

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-03/13-247
)
Appeal of)

INTRODUCTION

Petitioner appeals the determination of the Vermont Department for Children and Families ("Department") that her household is not eligible to continue receiving Reach Up while her children are in DCF custody. The sole question presented is whether petitioner is ineligible for an extension of Reach Up under the "temporary absence rule" which went into effect after petitioner's children were removed from her home. The following facts are adduced from documents and representations of the parties during a hearing held June 13, 2013.¹

PROPOSED FINDINGS OF FACT

1. Petitioner's two children were removed from her home on January 18, 2013 and placed into the custody of the Department's Family Services Division. Their removal was based on concerns regarding the children's contact with petitioner's boyfriend.

¹ It should be noted that this fair hearing was requested on March 29, 2013, and was continued several times at the request of petitioner.

2. At the time of the children's removal, petitioner's household was receiving Reach Up. The Department's goal at the outset of the removal of her children from petitioner's home was to develop a plan for family reunification as soon as appropriate.

3. Petitioner has participated in the family court process regarding the removal of her children with the goal of returning them to the household.

4. The Department promulgated a rule that went into effect on February 1, 2013, allowing Reach Up households to continue receiving benefits for up to 180 days when there is a temporary absence of the child(ren) from the home.

5. The Department issued a notice to petitioner dated March 11, 2013, stating that her Reach Up will end as of March 31, 2013, because there are no eligible children in her home. The notice also provided that:

Please connect with [case worker name] before the end of the month to discuss an opportunity to keep your grant open while you work on reunification. This must be set up before 3/31/13 if you wish to receive continued benefits.

6. With the assistance of her caseworker, petitioner subsequently filed a request for her benefits to continue during her children's absence, based on the new "temporary

absence" rule. The request was dated March 20, 2013 and was signed by petitioner and her caseworker.

7. The Department issued a notice to petitioner dated March 28, 2013 stating that her continuing benefits request had been submitted but denied on the basis that her children were removed from her home prior to the effective date of the new rule.

8. On March 29, petitioner appealed the decision terminating her benefits.

9. At the time of hearing, petitioner's children had not yet been returned to her home.²

ORDER

The Department's decision is reversed.

² A family court hearing was scheduled for June 17, 150 days after the children were removed. The result of that hearing was not known at the time of the hearing in this matter, nor is it relevant. By all accounts petitioner would have qualified for the extension of her benefits but for the Department's determination that the extension did not apply to her because of its effective date.

REASONS

The Reach Up program is remedial in nature, with the following purpose provided by statute:

(1) to assist families, recognizing individual and unique characteristics, to obtain the opportunities and skills necessary for self-sufficiency.

(2) To encourage economic independence by removing barriers and disincentives to work and providing positive incentives to work.

(3) to support parental nurturing.

. . .

(6) To protect children by providing for their immediate basic needs, including food, housing and clothing.

. . .

33 V.S.A. § 1102(a); See also W.A.M. § 2200; see also Fair Hearing No. B-03/09-171 (noting remedial nature of Reach Up program in reversal of sanction).

The facts in this matter are undisputed. The sole question is whether petitioner can avail herself of an option extending Reach Up based on an event that occurred - the removal of her children from her home - before that option was available, but remained a circumstance - the absence of her children from her home - which continued once the option was available. The rules provide the following, in pertinent part:

An eligible child must also be living with a parent or a qualified caretaker. A parent or qualified caretaker may apply and be found eligible to participate in Reach Up on behalf of a child who is not yet in the home or *is* temporarily absent from the home. Eligibility for Reach Up assistance may continue, in certain circumstances, *during* the temporary absence of either the child or parent/caretaker from the home.

W.A.M. § 2230 (emphasis supplied).

The new rule effective February 1, 2013, outlines the circumstances under which Reach Up may continue when a child is temporarily absent from the home:

B. Temporary Absence from the Home

1. Temporary absences of a child from the home, not to exceed 180 consecutive days, are limited to the following, unless the department determines that the child's circumstances are substantially similar to those described below:

. . .

b. The child is placed in the custody of the Department for Children and Families pursuant to a court order and reunification with the parent or caretaker is the permanency planning goal.

. . .

3. The parent or caretaker of a child who *is* temporarily absent from the home for any of the above reasons *shall continue to receive Reach Up assistance* as long as the following criteria are met:

a. The parent or caretaker with whom the child is living continues to maintain a home for the child;

b. The parent or caretaker plans for the child to return to the home at the end of the absence; and

c. The household continues to meet all other eligibility requirements for Reach Up.

W.A.M. § 2230.3 (emphasis supplied).

Based on the plain language of the regulations, petitioner meets the criteria for an extension of Reach Up. Her children were removed from her home with a goal of reunification, i.e., the absence was considered "temporary," and she continues to maintain her home with plans for her children to return. Pointedly, the Department's notice terminating the household's Reach Up was issued on March 11, well after the new regulations went into effect. Thus, when she applied for an extension of Reach Up, she was requesting that existing benefits continue under circumstances where, in the exact language of the rules, a child "is" temporarily absent. While the event that led to her children's absence occurred prior to the effective date of the new rule, those circumstances continued and existed at the time she requested the extension of Reach Up and when the new rule was in

effect.³ "Temporary absence" triggers application of the rule, regardless of when the children were removed.

The Department has otherwise failed to identify any basis in the regulations for precluding the application of the temporary absence rule solely because petitioner's children were removed prior to the effective date of the rule. The Department's application of the regulations is not consistent with the plain language of the rules and therefore its decision must be reversed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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³ Similarly, petitioner was not faced with losing Reach Up until after the new rule went into effect. This analysis may have been different if petitioner had an interruption of benefits prior to the effective date of the new rule. However, she did not lose her benefits immediately upon the removal of her children. Her request on March 20 was prior to the termination of her benefits and thus was for "continuing" benefits.