appealed this determination and her worker explained to her that the Department's "siblings in the same household rule" required the inclusion of the great-niece in the same grant with her infant half-brother. It was explained to her that the money would now be paid to the infant's mother, who was head of household for the new joint assistance group. That new group also included both children's natural father.

4. The petitioner protests this decision because she has the legal responsibility to care for the six year old, not the child's half-brother's mother and that she has no way of obtaining or accounting for that money if it goes to the half-brother's mother. She is reluctant to solve the problem by evicting her nephew and his companion from his home as she feels it will only make his situation and that of his infant worse. The half-brother's mother is not seeking payment for her son's half-sister and pending the outcome of this hearing, no payments are being made to her.

5. The petitioner asked for a postponement of this action so that she could consult an attorney. In order to resolve this problem and to stabilize the situation for both children, the petitioner and her husband commenced adoption

procedures for both of the children. On May 15, 1998, the children's father signed a consent to adoption form for both children indicating that he agreed to the adoption by his aunt and uncle. The Department reviewed this document and declined to see it as a resolution of the matter.

6. The adoption proceeding has been set and reset many times, the latest postponement being for the unavailability of the children's natural mother. No finalization has yet occurred in this matter.

#### ORDER

The decision of the Department is reversed. The matter should be remanded to the Department for recalculation of the benefits due to the entire assistance group and for a proration of the amounts due and payment to the appropriate custodians of each child as set forth in this order.

#### REASONS

The Department's action is based on a regulation (which is federally mandated) requiring children and parents of the same family living in the same household to be considered as one assistance unit when need is determined:

An "assistance group" is defined as one or more individuals whose requirements, income and resources are considered as a unit to determine need for ANFC.

An ANFC assistance group must include one or more eligible dependent children. In addition, the assistance group must include all siblings (including half-siblings) who live with the dependent child or

children, who meet one of the deprivation factors. . .  
The parent(s) of each child included in the ANFC  
assistance group must be included in the ANFC  
assistance group if he or she lives in the home with  
the children.

(Emphasis supplied.)  
W.A.M. 2242

Under this regulation, when the petitioner's nephew moved into her household, he should have been added to the petitioner's assistance group since he was the six-year-old's father and his income and resources considered to determine the new group's needs. When the nephew's new child was born, that child also should have been added to the assistance group because he was the six-year-old's half brother. The new child's mother would also have to be a part of the assistance group under the latter provision of the above regulation requiring parents to come into groups with their children.

The Department was correct to attempt to make all these people part of an assistance group for the purpose of determining their needs. However, there is no authority in the regulations which would allow the Department to make the assistance payments to persons other than those responsible for the care and supervision of the children being assisted.

On the contrary, the regulations specifically require payment to the appropriate individual:

Money Grants

. . .

ANFC money grants shall be made payable to the

caretaker responsible for care and supervision of the eligible child, except when an alternate payee has been designated by court action or under Department regulations.

W.A.M. 2230

This regulation requires the Department to pay whatever part of the assistance unit's grant which is attributable to the support of the grand-niece directly to the petitioner because she has clearly been designated by the family court of New York as the person responsible for care and supervision of the grand-niece. The other part must be paid to those persons who are responsible for the infant, presumably his natural parents.

As the Department's decision to stop making payments to the petitioner for her grand-niece violates its own regulation, that decision cannot be upheld. 3 V.S.A. § 3091. The matter must be remanded for a calculation of benefits which are actually payable to the petitioner consistent with this decision. The petitioner should understand that as she has continued to receive benefits at the previous rate pending this decision, the recalculation may result in a finding that she received benefits in excess of those she should have received under the new group formula. If that is so, she will receive a separate notice as to that fact and her rights with regard to any

overpayment which might exist. She should also be aware that the final severance of her nephew's and grand-niece's relationship by a court and her adoption of her grand-niece might have a completely different impact on her eligibility for and the calculation of benefits. She is urged to discuss this with her worker and her adoption attorney.

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