

unemployment compensation benefit he received was paid through the state of California based on earnings of the petitioner as a federal census taker from October 1, 1989 through September 30, 1990.

4. The petitioner also submitted two documents provided to him by the Department² showing the Department's budget and the methodology used by the Department in determining the standard of need. Based upon that document, it is found that the Department determines the standard of need by looking separately at two components, basic needs (non-shelter) and shelter needs. Basic needs are calculated based on data collected in 1965 in seven areas (food, fuel, utilities, chore services, personal needs, and incidental and other special needs) which data has been adjusted annually since that time for cost of living increases based on the Consumer Price Index. The shelter need is calculated from the median cost of shelter to ANFC families who have shelter and are not living in subsidized housing.

ORDER

The decision of the Department is affirmed.

REASONS

The issues raised in this appeal are virtually the same as those raised in Fair Hearings No. 10,378 and 11,058 involving this same petitioner. The reasoning in those decisions is adopted herein as the basis for this decision.

The Department has further pointed out that in addition to the authorities cited in Fair Hearing No. 10,378, the Vermont federal court has specifically upheld the right of the legislature to only pay a portion of the need standard established by the Department. Dale v. State of Vermont, 630 F. Supp. 107 (1986), aff'd 795 F. 2d 1004 (1986).

The petitioner does raise one somewhat different argument in this appeal, namely the validity of the Department's methodology used in calculating the standard of need. Specifically, he contends that the Department's calculations are flawed because they should not be using 1965 and 1967 data as a base for determining need. However, the document which the petitioner put into evidence indicates that the original data has been adjusted on an annual basis for cost of living increases based on the consumer price index. It cannot be concluded based on the evidence presented by the petitioner that the Department's methodology is patently incorrect. In fact, it appears that the Department's methodology follows the one required of states in the federal regulations. See 45 C.F.R. § 233.20(a)(2)(ii). Unless and until the petitioner can present some competent evidence showing that the Department's calculations do not reflect the current need standard for a family of four, it must be presumed that the Department's calculations of need are correct.

FOOTNOTES

¹The \$392.00 reported by the petitioner is actually the

latest in a series of unemployment compensation payments report by the petitioner covering the period beginning in January 1992. The Department has been attempting since February 12, 1992 to reduce the \$709.00 per month but has been unable to do so because those notices had been appealed and were still pending decision as of April 15, 1992. See Fair Hearing No. 11,058.

²In the course of this hearing, the petitioner propounded interrogatories to the Department which the Department objected to answering because civil rules of discovery are not applicable in Human Services Board proceedings. The hearing officer agreed with the Department's position but after reviewing the proposed interrogatories and ascertaining the gist of the information sought, ordered the Department to present the petitioner with documents showing the Department's budget and how the Standard of Need is calculated, pursuant to Fair Hearing Rule No. 4.

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