

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,083
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare denying him Refugee Cash Assistance and Medicaid.¹

FINDINGS OF FACT

1. The petitioner is a refugee from Romania who arrived in the United States on October 3, 1991. On that same day he made a formal written request for asylum with the Immigration and Naturalization Service and a request for employment authorization.

2. The instructions accompanying the petitioner's request for asylum informed him that he would be interviewed by an Immigration officer within forty-five days after his form was received. However, the petitioner heard nothing further from Immigration and Naturalization Service (I.N.S.) within that time frame. After the forty-five days passed, the petitioner made several calls to I.N.S. to find out what had happened to his application to no avail. The petitioner received a written acknowledgment of receipt of the October 3, 1991 request from the I.N.S. on February 24, 1992. That acknowledgement told the petitioner that he would get a notice

of a date and place for an interview. As of April 1, 1992, the date of the hearing, the petitioner had yet to receive that notice.

3. On December 18, 1991, the petitioner, who still had no authorization to work, applied for Refugee Cash Assistance (R.C.A.), Medicaid, and Food Stamps at the Department of Social Welfare. He received a notice December 20, 1991 denying his eligibility for all programs because "You are not an eligible alien as you are unable to participate in a job search".

4. With the intervention of Senators Jeffords and Leahy, the petitioner received an oral authorization to work on February 18, 1992 from the I.N.S. On February 24, 1992, he received a written acknowledgment from I.N.S. of receipt of his request for asylum and was told he would receive a separate notice regarding an interview time.

5. With this information in hand, the petitioner reapplied for ANFC, Food Stamps, and Medicaid. On February 27, 1992, the petitioner was denied R.C.A. because his application was still pending with I.N.S. to determine his alien status and for Medicaid because he was categorically ineligible. He was, however, granted Food Stamps and advised that he would have to participate in the Food Stamp work program.

6. As of the date of the hearing on April 1, 1992, the petitioner had still not received an interview

appointment with I.N.S. Even though he is relatively fluent in English and has an extensive background in nuclear physics and engineering, he has been unable to find employment in spite of his own extensive efforts and assistance from city officials.

7. The petitioner's sole source of income at present is Food Stamps of \$111.00 per month. He is unable to live on that amount and unable to buy paper and envelopes which he says he needs to do a proper work search. He bases his claim for benefits on his general human right of life and survival and to his rights as a refugee under the United Nations charter. He believes he should be found eligible for all programs from his initial date of application in December of 1991. The petitioner has not applied for nor apparently been advised to apply for any other programs administered by the Department. The Department's attorney advised him at the hearing to apply for General Assistance.

ORDER

The Department's decision denying both A.N.F.C. and Medicaid is affirmed.

REASONS

The R.C.A. program is only available to those persons who first meet the categorical definition of "refugee" set out at W.A.M. § 2501. Under those definitions, "a person with an I.N.S. status of applicant for asylum . . . is not eligible". W.A.M. § 2501(F). Under the regulations, an applicant from the petitioner's country can only meet the

categorical eligibility requirements if he has "been paroled as a refugee or asylee" via an "I-94" I.N.S. form. W.A.M. § 2501(E).

The petitioner in this matter is clearly (and admittedly) still only an applicant for asylum as he has not yet been interviewed by the I.N.S. The instructions given to him by the I.N.S. clearly contemplate that this procedure will be fairly rapid, but in his case at least, this process appears to have broken down. The result has been extreme hardship and unfairness for him as a timely decision to grant such status would have clearly made him categorically eligible for R.C.A. benefits and Medicaid. See W.A.M. § 2502.2. As it now stands, the petitioner has been placed in a veritable limbo by the I.N.S.' inaction in his case which allows him to remain in this country but denies him benefits conferred on formally "paroled" refugees. To make matters worse, refugee benefits cannot be paid to persons who have lived in this country for more than eight months which means that he may never receive any benefits under this program. See W.A.M. § 2502(c).

However, the fact that the federal asylum process has broken down in this case does not change the R.C.A. eligibility rules. The petitioner's status has been specifically excluded under the category of persons eligible for this program. Although the petitioner cites general humane considerations, he could cite no law which requires

the inclusion of applicants for asylum in a federal/state assistance program. Therefore, it must be concluded that the Department's action in finding him ineligible for the R.C.A. program is correct. That finding does not mean, however, that he may not be eligible for some other program such as General Assistance, and he is encouraged to apply under that program.

FOOTNOTES

¹The petitioner at hearing also stated that he had intended by his general appeal to appeal the prior Food Stamp disqualification. As the petitioner's general appeal could not fairly be found to put the Department on notice of that fact, the Food Stamp issue was set for a separate hearing following the Department's request for time for the Commissioner to review the matter.

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