

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 16,138
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare that she is not eligible for ANFC benefits for two of her children because they are in SRS custody and attend a residential school paid for by SRS. She also appeals a decision that she was overpaid during periods in the last two years when the children were attending the residential school.

FINDINGS OF FACT

1. The petitioner is the mother of eight children, two of whom are currently in the custody of the Department of Social and Rehabilitation Services (SRS). Sometime in 1996, the two children, a son and a daughter, were placed in the long-term care of the petitioner and she enrolled them in her local public school. Sometime thereafter, the petitioner asked that the children be enrolled in a private residential school within an hour of her home. She asked for this because she had other children in the residential school and felt it would be best for her two children to be out of her

neighborhood. SRS complied with this request and paid for her children to attend the year-round residential school. Her son was enrolled in the school on July 11, 1997 and her daughter was enrolled about a year later on August 28, 1998.

2. During their attendance at this school, the two children visit their mother every third weekend and spend school holidays and vacations with her, typically a few days at Thanksgiving and a week or more at Christmas. In the summer of 1997, the petitioner's son spent one entire week with her after graduation, two four-day weekends and over a week at the end of the summer. During the summers of 1998 and 1999, her son spent a similar amount of time with the petitioner. Her daughter, however, was home for the entire summer break after her first year of school from June 19-August 22, 1999.

3. The petitioner was granted ANFC assistance for these two children from August 1, 1997 through September 15, 1999 and received \$3,250 in total payments for the two during this time. She was notified in August of 1999 that the payments would end because the children are not in her custody and are enrolled in a residential school paid for by SRS. She was also notified that the Department determined that she had been overpaid \$3,250 during the previous two years due to a

communication error between DSW and SRS about payment for the school. DSW does not fault the petitioner in any way for the overpayment.

4. At all times she received ANFC for these two children, they were in the custody and control of SRS. SRS made decisions regarding the children's legal, medical and educational needs, provided and was responsible for their daily care and supervision, and had the power to permit or forbid visitation with the petitioner. During periods of time when the children were not in the residential school, the petitioner was responsible for providing for the physical needs of her children.

5. The petitioner states that she was referred by her SRS worker to the ANFC program for assistance in meeting the needs of her children when at her home. She was not aware until the day of the hearing that SRS might have been able to assist her with some financial support during periods her children were visiting her. She feels that her ANFC overpayment is SRS' fault and that she should not be required to repay the amounts.

6. At the request of the hearing officer, DSW reviewed the time periods during which the children were in residential care and with their mother to see if she might have been

correctly paid for any periods during the last two years. DSW concluded that the petitioner's daughter properly received an ANFC grant during the summer of 1999 because she was with her mother for over two months. DSW also concluded that the petitioner's son could not have been eligible for any time periods because he did not spend any significant period of time with his mother during the two years prior to September of 1999. The overpayment was thus adjusted to \$2,971 to reflect the months in the summer of 1999 when the daughter was residing in the petitioner's home.

7. Based on the above information provided by the Department it must also be concluded that payments made on behalf of the petitioner's daughter from August 1, 1997 through August of 1998 were made while the petitioner's daughter was in her home and not in the residential school.

ORDER

The decision of the Department that the petitioner is no longer eligible for ANFC benefits for her son and daughter is affirmed. The decision finding that the petitioner was overpaid is further modified to reflect an overpayment on behalf of the son from August 1, 1998 through August of 1999

only; and an overpayment on behalf of the daughter from September 1, 1998 through May of 1999 only.

REASONS

There is no prohibition in the regulations against paying ANFC benefits to relatives (including parents) who care for children who are committed to the custody of SRS. WAM § 2302.2. The difficulty arises when the children are placed in a residential school:

Dependent Children in Schools and/or Institutions

Allowances for an ANFC child who is away from home to attend school shall be included in full when the parent or other caretaker is responsible for the child's expenses at the school.

When a school or institution agrees to accept a child and be responsible for the child's needs during residency at the school or institution, a decision must be made as to whether that child should continue as part of the ANFC assistance group. If responsibility for the care and control of that child remains with the parent, stepparent or caretaker and the parent/child relationship is maintained, then the child is considered to be living in the household and should be included in the ANFC assistance group.

If the parent, stepparent or caretaker is no longer responsible for the care and control of the child (e.g. child is committed to SRS) then that child does not meet the requirements for living in the household and he or she cannot be included in the ANFC assistance group.

WAM § 2245.22

Because the petitioner's children are legally committed to the care and control of the Commissioner of SRS and because they reside at an institution paid for by SRS, they cannot currently be members of her ANFC household. The Department is thus correct in its determination that these two children cannot currently be included in the petitioner's ANFC grant.¹

The Department's rules require that it recover any payments due to "administrative error, client error or payments made pending a fair hearing which is subsequently determined in favor of the Department. . . ." WAM § 2234.2 However the Department is limited by that same rule to recovering only for the twelve-month period before the discovery of the error "unless the overpayment was caused by the recipient's willful withholding of information which affected the amount of payment" in which case recoupment can occur for the prior three years. WAM § 2234.2 The Department agrees that the overpayment occurred due to its miscommunication with SRS and through no fault of the petitioner. Therefore, the Department is limited to recovering ANFC payments made for the son from August 1, 1998 through August of 1999 and for the daughter from September 1,

¹ Of course, if either child returns to her home for a significant period of time during the summer months he or she could be placed again on her

1998 through May 31, 1999, the only months when she was solely in residence at the school during the preceding twelve.

The amount of the overpayment for these periods has not been calculated by the Department. Therefore, the matter is remanded for such a calculation. The amount of that calculation can then be recovered by the Department from the petitioner's current ANFC check (if she is receiving one) at a rate of 5% per month until the total is recovered. Of course, if the petitioner disagrees with the calculation of the overpayment, she may appeal that to the Board. The petitioner is also encouraged to ask SRS for any assistance that she may be entitled to for the support of her visitation with her children and to ask if she might be reimbursed for any amounts she spent on the children in the past year which will be recovered by the ANFC program.

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grant for that period of time.