

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 10,214  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for emergency fuel assistance. The issue is whether the Department's actions were in accord with the pertinent regulations.

FINDINGS OF FACT

The petitioner lives with her six children. She receives ANFC, Food Stamps, and Social Security, and has a part-time job. Because of her work, she is a "monthly reporter" in that her ANFC and Food Stamp benefits are determined retrospectively based on her previous month's earnings.

On January 2, 1991, the date the petitioner filed her monthly report for December, 1990, the petitioner also applied for emergency fuel benefits. She was very low on fuel and had no cash or resources on hand to purchase more. The Department denied her application because the petitioner on her application could not adequately account for how she had spent her income in December. On January 4, 1990 the decision was "affirmed" by the District Director and, then, by the Commissioner pursuant to an appeal process specified in the regulations (see infra).

On the petitioner's application the Department noted that child care<sup>1</sup> and Christmas presents were included as expenses for December. The Department determined that neither of these was "unanticipated" or "extenuating". Furthermore, even with these claimed expenses, the petitioner listed her total expenses for December as being \$100.00 less than her income for that month. However, even though the Department determined that the petitioner should have had sufficient income to buy fuel, there is no allegation or evidence that at the time of her application she, in fact, had cash on hand.

The Department also noted that the petitioner had applied for, and had been granted, emergency fuel assistance two months before and had, in the Department's view, failed to heed this as a warning to budget her income more carefully. Finally, the Department also considered the fact that the petitioner's ANFC "housing allowance" exceeds her actual rent because the petitioner is a recipient of a "Section 8" subsidy.<sup>2</sup>

After being denied emergency assistance, the petitioner ran out of fuel on January 4, 1991; but, fortunately, her father promptly paid for another delivery. To date, the petitioner's father has not asked the petitioner to repay him, although the petitioner feels she has a responsibility to do so.

ORDER

The Department's decision is affirmed.

REASONS

The following regulations describe the aspects of the emergency fuel program that appear pertinent to this case:

2950 Emergency Assistance

Emergency assistance in accordance with the following regulations may be extended to alleviate a crisis due to lack of heating capacity for individual households.

The period during which applications will be accepted and benefits granted under regulations pertaining to this component of the program will be from the last Monday in November to the second Friday in April for all households whose primary heating fuel is delivered in bulk and to the last regular working day in April for households whose primary heating fuel is by metered service, subject to change by the Commissioner of Social Welfare on the basis of weather conditions and funds available.

2951 Eligibility

It is not the intent of these regulations to define a program of entitlement; i.e., a household whose income and resources are within the specified limits and who has a fuel need does not become entitled to a grant, and indeed may be denied. It is the intent of this regulation to provide a framework within which department staff, based on their judgment, may grant assistance to households who face a heating crisis.

In making this judgment staff will consider the individual situation; income, resources, prior applications, and what led to the crisis. Staff will also consider what potential income and resources are available and the extent to which the household can commit all or a portion of such potential toward meeting or partially meeting their current heating need crisis. This potential shall include all members of the household and not simply those bearing direct responsibility for the purchase of fuel.

Within this framework, staff will determine eligibility on the basis of conserving program funds and utilizing client resources to the maximum extent reasonably possible. Staff will make every effort to assist those who are denied eligibility to find alternative

solutions to their problems.

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2956           Benefits and Payment Maximum

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All applicants for emergency assistance must meet the income and resource eligibility criteria, and demonstrate that their fuel emergency resulted from unpredictable or extenuating circumstances. To make such a determination the Department will complete a careful assessment of past income; uses made of income and resources; relative necessity of such uses including consideration of age, health, and other factors having impact on necessity; and adequacy of planning (past and future) to avoid such emergency. Households will be expected to decline or delay payment for non-essentials in favor of assuring themselves an adequate fuel supply and to make reasonable efforts to conserve fuel to avoid an emergency.

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2957           Appeal Rights, Emergency Component

When an applicant is found ineligible under this component of the program he or she is entitled to an appeal process designed to address the potential urgency of the unmet need. The worker, upon determination that an applicant is not eligible, shall advise the applicant of the reason for denial and explain his or her rights to appeal the decision to the supervisor and the District Director or a designee. The applicant may appeal simply by stating that he or she wishes to do so.

