

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,100

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare to reduce her Food Stamp grant and to deny her Supplemental Fuel assistance benefits. The issue is whether the petitioner's fuel and utility allowance has been properly calculated and considered.

FINDINGS OF FACT

1. The petitioner is a disabled woman whose sole source of income in SSI benefits of \$500.87 per month and who lives in Section 8 subsidized housing.
2. The petitioner's rent in her section 8 apartment is \$149.00 per month. That rent is set based upon her income level. She is not required to pay any of her heating expenses out of pocket but she does pay for her electricity. Last heating season, she was found eligible for fuel assistance under regulations, since changed, which allowed Section 8 recipients to get assistance even if they did not have direct liability for fuel expenses. Her receipt of fuel assistance further allowed her to receive a higher fuel and utility standard deduction (now set at \$312.00 per month) when she applied for Food Stamps without showing that she had actual fuel and utility expenses.
3. This year, in a notice dated September 12, 1994, the Department denied the petitioner fuel assistance because she could not demonstrate that she had actual liability for heating expenses. She was also notified that her Food Stamps would be reduced because she had been given a lower allowance for fuel and utility amounts (\$117.00 per month). This occurred not because of any actual change in the petitioner's circumstances but because her failure to receive fuel assistance knocked her into a lower category of automatic fuel and utility deductions in the Food Stamp program. The petitioner was advised, however, that she could get a larger deduction if she could show that her actual utility expenses exceeded \$117.00 per month. The petitioner does not claim, however, that her actual expenses exceed \$117.00 per month.

4. The petitioner's Food Stamp eligibility was actually calculated by deducting a \$134.00 standardized figure from her SSI income of \$500.87 for a countable total income of \$366.87. Her shelter and utility standard was calculated by dividing her countable income in half (\$183.44) and comparing it with her shelter expense of \$266.00 per month (her \$149.00 rent plus her \$117.00 utility allowance). The difference of \$82.56 was considered an excess shelter amount and was further deducted from her countable income of \$366.87, leaving a countable income of \$284.31 per month. The Department determined that a person with \$284.31 in income is eligible for \$29.00 in Food Stamps.

5. At the hearing, the petitioner indicated that she had large medical expenses and was about to incur a considerable expense for a home health aid. At her request, the hearing was continued for one month in order to allow her to bring in evidence of those expenses. She was able to verify only \$52.00 in medical expenses over the last year which were not covered by Medicaid. The Department divided that amount by twelve months and determined that she had only \$4.33 per month in excess expenses. No medical deduction was granted to her because she had less than \$35.00 per month in medical expenses. The petitioner presented no evidence that she had yet engaged a home health aid but said she might do so in the future. The Department invited her to submit verification of that expense when it occurred to receive an adjustment in her Food Stamp amount.

ORDER

The decision of the Department is affirmed.

REASONS

The Fuel Assistance regulations as revised on September 25, 1994, exclude from eligibility

2. Residents of public subsidized housing for which heat is provided in the rent and who do not receive, either directly, or indirectly as a reduction of their rent obligation, any utility allowances that include energy costs. This exclusion does not preclude emergency assistance in extenuating circumstances.

Other public subsidized housing residents who are responsible for out-of-pocket payments for utility bills for heat and receive utility allowances that include energy costs for heat are eligible, and will remain eligible as long as a legal requirement to provide LIHEAP benefits to subsidized housing residents exists.

W.A.M. 2902.4

The petitioner does not pay for her own heat and is not given any utility allowance to do so. Her utility allowance is exclusively for electricity, which is not her source of household heating. Therefore, she was properly denied fuel assistance benefits for this heating season.

Vermont uses three standardized utility allowances, one which includes heat, one which includes utilities without heat and one for households who have only telephone service. F.S.M. 273.9(d)(6)(v). The standard utility allowance which includes heat is available only to households which incur heating costs separately from their rent, including:

A Residents of rental housing who are billed on a monthly basis by their landlords for actual usage as

determined through individual metering;

B Recipients of energy assistance payments made under the Low Income Energy Assistance Act of 1981; or

C Recipients of indirect energy assistance payments, made under a program other than the Low Income Home Energy Assistance Act of 1981, who continue to incur out-of-pocket heating or cooling expenses in accordance with 273.10(d)(6) during any month covered by the certification period.

F.S.M. 273.9(d)(6)(ii)

Last year, even though she had no out of pocket heating expenses, the petitioner was eligible for the LIHEAP (fuel assistance) program. Because she was eligible for that program, she automatically became eligible for the larger utility allowance with heat provided in the Food Stamp program. This year, with a change in the fuel assistance regulations, she is no longer eligible for LIHEAP benefits. Therefore, she can only get the larger utility allowance if she can show actual out of pocket expenses for heating. Because she cannot make this showing, she receives the lower utility allowance for Food Stamps.

The Department's decision in her case is correct, although the petitioner's consternation is understandable. Her Food Stamp reduction occurred not because of a change in her circumstances but because of a change in the regulations which, in essence, gave her an advantage in prior years. The petitioner has been made aware that she can get her actual utility costs if they are higher than the standard allotted her. F.S.M. 273.9(d)(6)(vii). As a disabled person, she is also eligible for an excess medical expense deduction if she should incur monthly expenses in excess of \$35.00. W.A.M. 273.9(d)(3). Although the Department is correct that she does not currently have excess expenses, the cost of a homemaker, home health aide or attendant necessary because of her infirmity could be used to meet this \$35.00 "deductible" if she should hire one in the future. F.S.M. 273.9(d)(3)(10). She should contact the Department with this information if she should incur such an expense.

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