

On June 9, 2006 the Board sent the petitioner a notice scheduling the hearing on June 29, 2006. The notice was sent to the address given by the petitioner in her appeal letter. The notice was returned to the Board with a notation from the post office dated June 15, 2006 that the petitioner was "temporarily away". The Board resent the notice to the petitioner at the same address on June 22, 2006.

On June 27, 2006 the post office returned the notice with the same notation. Having heard nothing from the petitioner, the Board on July 7, 2006 sent the petitioner another notice (to the same address) rescheduling the hearing for July 27, 2006. This notice was returned in the same manner on July 18, 2006.

On July 21, 2006, the Board sent a notice to the petitioner (same address) rescheduling the hearing for August 30, 2006 and advised the petitioner on the notice: "No further continuances will be granted". This notice also was returned to the Board by the post office on August 23, 2006.

On August 29, 2006 the Board received a phone call from the Department's district office stating that the petitioner had appeared at the district to apply for other benefits and that she had orally inquired about the status of her hearing. The Board advised the district office to orally tell the

petitioner that she could appear at her hearing, which was scheduled the next day at 10:00 a.m.

At 11:00 a.m. on August 30, the petitioner appeared at the district for her hearing. The hearing officer conducted the hearing by telephone. At the hearing the petitioner did not dispute the following facts. The hearing officer denied the petitioner's request to submit testimony and what-appeared-to-be-voluminous written evidence regarding the petitioner's claims that the state had engaged in "unlawful incarceration" and had issued a "wrongful custody order".¹

FINDINGS OF FACT

1. Sometime months prior to February 2006 the petitioner's minor son was adjudged by the family court to be a "child in need of supervision" (CHINS) and placed in the care and custody of the Department's Child Protective Services Division, where he remains. It appears that the Department then placed the child in the home of his father.

¹ The earliest date on which the petitioner can be deemed to have filed her appeal in this matter was slightly more than 90 days from the date of the Department's notice (see Fair Hearing Rule No. 1). However, given the appearance of the petitioner's diminished capacity, and the fact that she would be free to reapply for RUFA benefits at any time, the Board will address the merits of her appeal.

2. At all times pertinent to this action the petitioner has lived alone in an isolated rural area. She has not lived with the child nor has she been responsible for his care and custody during any of this time.

3. The Department denied the petitioner's application for RUFA benefits in February 2006 based on its determination that there were no "eligible children" in the petitioner's home.

4. There is no allegation or indication of any likelihood that the child will be returned to the petitioner's care and custody any time in the foreseeable future.

ORDER

The Department's decision is affirmed.

REASONS

This appeal compels the Board to again revisit issues exhaustively considered in a series of fair hearings decided several years ago. See Fair Hearing Nos. 18,011; 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.

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 child, continued to have the "responsibility" for or the right to "supervise" the care and control of the child, it must be concluded that she would be 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 child were, in effect, terminated, it must be concluded that once the child was taken from the petitioner's home the petitioner was ineligible for RUFA.

In Vermont, the CHINS process begins when a law enforcement officer (usually working in concert with Family Services) takes a child into "custody" (pursuant to 33 V.S.A. § 5510). The officer (or the Department) 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;

(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 child effectively ceased at the point that the Detention Orders in these matters "transferred legal custody" of the children to the Department. There appears to be no dispute in this matter that this occurred immediately after the child was taken from the petitioner's home sometime well before February 2006.

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.² It must, therefore, be concluded that at the point that "legal custody" was "transferred" by the family court from the petitioner to the Department, 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 foster care or with another caretaker relative they become eligible for RUFA payments in their foster parents' or relatives' homes. See W.A.M. §§ 2242.5 & 2248. Accordingly, the Department's decision in this matter denying the petitioner's application for RUFA must be affirmed.

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² The Board does not have jurisdiction to address the petitioner's allegations that the Department's and/or the family court's actions were "illegal".