STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 16,521
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals a decision of the Department of Prevention, Assistance, Training and Health Access (PATH) (formerly the Department of Social Welfare) denying her request for a waiver from cooperating in the pursuit of child support.

FINDINGS OF FACT

1. The petitioner is the thirty-seven year old single parent of three boys (ages 18, 14 and 10) from her former marriage and the parent of a four month old boy who is the result of a brief relationship she had with a forty-six-year-old man last year. The petitioner receives ANFC on behalf of her infant son.

2. On May 9, 2000, the petitioner requested that the Department grant her a waiver from cooperating in pursuing child support against the child’s father because she believed doing so would result in serious emotional harm to her child and emotional harm to herself which would reduce her ability

to care for the child. She provided a written statement in support of her claim.

3. The Department denied the petitioner's request on May 24, 2000 because she had not provided sufficient evidence to support her claim.

4. At hearing, the petitioner offered her own testimony in support of her claim. She knew her son's father as a co-worker many years ago and ran into him again in July of 1999 when she was recovering from another failed relationship. At that time, he represented that he was free to have a relationship with her. He became friendly with her ten-year-old son but did not move in with them. The petitioner was concerned at one point when the man was arrested for check fraud and told her that he had several social security numbers. When the petitioner discovered she was pregnant in September of 1999, she told him and he pleaded with her to terminate the pregnancy. He revealed to her that he was living with another woman who was also pregnant and that yet another girlfriend was pregnant as well. He worried what people would think about this and told her he was unable to deal with three new babies. The petitioner also noticed at this time that he started behaving in an unpleasant way to her

ten-year-old boy. The petitioner refused his request to terminate the pregnancy and stopped seeing him.

5. The petitioner gave birth to her son in April of 2000. The boy's father came by to visit him on June 6, 2000. He told the petitioner that he was particularly interested in this child because he was a boy and his other children, both born a few months earlier, were girls. He complained that one of the mothers was pursuing him for child support. The petitioner told him at that time that she did not want him to have anything to do with her son and that he should not come to her home again or she would call the police. He has not returned to her home although she sometimes sees him drive by the house, in what she believes, to be an attempt to catch a glimpse of his son. The petitioner believes that the father may try to take her son and so does not take the child out often. She fears that if he does take the boy he will be difficult to track down because he has several social security numbers. She believes he is currently employed in the same business he has been in for many years.

6. The boy's father has never made a verbal threat to take the child or to force visitation on the mother. The petitioner does not believe that he has made any such threats to the mothers of his other children. Her belief that he

might steal the child is based on an unsupported “feeling”. She is also concerned that if the father is allowed to see the child he will be emotionally harmed because he does not keep his promises and because he has shown through his treatment of her ten year old that he can be hurtful to children. The petitioner has presented no medical records, police records or other corroborating details of any kind which would tend to show the likelihood of serious emotional harm to herself or her child.

7. It cannot be found on these facts that the petitioner has provided sufficient evidence that there is a reasonable likelihood of serious emotional harm to her child or herself if she is required to participate in pursuing support from her child’s father.

ORDER

The decision of the Department is affirmed.

REASONS

Any person who receives ANFC automatically assigns her rights to support to the Department of Prevention, Assistance, Training and Health Access and is expected as a condition of eligibility to cooperate in establishing paternity and

collecting child support benefits unless she has “good cause” for failing to do so. W.A.M. 2331.32. “Good cause” is defined in the Department’s regulations as follows:

> . . . To show that cooperation may be against the best interests of the child, the applicant or recipient must provide evidence that cooperation in establishing parentage or pursuing support is reasonably anticipated to result in any one of the following:
>
> 1. Serious physical or emotional harm to the child for whom support is being sought.
>
> 2. Physical or emotional harm to the recipient parent or caretaker that is so serious it reduces his/her ability to care for the child adequately.
>
> NOTE: Physical or emotional harm must be of a serious nature to justify a good cause finding.
>
> . . .

W.A.M. 2331.34 further delineates the type of evidence which must underlie a request for an exemption due to claimed emotional harm:

> Whenever the waiver request is based in whole or in part upon the anticipation of emotional harm to the child, the recipient parent, or the caretaker, the present emotional state and health history of the individual subject to emotional harm must be considered as well as the extent of involvement of the child in the establishment of parentage or support enforcement activity to be undertaken. A finding of good cause for emotional harm may only be based upon a demonstration of an emotional impairment that substantially affects the individual's functioning.

The Board, relying on Bootes v. Cmmr. of Penn. Dept. of Public Welfare, 439 A.2d 883, 885 (1982), has held that a determination of reasonable anticipation of harm under the above regulations is a factual decision which must be made on a "case by case basis on the weight, sufficiency and quality of the gathered evidence" and that the "final decision requires a subjective judgment on the part of the hearing examiner." See Fair Hearings No. 13,236 and 14,157. The Board has also held, based on a ruling by the federal Department of Health and Human Services (43 Fed. Reg. 2176, January 16, 1978) interpreting the federal regulation at 45 C.F.R. § 232.42 which sets forth the "good cause" exemption, that a sufficient level of severity of harm is met only "in those few extraordinary circumstances where the parent or child faces a risk so real that it would outweigh the emotional, physical and financial benefits of the child's receiving parental support." See Fair Hearing No. 14,157.

The finder of fact, then, is required to determine whether the emotional harm alleged is proven based (1) on a reasonable likelihood that the non-custodial parent will take some action with regard to the child or custodial parent if support is pursued; (2) that, based on the health history of the child or the custodial parent, the action is expected to

cause emotional harm to the child or custodial parent; and (3) the emotional harm is so severe that it substantially affects the child's or custodial parent's ability to function. Only if these criteria are met can the custodial parent be released from cooperating in securing parental support for her child.

In this case, the child's father has indicated an interest in the child which in combination with the father's social security fraud has made the petitioner fear that the child might be kidnapped. The petitioner admits that the child's father has made no such threat and that he has never been involved in any activity of this kind in the past. Although he has apparently had some minor scrapes with the law, he has been consistently employed for many years. He has not disobeyed the petitioner's wish that he stay away from her home nor engaged in any attempt to try to enforce any parental rights. It cannot be concluded that the petitioner has a reasonable belief that such a kidnapping will take place.

Neither can it be concluded that the petitioner has shown that harmful contact between her infant son and his father is likely to occur if child support is pursued. While it is entirely possible that the child's father will seek court ordered visitation if he is required to pay child support, he has a right to seek such visitation and his request is subject

to review by a Court to determine the "best interests" of the child. The petitioner has a right to present whatever evidence she has to a family court to either prevent or restrict visitation. For this reason, the Board has held that fear that a parent might seek visitation is not sufficient to show emotional harm. Fair Hearings No. 11,649 and 12,863. There is nothing else at present which would indicate that severe emotional harm would occur to the petitioner or her infant son if she is required to cooperate in obtaining child support for him.

The Department was correct under the state and federal regulations and guidelines and prior Board decisions in its denial of a request for a waiver and that denial must be upheld. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19. This decision is also consistent with the stated federal policy of not depriving children of their right to obtain child support without a very serious countervailing reason.

# # #