

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 8869
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for ANFC. The issue is whether the father of the petitioner's child is "absent" from the petitioner's home within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner is seventeen years old. In May, 1988, she gave birth to a baby boy. For the previous two and a half years the petitioner had lived "off and on" with the father of the child. In May, 1988, she and the father were sharing an apartment with the petitioner's sister.

In June, 1988, the petitioner and the father applied for ANFC based on the father's "unemployment". On July 11, 1988, the father began working. Apparently, however, he had problems keeping the job. On August 3, 1988, the Department denied their ANFC application based on the father's noncooperation with the work registration requirements of the ANFC-UP program.

Sometime in July, 1988, the father "moved" into a friend's apartment that was located "around the corner"

from where the petitioner was living. The child "visited" the father at his apartment for about 6 hours per day. The petitioner testified that she, herself, visited the father's house "sometimes". When the petitioner began school in September, the father would watch the child. The petitioner would drop the child off at the father's apartment and provide him with food and diapers for the child. When asked to explain the reasons for the "separation" the petitioner responded only that it was for "personal reasons".

The petitioner applied for ANFC based on the father's "absence" in October, 1988. The Department denied the application because it determined that the father's care, maintenance, and guidance of the child was not interrupted or terminated due to his absence from the petitioner's home.

Shortly after the Department denied the petitioner's application she "broke up" with the father. She and the child now live with her father in another town from the father of the child.¹

Based on the above facts, which are not essentially in dispute, it must be found that the petitioner's and the father's living situation was little more than a contrivance designed primarily to establish eligibility for ANFC. The petitioner, herself, stated that she and the father did not "break up" until after her ANFC application was denied. Although the father may have slept at a place

separate from the petitioner's residence, there is no evidence that his relationship with the petitioner and the child was significantly altered by this circumstance. Any lack of parental support on his part does not appear to have been a function of his "absence". Thus, the factual requirements of the regulation in question were not met (see infra).

ORDER

The Department's decision is affirmed.

REASONS

The regulations defining ANFC eligibility based on "deprivation of parental support" due to the absence of a parent include the following provisions:

§ 2331. 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:

. . .

3. Informal separation of parents without benefit of legal action.

In Fair Hearing's No. 6838, 6877, an 8427 the Board held that when the "physical absence" of a parent appears "contrived", one must look closely at the question of whether the level of parental support (care, maintenance, or guidance) is interrupted or terminated as a result of the absence. In this case, the petitioner did not establish that the level of parental support by the father of her child was at all adversely effected by his "absence"

from her home.² If anything, it appears that the father's level of support (at least in terms of care and guidance) actually increased during this time.³ (It appears that his provision of financial support was at all times marginal, at best. The petitioner, herself, stated, "he won't work".)

For these reasons it must be concluded that the regulatory definition of "absence" (supra) was not met. The Department's decision is affirmed.

FOOTNOTES

¹At the hearing, the petitioner was advised to reapply for ANFC based on these circumstances. The decision in this matter concerns only the circumstances that existed prior to the date of the Department's denial of the petitioner's October, 1988 application for ANFC.

²This case is distinguished from Fair Hearing No. 6197 primarily by the facts that in Fair Hearing No. 6197 the parents (who, like the petitioner herein, were themselves minors) had never lived together in the home of the child and were living separate for specific reasons entirely unrelated to their eligibility for ANFC.

³This is not to say that an absent parent who maintains or even increases his level of "parental support" after he moves out cannot be "absent" from the child's home within the meaning of the regulation. The key factor in such cases is whether the parents' "separation" is a bona fide one. See Fair Hearing Nos. 6111, 6211, 6324, 6576, 6624, and 7038.

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