

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 18,384
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Appeal of)
)

INTRODUCTION

The petitioner appeals a decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) to terminate her Reach Up benefits because she has no dependent children in her household.

FINDINGS OF FACT

1. The petitioner is the mother of a two-year-old girl who was taken into SRS custody in February of 2003. On March 3, 2003, the petitioner was notified by PATH that her Reach Up benefit of \$579 per month would be terminated as of March 16 because there were no longer any children in the home. The petitioner appealed that decision and her benefits have continued pending a decision by the Board.

2. There was a hearing before the juvenile court on March 27, 2003 at which time the Court indicated that SRS was to retain custody of the child at least until a further hearing on May 1. The petitioner is concerned that without

the money to pay for housing, that the Court is less likely to return her daughter to her.

ORDER

The decision of PATH is affirmed.

REASONS

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.

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 the adult unable to do so, shall notify the district director of any physical separation of the adult and child that 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 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 these cases are 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, following the transfer of custody to SRS by the juvenile court, continued to have the "responsibility" for or the right to "supervise" the care and control of her child, then the petitioner could retain her eligibility 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 child" were, in effect, terminated, it must be concluded that once the child was taken from her home, the petitioner is no longer eligible for RUFA benefits.

The petitioner does not argue that she has, at least temporarily, lost responsibility for the care and control of her child. Under those facts, the petitioner cannot be eligible for a RUFA payment under the above regulations. In addition, federal rules and regulations would allow RUFA payments to now be made to her child through the foster care program. W.A.M. 2248 and 42 U.S.C. § 672(a). The regulations prohibit states from paying RUFA benefits to more than one household at the same time for the same child. See 42 U.S.C. § 609(a) and 45 C.F.R. § 233.90(c)(1). These rules form a further basis for the denial of RUFA benefits to the petitioner. See Fair Hearing Nos. 12,265, 12,296 and 12,979.

The petitioner's concern that she may be disadvantaged by her lack of housing in her effort to effectuate a return of her child should be addressed to SRS. That agency has a responsibility to work for the reunification of the family and any obstacle to that reunification, including a lack of housing, is a matter for the family's caseworkers to consider. As PATH acted in accord with its regulations in terminating the RUFA grant, the Board is bound to uphold it. 3 V.S.A. § 3091(d). Fair Hearing Rule 17.

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