

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. A-02/09-80  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Economic Services Division, denying her request for a waiver of child support cooperation under the Reach Up Financial Assistance (RUFA) program. The issue is whether the petitioner meets the criteria for a waiver of child support cooperation. The facts are not in dispute.

FINDINGS OF FACT

1. The petitioner is the caretaker of two minor children. Petitioner's son signed over custody of his son to the petitioner as part of a court order. Petitioner also has custody of her grandson's sister. Both the boy and girl have the same mother. Petitioner obtained custody of the girl after the Family Services Department became involved with the mother.

2. On or about October 7, 2008, the petitioner requested a waiver of child support cooperation for each child. She did not want the Office of Child Support to

pursue the children's parents for child support. In support of her waiver request, petitioner explained that the parents did not have the financial means to pay support and that pursuing support would emotionally harm petitioner.

Petitioner did not give any details of how she would be emotionally harmed.

3. The Department sent petitioner a Denial of each waiver request on January 25, 2009. The petitioner asked for a fair hearing on February 2, 2009 and a hearing was convened on February 11, 2009.

4. Petitioner explained that neither her son nor the children's mother has the financial ability to pay support. Her son is supporting four other children. She also expressed concern that if either parent was ordered to pay support that he/she would seek custody. Petitioner is afraid that she could lose custody of the children in the future. Petitioner agreed there is no domestic violence or other harm involved in her request.

ORDER

The Department's decision is affirmed.

REASONS

As a condition of eligibility for RUFA, the custodial parent or caretaker is required to assign their rights to child support to the Department. W.A.M. § 2332. In certain situations, this requirement can be waived.

The pertinent regulation is W.A.M. § 2332.1 which states:

...Good cause exists when the department determines that cooperation is not in the best interest of the child for whom assistance is requested and is reasonably anticipated to result in any 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 participant parent or caretaker so serious that it reduces the ability to care for the child adequately.
3. At least one of the following circumstances exists, and the commissioner or the commissioner's designee agrees that, because of the existence that circumstance in the particular case, requiring a parent or other caretaker to cooperate in proceedings to establish parentage or pursue support would be detrimental to the child for whom support would be sought:
  - a. The child for whom support is sought was conceived as a result of incest or forcible rape;
  - b. Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction, or
  - c. The applicant or participant is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep or relinquish the child for adoption, and the

discussions have not gone on for more than three months.

The parent or caretaker has to provide evidence to support the waiver request; this evidence may include law enforcement records, criminal records, medical records or psychological records. W.A.M. § 2332.2. In addition, W.A.M. § 2322.2 addresses claims of emotional harm as follows:

...the present and emotional state and health history of the individual subject to emotional harm must be considered...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.

Concern that a noncustodial parent does not have the means to pay child support does not fit the good cause criteria.

In terms of emotional harm, the petitioner has not supplied the type of evidence that would show an impact upon her functioning if a child support action is brought. There is no history of domestic violence. Petitioner has not provided documentation of her emotional health and how her health may be impacted by a child support action.

The good cause criteria are a means to protect individuals including victims of domestic violence or child abuse, both physical and emotional, from harm if a child support action is initiated. The criteria are also a means

of protecting vulnerable caretakers who would be emotionally harmed if court proceedings are initiated. The burden is on the petitioner to present evidence that supports her claim. Here, the evidence does not rise to the level necessary for a waiver of child support cooperation. Accordingly, the Department's decision is affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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