STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 18,011
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals the decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) terminating her Reach Up Financial Assistance (RUFA) benefits. The issue is whether the petitioner had an "eligible child" in her "home" within the meaning of the pertinent regulations once her children were removed from her home pursuant to family court "CHINS" proceedings. The following facts are not in dispute.

FINDINGS OF FACT

1. On August 27, 2002 the petitioner reported to the Department that her children had been taken into protective custody by the Department of Social and Rehabilitation Services (SRS) on or about July 28, 1993, pursuant to a CHINS proceeding in Family Court. The petitioner indicated to her worker that she did not expect the children to be returned to her within the next thirty days.

2. Based on this information, on August 28, 2002 the Department sent the petitioner a notice terminating her RUFA benefits effective September 15, 2002 because there were no longer any eligible children in the petitioner's home.

3. There appears to be no dispute that SRS placed the children in foster care in August and that the children have remained in SRS foster care since that time.

4. According to the petitioner, a Family Court hearing concerning the children was held on October 16, 2002 at which time a disposition hearing was scheduled for December 18, 2002. At her fair hearing on November 26, 2002 the petitioner indicated that she expects the children to be returned to her following the disposition hearing.

ORDER

The Department's decision is affirmed.

REASONS

This appeal compels the Board to revisit issues exhaustively considered in a series of fair hearings decided several years ago. See Fair Hearing Nos. 12,265 and 12,296 (consolidated cases) and 12,979. At this time, a reexamination of the Vermont CHINS procedures and current RUFA

regulations compels the conclusion that the bases of the Board's rulings in those cases still pertain. The following discussion incorporates large portions of the Board's rulings in those cases, with updated citations of regulations that have since been amended (but essentially unchanged).

The RUFA regulations generally 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. § 2302.13 defines "home" as follows:

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

Also relevant is W.A.M. § 2224, which defines "family separation" as follows:

> An adult participant in the Reach Up program, or an individual acting on behalf of a caretaker relative unable to do so, shall notify the district director of any physical separation of the adult and child(ren) which continues or is expected to continue for 30 days or more. Eligibility shall continue when the following conditions are met:

1. The adult participant or, in cases of subsequent separation of parents receiving assistance as a two-parent family, the other participant parent continues or supervises continuing care and supervision of the eligible child; and

2. A home is maintained for the child or for return of the adult participant within six months; and

3. Eligible family members have continuing financial need. . .

The crucial language in the above regulations, at least insofar as this case is concerned, are the phrases "is responsible for the care and control of the child(ren) during temporary absence of either from the customary family setting" and "continues or supervises continuing care and supervision of the eligible child." If it could be concluded that the petitioner in this case, following the proceedings in Family Court regarding her children, continued to have the "responsibility" for or the right to "supervise" the care and control of their children, it must be concluded that she remained eligible for RUFA under the above regulations. See Johnson v. Comm. of Pub. Welfare, 414 Mass. 572 (1993). However, if her custodial rights of "supervision" and "responsibility for the care and control of the children" were, in effect, terminated, it must be concluded that once

the children were taken from the petitioner's home the petitioner was no longer eligible for RUFA.

In Vermont, the CHINS process begins when a law enforcement officer (usually working in concert with SRS) takes a child into "custody" (pursuant to 33 V.S.A. § 5510). The officer (or SRS) must then immediately petition the family court for an order of "detention or placement in shelter care". Id. §§ 5511(2) and 5513. Although the statutes define both "detention" and "shelter" as "temporary care...pending court disposition" (33 V.S.A. §§ 5502[a][5] and [17]), 33 V.S.A. § 5514(a), further defines "temporary shelter care or detention" as follows:

> (a) A child taken into custody under section 5510 of this title and not immediately released to his parents, guardian or custodian, or delivered to a designated shelter, shall be by order of the court provided temporary shelter care or detention prior to a detention hearing on a petition held under this chapter or a hearing before a probate or other court upon a transfer thereto under section 5529(b) of this title in one or more of the following places;
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> (1) The home of his parents, guardian, custodian, or other suitable person designated by the court, upon their undertaking to bring the child before the court at the detention hearing,
>
> (2) A licensed foster home or a home approved by the court,
>
> (3) A facility operated by a licensed child caring agency,

> (4) A detention home or center for delinquent children which is under the direction or supervision of or approved by the department of social and rehabilitation services, or
>
> (5) In the event that the child has been or will be or may be transferred under section 5529(b) of this title, in any other suitable place designated by the court; or shall transfer legal custody of the child to the commissioner of social and rehabilitation services, if the court believes the child may be found delinquent, if the court believes the child may be found in need of care or supervision, pending such detention or other hearing.

(Emphasis added, see infra.)

Following the issuance of one of the above "emergency orders" a "detention hearing" must then be held within forty-eight hours to determine whether "the continued detention of the child would be to his best interests and welfare". 33 V.S.A. § 5515(a). After a detention hearing, if circumstances warrant, the family court may "order the continued detention or custody of the child pending the full ("merits") hearing under section 5519 of this title". Id. § 5515(d). Reading, as one must, this section and § 5514(a), supra, in para materia, it can only be concluded that "continued detention or custody" refers to the same "temporary shelter care or detention" placement options set forth in § 5514(a).

"Legal custody" is specifically defined in the CHINS statutes, at 33 V.S.A. § 5502(a)(10), as follows:

> "Legal custody" means the legal status created by order of the juvenile court under the authority of this chapter which invests in a party to a proceeding under this chapter or another person, which party or person may also be the guardian of the person of the minor, the right to have the physical possession of a minor and to determine where and with whom he shall live, the authority to consent to major medical, psychiatric, and surgical treatment, and the right and duty to protect, train, and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to the powers, rights, duties and responsibilities of the guardian of the person of the minor and subject to any residual parental rights and responsibilities.

In light of the above it must be concluded that as far as the family court is concerned the petitioner's parental "responsibility" for and "supervision" of the children effectively ceased at the point that the Detention Orders in these matters "transferred legal custody" of the children to SRS. There appears to be no dispute in this matter that this occurred immediately after the children were taken from the petitioner's home in August.

33 V.S.A. § 5503(b) provides as follows:

> The orders of the juvenile court under authority of this chapter shall take precedence over any order of any other court of this state...to the extent inconsistent therewith.

The Board has held that it and the Department are effectively bound by the family court's orders in these matters. It must, therefore, be concluded that at the point that "legal custody" was "transferred" by the family court

from the petitioner to SRS, the petitioner was no longer eligible for RUFA based on the definition of "temporary absence" under the above regulations. This analysis is bolstered by the fact that as soon as children are placed in SRS foster care they become eligible for RUFA payments in their foster homes. W.A.M. § 2248. Accordingly, the Department's decision in this matter must be affirmed.

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