The District Director will provide for hearing the applicant's appeal at the earliest possible opportunity and in no event later than the next normal working day.

The applicant may bring representation of his or her choice to assist in presenting the case. The District Director will review the circumstances of the case to consider the nature of the emergency, unpredictable or extenuating circumstances, prior effort on the part of the applicant to avoid the crisis, potential for meeting the need or finding alternative solutions, as well as proper application of policy. The District Director may waive policy or procedure in order that unique situations may be addressed on an individual basis. However, the department shall incur no obligation to grant any waivers by virtue of this authority. Waivers if authorized, may be under

condition of special agreements negotiated with the individual applicant regarding weatherization, conservation, financial management, counseling, payment, recoupment, etc. The District Director, following completion of the review, will confirm, modify or revise the decision, and provide written notice of the action taken. The basis for the decision must be documented in the case record.

The applicant may enter an appeal from the decision of the District Director at the time of the decision or anytime within three days. This appeal, although addressed to the Commissioner, will be processed through personnel specifically delegated this authority. It may be conducted in person, in writing, or by telephone when necessary to expedite the process to meet an emergency need. The District Director will provide telephone service from the District Office to State Office for any applicant who wishes to present his or her appeal in this manner.

Further appeal must be processed through normal channels in the form of a request for fair hearing before the Human Services Board. Fair Hearing rules are contained in section 2910.

(Emphasis added.)

Under the above regulations the determination of eligibility for the program appears to be highly discretionary. Based on the information available to the Department at the time of the petitioner's application,<sup>4</sup> it cannot be concluded that the Department's denial was not in accord with the regulations--particularly §§ 2951 and 2956, supra.

However, the Department's discretion under § 2957 includes the authority to address "unique situations" through "special agreements negotiated with the individual applicant regarding . . . recoupment." In this case, whatever the circumstances that "caused" the petitioner's emergency, the following was clear: the petitioner met the

general income guidelines of the program, it was midwinter, the petitioner had six minor children, she was out (or very nearly out) of fuel, she was expecting an ANFC check within a few days that she was, in effect, offering to be used as "collateral" for repayment, and it was a few days after Christmas.<sup>5</sup> Surely, these factors should have outweighed any administration inconvenience and adverse "precedent" the Department may have feared setting by granting the petitioner a "waiver" under § 2957.

While the regulations clearly provide the Department with a discretionary mechanism to allocate scarce funds, it is not the intent of the regulations to, in effect, punish households for perceived financial imprudence--especially when, as here, there exists a readily available means for the Department to recoup any and all funds it expends to relieve the existent emergency.

The hearing officer and the board read the above regulations (and will continue to do so unless contradicted by a court of law) as committing the Department to take whatever steps are legal, reasonable, and necessary to avoid having individuals--especially children--go without heat in the midst of a Vermont winter.

Had this hearing been held on January 4, 1991, the hearing officer and the board would not have hesitated to order the Department to grant the petitioner a waiver under § 2957 sufficient to purchase a minimum delivery of heating

fuel. At this point, however, since the Department could have required the petitioner to agree to some form of recoupment, the petitioner is no worse off than she would have been had such an order been entered. Therefore, further relief is inappropriate. However, the Department should consider itself "on notice" that the board will expect it to apply the provisions of § 2957 liberally. Unless compelling circumstances (not present in this case) dictate otherwise, individuals--especially children--should not be left at risk of being without heat in the middle of winter in Vermont if it can reasonably be avoided.

FOOTNOTES

<sup>1</sup>The petitioner attends college one weekend every three weeks. Child care for this time is not deductible from her ANFC income as it is for when she is working. Whether the Department's Reach-up program should cover this expense is the subject of another pending fair hearing.

<sup>2</sup>See W.A.M. §§ 2245.31 and .33.

<sup>3</sup>It did not come out directly at the hearing, but the hearing officer senses that the petitioner's "history" of dealings with the district office played a significant part in the Department's decision in this case.

<sup>4</sup>At the hearing the petitioner testified that she mistakenly understated her food expenses on her application by at least \$100.00.

<sup>5</sup>The Department did not allege that it knew or had any reason to believe that the petitioner's father could or would buy fuel for her.

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