STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 18,647
	)	
Appeal of	)	
	)	

INTRODUCTION

The petitioner appeals a decision of the Department of Social and Rehabilitation Services (SRS) limiting her day care subsidy payments to fifty percent of the usual rate of reimbursement. The issue is whether the Department abused its discretion in granting the petitioner a limited exception to its usual policy of disallowing any subsidy based on a parent's attendance in graduate school. The pertinent facts are not in dispute.

FINDINGS OF FACT

1. The petitioner applied for subsidized day care in July 2003. This was based on the petitioner expecting the birth of her child, who was born in August.

2. The petitioner lives with her husband and the child. The petitioner is an undergraduate student at the University of Vermont. Her husband is a graduate student at the same university. The petitioner is a permanent resident alien.

3. The petitioner's husband, also an alien, works part-time through the University as part of his program of study. When he was admitted to this country as a graduate student he was single. It appears that his current immigration visa

requires him to maintain his student status and limits his employment to a certain number of hours and only through the university where he is studying. There does not appear to be any dispute that the petitioner's husband is working at the maximum number of hours allowed by his current immigration status, which has not changed since the time he entered the country.

4. The limitations on the husband's type and hours of work renders the family financially eligible for a child care subsidy. However, the Department's regulations (see *infra*) do not allow subsidies for parents with undergraduate college degrees who are enrolled in graduate school.

5. However, due to the legal limitations on the petitioner's husband's ability to work, the Department, in August 2003, granted the petitioner an exception to its graduate student policy and allowed the petitioner a child care subsidy in an amount of fifty percent of the usual subsidy for a six-month period.

6. The petitioner requested a hearing because she feels she should get a full subsidy in light of the legal constraints on her husband's ability to work more hours. She fears that she will have to drop out of college if she cannot get a day care provider to accept half payment for the full-time day care she needs if she is to continue her present course of study.

7. The Department maintains that the petitioner has not

shown that her husband has exhausted all recourse that might be available to him in obtaining a hardship exception from the U. S. Immigration and Naturalization Service that would allow him to work more hours. A document from the University of Vermont dated October 16, 2002 indicates that the petitioner's husband's decision to get married poses a potential threat to his immigration status. The University strongly advised the petitioner's husband to consult with an immigration attorney.

8. The hearing officer is satisfied that the petitioner has demonstrated that her husband cannot obtain any more hours of work from the University and that his immigration status is, at best, tenuous. It does not appear that either the petitioner or her husband possesses the means or sophistication to reasonably expect that they could successfully petition INS to change the husband's immigration status in that regard.

9. However, it cannot be concluded that it would pose an undue or unreasonable hardship on the family under the circumstances to have the petitioner, herself, postpone her college studies and seek employment at least until her husband completes his degree.

ORDER

The decision of the Department is affirmed.

REASONS

The regulations adopted by the Child Care Services Division require a recipient to meet income eligibility requirements and show a "service need" as a condition to eligibility. CCS Regulation 4032. "Service Need" is defined as follows:

> A service need exists when child care is necessary to support a goal of "self-support" or "protection" or "family support".
>
> . . .
>
> It shall be assumed that each primary caretaker residing in the child's home is able and available to provide child care unless a service need is established due to one of the following conditions:
>
> a. Employment (includes self-employment)
>
> b. Training
>
> c. Incapacity
>
> d. Requires Protective Services Child care
>
> e. Determined eligible by risk factors for Family Support Child Care.
>
> f. Seeking employment
>
> Regulation 4033, Child Care Services Regulations, Rev. 11/1/90

"Training" is specifically defined in the statute authorizing child care services at 33 V.S.A. § 3511(6) as "an activity, approved by the commissioner or the commissioner's designee, which is likely to lead to employment or required to

maintain employment". In the regulations, the commissioner has approved the following activities:

> Any activity which, in the opinion of the Commissioner or her/his designees, is likely to lead to employment within one year of completion of training or which is required to maintain employment. Approved training programs include:
>
> 1. Work training programs sponsored by the Department of Social Welfare;
> 2. Work experience or work study programs;
> 3. High School (public or private);
> 4. College;
> 5. Adult Basic Education (ABE);
> 6. Job Training Partnership Act Programs (JTPA);
> 7. Start-Up self-employment activities;
> 8. Other training programs approved by the Commissioner or her/his designee.

CCS Regulation 4031

In Fair Hearings No. 14,274 and 11,101, the Board agreed with the Department's interpretation of the above regulations as excluding graduate programs of study and upheld the Department's exercise of its discretion to exclude such programs based upon the need to conserve limited resources and the fact that graduate degrees are not needed to obtain employment.

It must be concluded that the petitioner's situation in this matter is beyond the contemplation of the above regulations. As noted above, the petitioner's husband does not have the options implicit in the regulations. If he does

not maintain his graduate student status, with its limited opportunities for employment, he risks being deported. The Department has at least partially recognized this dilemma by granting the petitioner an exception to the regulations to the extent that it has allowed her a fifty percent child care subsidy.

The above notwithstanding however, it cannot be concluded that the Department is abusing is discretion in refusing to allow more than a fifty percent subsidy as an exception to its usual policy. This is a household in which both parents are post-secondary students. Although the petitioner, as an undergraduate student, has a "service need" under the above regulations, and even though her husband presently is unable to work more hours, unlike most other families one parent is on the verge of obtaining a graduate degree and the other an undergraduate degree. It is reasonable to expect that once the petitioner's husband obtains this degree he will have considerable earning potential. Under these circumstances, it does not seem contrary to the purposes of the child care subsidy program if the petitioner were forced to temporarily cut back on her college education in order to provide additional income for the family until her husband can complete his program of graduate study.

Although one can sympathize with the petitioner's dilemma, inasmuch as it cannot be concluded that the Department's decision in this matter constitutes an abuse of

discretion, the Board is bound to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

# # #