

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,569

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Appeal of)

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INTRODUCTION

The petitioner appeals the Department of Social Welfare's decision to reduce the benefits he receives under the Low-Income Home Energy Assistance Program (LIHEAP) based upon his receipt of federally funded housing and utility subsidies.

FINDINGS OF FACT

In lieu of a hearing, the parties have agreed that the following are the facts in this case:

1. Petitioner is a 57 year-old individual who lives with his wife in a rented house located in Burlington, Vermont.
2. Petitioner's landlord receives a subsidy from the Vermont State Housing Authority under the HUD-financed Voucher Program. The Voucher Program is a federal housing subsidy program for low-income tenants created under the U.S. Housing act, as amended, 42 U.S.C. § 1437f(o).
3. Petitioner does not pay his landlord directly for rent. The Vermont State Housing Authority pays the landlord \$590 per month as a subsidy under the Voucher Program.
4. Petitioner's household receives \$540 per month in income in the form of Social Security Disability benefits. This has been the household's only income for all times relevant to this appeal.
5. Under the terms of his rental agreement, petitioner, pays out-of-pocket costs for all utilities. He heats his house with oil. He also pays for electricity and for natural gas for cooking. Petitioner receives approximately \$57 per month from the Vermont State Housing Authority to pay for utilities.

6. On September 17, 1993, petitioner applied to the Vermont Department of Social Welfare (DSW) office in Burlington, Vermont to receive benefits under the Low Income Home Energy Assistance Program (LIHEAP) administered by DSW.

7. Under the LIHEAP Program, 42 U.S.C. § 8621-8629, the Secretary of Health and Human Services is authorized to make grants to the states for the purpose of assisting eligible households meet the costs of home energy.

8. On October 14, 1993, DSW notified petitioner that he would be denied LIHEAP benefits for the 1993-1994 winter heating season.

9. DSW based its calculations of petitioner's ineligibility for benefits, *inter alia*, on the guidelines set forth in DSW Fuel Policy Manual § 2901-2904 (revised October 1993) and Fuel Procedures Manual § P-2905 (revised October 1993). Copies of the revised sections of Fuel Policy § 2901-2904 and the revised sections of Fuel Procedure § P-2905 are attached hereto as Exhibit "A".

10. In calculating petitioner's ineligibility for benefits, DSW attributed to him unearned income of \$458, representing an imputed portion of his public housing subsidy. The addition of \$458 to petitioner's Social Security income of \$540 gave him a total of \$998.00 in income for purposes of DSW's fuel assistance calculations.

11. As a result of the Department's calculations, petitioner was denied fuel assistance benefits, because his income exceeded \$990.00, the maximum amount set by the Department to establish fuel assistance eligibility for a household of two. Fuel Procedure Manual § P-2905-A.

12. Petitioner contends that DSW should not have added the \$458 standardized subsidized housing increment to his unearned income. Not using the increment would have made his household eligible for the fuel assistance grant.

13. DSW added the \$458.00 to petitioner's unearned income as part of its implementation of new policies for determining fuel assistance eligibility and benefits levels for tenants residing in federally subsidized housing. DSW's rationale for adopting these standards is set forth in a DSW Bulletin No. 93-36F dated September 22, 1993. A true and correct copy of Bulletin No. 93-36F is attached hereto as Exhibit "B".

14. DSW implemented the various changes in fuel assistance benefits calculations set forth in Bulletin 93-36F and in Fuel Policy §§ 2901-2904 and in Fuel Procedure § P-2905 G as the result of changes enacted by Congress in amendments to the Housing and Community Development Act of 1992. The 1992 federal legislation clarified prior law on the subject in stating that tenants residing in federally subsidized housing may not be declared categorically ineligible for fuel assistance benefits, as had been the DSW policy in Vermont prior to the 1993-94 heating season.

15. The standardized supplements to unearned income contained in Fuel Procedures P-2905 G reflect DSW's estimation of levels of subsidy for rent and utilities that subsidized housing tenants receive, depending on the size of their rental unit and the manner in which they pay for heat. By adding these standard increments to unearned income, DSW reduces or denies fuel assistance benefits paid to subsidized housing tenants who receive a utility allowance and housing subsidy.

16. Petitioner receives benefits under the Voucher Program. Under that program, the Housing Authority pays a monthly subsidy to the private landlord who owns petitioner's rental dwelling. The amount of the subsidy paid to the landlord equals the difference between a standardized rent level set by the housing authority and a reduced rent paid by petitioner.

17. The monthly market level rent for petitioner's rental dwelling is \$590. Petitioner does not make a monthly rent payment to the landlord. After subtracting the utility allowance from one-third of his income, petitioner's rent would be less than \$0.

18. In December 1993, DSW revised its calculations for the increments to unearned income applied to households residing in subsidized housing. Under the revised calculation, DSW would add \$335, instead of \$458, to petitioner's household income. The change, if applied retroactively to October, 1993, would make petitioner eligible for some fuel assistance benefits. Under WAM P-2905 B, the higher its household income, the lower will be the amount of fuel assistance benefits the household receives. Under the revised calculation, petitioner's level of benefits will be lower than it would be were no increment at all added to his income.

ORDER

The section of the Department's LIHEAP regulations which include the value of subsidized housing and utility allowances as unearned income is struck as violative of the federal statute and the petitioner's case should be remanded for a calculation of his eligibility and benefits without attribution of the standardized income amount until such time as the Department may revise its regulations.

REASONS

This same issue came before the Board in Fair Hearings Nos., 12,424, 12,353, 12, 415, 12,387, 12,404, and 12,474. In those hearings the Board determined that the mandates in the federal energy statutes at Sec. 927(b) of the Housing and Community Development Act of 1992, 42 U.S.C. § 8624 (as amended by Pub. Law 103-185, Title IX, Sec. 927, Dec. 14, 1993) requiring equal treatment of applicants for heating assistance are violated by the Department's regulations at W.A.M. 2904.2 and 2904.3(10) requiring the inclusion of in-kind income only when computing the eligibility of persons who receive federal housing subsidies. The Board also concluded that the standardized income figures employed in W.A.M. 2904.2 to determine the amount of the in-kind income also singled out federally subsidized tenants for treatment not accorded any other group applying for assistance. Thus it was determined that the portions of the regulations requiring that rent and utility subsidies be included as unearned income at W.A.M. 2904.2(1) and 2904.3(10) must be struck from the text as violating the federal statutes authorizing the heating program.⁽¹⁾

The Department has offered no new argument which would square its regulation with the federal law. In fact, it has not even requested that the Board reconsider its prior decision. There is no reason, therefore, not to apply the prior reasoning to this case.

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1. For an extended discussion of the legislative history of the federal law and the Board's reasoning behind this decision, see Fair Hearings 12,424, et al.