

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,729

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare to reduce her ANFC grant based upon its inclusion of part of her public housing subsidy as unearned income to her.

FINDINGS OF FACT

The petitioner, who is an ANFC recipient, lives with her child in housing subsidized by the Vermont State Housing Authority (VSH). In calculating the amount of her rent, the VSH considers that the petitioner must pay for her own fuel and utilities and assigns her an amount known as a "utility allowance".

Prior to July 1, 1995, the petitioner's ANFC grant was calculated at \$547 per month. On June 15, 1995, "mass change" notices were sent to all recipients who live in public housing advising that effective July 1, 1995,

A portion of any utility allowance used in your rent calculation for fuel and/or utilities as a resident of subsidized housing is counted as unearned income for ANFC. The Department uses a standard of \$70 if fuel or fuel and utilities allowance is used in your rent calculation, or \$30 if an allowance for utilities only is included.

Based on the information we have, we have used either \$70 or \$30 for your household if you pay for fuel and/or utilities. You will see this on the enclosed notice as a change on the "UNEARNED INCOME" line.

If your actual utility allowance from the Housing Authority is lower than the standard and you provide proof of it during the next 12 days, we will use your actual allowance instead of the standard and redetermine your ANFC grant.

The petitioner received specific information that a \$70 unearned income amount would be used in her case and that based upon this her July 1 grant would be reduced to \$483 per month. The petitioner appealed because she felt the mass change violates state law and unfairly discriminates against individuals in public housing. The matter was continued for several weeks to allow the petitioner to obtain legal advice or submit a written argument in her own behalf. The petitioner failed to respond, however, to the deadline imposed by the hearing officer.

ORDER

The decision of the Department is affirmed.

REASONS

On July 1, 1995, regulations were adopted by the Department of Social Welfare which provide as follows:

Unearned income

Unearned income includes the following:

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F. \$70.00 of a Housing and Urban Development (HUD) fuel or fuel and utility subsidy or \$30.00 of a utility-only subsidy which has been included in HUD's calculation of the rent of an ANFC family living in subsidized housing, thereby reducing its rental obligation by an equivalent amount. This amount is not limited to a subsidy actually paid to the ANFC family. An applicant or recipient who documents an actual subsidy amount less than the standard may have the actual amount counted as unearned income in benefit and eligibility calculations.

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W.A.M. 2252

Housing Allowance - Eligibility Standards

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A standard amount which, in most cases, represents a portion of the fuel and/or utility subsidy used by Housing and Urban Development (HUD) in the calculation of rent for ANFC families in subsidized housing will be considered unearned income for ANFC purposes, according to WAM 2252. The standard amount for those families who must pay for fuel or fuel and utilities is \$70. The standard amount for those families who must pay for utilities only is \$30. An applicant or recipient who documents an actual subsidy amount less than the standard may have the actual amount counted as unearned income in benefit and eligibility calculations.

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W.A.M. 2245.3

The regulations adopted by the Department on July 1, 1995, clearly require utility allowances in public housing to be at least partially treated as unearned income. Although standardized figures are used, recipients are allowed to reduce those figures if their utility allowance is actually lower than that figure. The petitioner presented no evidence that those are the facts in her situation.

The petitioner is not incorrect about the effect of the regulations upon her. However, the decision to further reduce her income was a political one made by the state legislature and welfare administration. That decision cannot be overturned by this Board unless it is found to be illegal. That means that the petitioner must show that the decision to include housing allowances in the definition of unearned income is contrary to federal or state law. The petitioner failed to make such an argument. Thus, the Board is required to uphold the reduction of her benefits. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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