

**A.S.,**  
**Petitioner,**  
**v.**  
**BERGEN COUNTY WELFARE BOARD,**  
**Respondent.**

Initial Decision: October 9, 1981      Final Agency Decision: November 10, 1981

Amended Final Agency Decision: December 10, 1981

Superior Court, Appellate Division Decision Appears at: 191 *N.J. Super.* 228 (App. Div. 1983)

**SYNOPSIS**

The Bergen County Welfare Board reduced petitioner's AFDC and Food Stamp benefits claiming that petitioner's spouse was present in her home and therefore, she and their children were ineligible for assistance.

The administrative law judge assigned to the case found that petitioner lives in an apartment in the same five-family building in which her spouse's parents live and that petitioner's spouse is currently living in his parents' apartment. The judge determined, however, that evidence presented by the agency was insufficient to establish that petitioner's spouse was living in petitioner's home or that petitioner's spouse was providing maintenance, physical care or guidance for the children. Accordingly, the judge determined that petitioner continued to be eligible for benefits based upon deprivation of parental support and care.

Upon review of this initial decision, the Director of the Division of Public Welfare rejected the initial decision. The Director rejected petitioner's contention that her spouse had no contact with the family unit finding that petitioner and her spouse live in the same dwelling unit. Accordingly, the Director denied eligibility for benefits.

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**Richard Semel, Esq.,** for petitioner (Bergen County Legal Services, attorney)

**Richard Williams,** Assistant Counsel, for respondent

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**ROBBINS, ALJ:**

Petitioner requests relief from the administrative determination of the Bergen County Welfare Board reducing assistance under the program of Aid to Families with Dependent Children (AFDC) and Food Stamps (FS), pursuant to *N.J.A.C.* 10:81-2.7(d). The agency alleges that petitioner's spouse is in the home and, therefore, she and their two children are ineligible for assistance. Petitioner continues to have eligibility for one child from a former union. The matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to *N.J.S.A.* 52:14F-1 *et seq.*

Petitioner requested a hearing on August 17, 1981, after receipt of adverse action notice dated August 7, 1981. After notice to all parties, a hearing was held on September 22, 1981, in the Hackensack Municipal Court, Hackensack, New Jersey. At the time of the hearing, the court determined that the issue was one of disputed facts. Therefore, in accordance with *N.J.A.C.* 10:81-7.4(a), the agency was advised to continue assistance unreduced pending a final decision in this matter.

At issue is the administrative determination to terminate AFDC assistance because of the alleged presence in the home of the father of two eligible children. The relevant regulation, *N.J.A.C.* 10:81-2.7(d), provides as follows:

Continued absence of the parent from the home constitutes deprivation of parental support or care. Absence will be considered continued when: it interrupts or terminates the parent's functioning as a provider of maintenance, physical care or guidance for the child; . . . .

Petitioner lives in an apartment in a five-family building. The parents of petitioner's spouse are superintendents of this building and occupy another apartment at the same address. At the present time, petitioner's spouse is living with his parents. Because of the foregoing, the agency asserts that petitioner's spouse is not absent from the home of his spouse and children.

Petitioner asserts that she has lived with her spouse only briefly during their marriage. They would be divorced if they could afford to take this action. Petitioner is attempting to find other living quarters but is having difficulty doing so. She states that she does not see her spouse and he never sees the children or visits in any way. She has no contact with him. She states that he gives her no help of any kind. He provides no money for purchase of any items for the children and he has no contact with the children.

A friend of petitioner's testified on her behalf and corroborated her statements about the absence of her spouse.

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The agency presented no testimony further than to establish that petitioner's address and her spouse's address were in the same building.

Based upon the foregoing, I **FIND**:

1. Petitioner lives in an apartment in the same five-family building in which her spouse's parents live.
2. Petitioner's spouse is currently living in his parents' apartment.
3. Evidence presented by the agency is not sufficient to establish that petitioner's spouse is living in petitioner's home or that petitioner's spouse is functioning as a provider of maintenance, physical care or guidance for the children.

Based upon the facts adduced at the hearing in this proceeding and the applicable regulations, I **CONCLUDE**, pursuant to *N.J.A.C.* 10:81-2.7(d), that petitioner's spouse is absent from the home and, therefore, the family continues to have eligibility for AFDC and FS based on deprivation of parental support and care.

Therefore, the action of the Bergen County Welfare Board in terminating AFDC and FS assistance is **REVERSED**.

**FINAL DECISION BY THE DIRECTOR OF THE DIVISION OF  
PUBLIC WELFARE, G. THOMAS RITI:**

Having reviewed the initial decision and any exceptions or replies submitted, I hereby amend the decision of the administrative law judge in the above captioned case.

Pursuant to the definition of continued absence set forth in *N.J.A.C.* 10:81-2.7(d), the County Welfare Agency must determine whether or not a parent has opportunity to exercise parental responsibility irrespective of the parent's physical presence in the home. In the instant case, the fact that the father is a resident of the same dwelling unit as the eligible unit is deemed sufficient grounds to support a presumption that opportunity exists to exercise parental responsibility. The petitioner's assertion that the father provides no financial support or has no contact with the eligible unit is not evidence of continued absence within the meaning of the regulation. Accordingly, the recommended decision by the administrative law judge is not accepted and the action terminating assistance under the C segment of the AFDC program is affirmed.

Termination of participation in the Food Stamp program based on loss of public assistance household status, is also affirmed.

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**AMENDED FINAL DECISION BY THE DIRECTOR OF THE  
DIVISION OF PUBLIC WELFARE, G. THOMAS RITI:**

Having reviewed the initial decision and any exceptions or replies submitted, I hereby amend the decision of the administrative law judge in the above captioned case as the Final Decision.

Pursuant to the definition of continued absence set forth in *N.J.A.C* 10:81-2.7(d), the County Welfare Agency must determine whether or not a parent has opportunity to exercise parental responsibility irrespective of the parent's physical presence in the home. Facts presented establish the petitioner, who is unemployed resides in a multi-family building which is also the residence of her spouse who is the father of two of the children in the eligible unit. The petitioner's contention regarding absence of contact between the father and the eligible unit is not accepted as credible and the assertion that her spouse provides no financial support is not evidence of deprivation within the meaning of the regulation. Accordingly, the recommended decision by the administrative law judge is not accepted and the action reducing assistance under the C segment of the AFDC program, based on loss of continued eligibility for the petitioner and two children, is affirmed.

Termination of participation in the Food Stamp program based on loss of public assistance household status, is also affirmed.