

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 8740
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for ANFC benefits. The issue is whether the petitioner's husband was absent from the petitioner's home during the period in question within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner applied for ANFC on July 11, 1988. On her application she alleged that her husband was absent from her home. The department denied her application when its investigation concluded that the husband was still living in the petitioner's home.

Apparently, the petitioner and her husband had been experiencing marital difficulties for at least the previous year. The petitioner lost her job in May, 1988. She alleges that her husband left the home just prior to her application for ANFC. On her application the petitioner listed three people as sources of verification of her husband's absence. When the department contacted these individuals, however, none of them could verify that the husband lived elsewhere. The department also contacted the husband's probation officer who

informed them that the husband had not reported a change of address (which was required as a term of his probation).

As luck would have it also, a caseworker in the district office lived directly across the street from the petitioner. She had observed the petitioner's husband being dropped off from work at the petitioner's house every weekday evening during the period in question. She did not observe him leaving before 11:00 p.m., when she went to sleep. On Sundays, the caseworker observed the petitioner, her husband, and the children go to church together. She observed that the husband appeared to be "home for the weekend."

The petitioner alleges that as of early July, 1988, her husband had moved to a trailer in a town located at least 1/2 hour distance from the petitioner's home. Her husband had lost his license and did not drive. A friend of his dropped him off from work each evening. The petitioner alleged that her husband left each night by the back door and was driven to his home.

Based on the evidence presented, it must be found that the petitioner's husband was not continuously absent from the petitioner's home during the period in question. The petitioner's allegations are difficult to credit for several reasons. First, although given ample opportunity to do so (the matter was continued after the initial hearing), the petitioner presented no corroborative

testimony or evidence of any sort to support her testimony.

Although it appears there was some tension between the petitioner and her neighbor (the caseworker) that was entirely unrelated to the petitioner's dealings with the department, the caseworker's testimony was deemed credible.

The petitioner did not credibly explain why her husband, who needed a ride of some distance to get "home" each night, would not meet his ride in front of the house--the same way he arrived.

The petitioner reapplied for ANFC benefits on August 15, 1988, alleging a change in circumstances. At the time of the hearing (held on September 15, 1988) the department had not made a determination of the petitioner's eligibility based on the second application. The hearing officer still does not know the result of this application.

However, the parties informed him that no dispute exists in this matter as of August 15, 1988.<sup>1</sup> Therefore, the decision in this case effects only the one-month closed period from July 15, 1988, to August 15, 1988.

ORDER

The department's decision is affirmed.

REASONS

"Absence" is defined in § 2331 of the ANFC regulations as follows:

Continued absence of a parent refers to physical absence of a parent from the home for one of the following reasons, the nature of which interrupts or terminates the parent's functioning as a provider of maintenance, physical care or guidance for the child:

. . .

2) Divorce or legal separation of the parents.

. . .

The board has held that the threshold issue in these matters is whether the allegedly absent parent is, indeed, "physically absent" from the home on a regular basis. Fair Hearing No. 6877. Because it cannot be found that the petitioner's husband was, in fact, living elsewhere during the period in question, the above definition is not met. The department's decision is affirmed.

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