

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,139

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Appeal of)

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INTRODUCTION

The petitioner appeals the failure of the Department of Social Welfare to offer her a director's hearing prior to her termination from the fuel assistance program.

FINDINGS OF FACT

1. The petitioner is a woman who receives federal disability benefits and Medicaid, Food Stamps and fuel assistance through the state DSW office.
2. During the summer of 1995, the petitioner, wishing to maximize her income and believing that the fuel assistance program might be eliminated, moved from a Section 8 government subsidized housing unit which included electricity, but not heat, to a Section 8 unit which included heat but not electricity.
3. On August 25, 1995, the Department sent the petitioner a notice that she would no longer be eligible for supplemental fuel assistance payments because she had no out of pocket expenses for fuel in her new apartment. The notice also advised the petitioner that she could request a "director's hearing" within five working days and that her benefit would continue at the current amount until the hearing was held. After the hearing, the amount of assistance would continue at the figure set by the director until a Fair Hearing could be held.
4. On August 26, 1995, the petitioner appealed the denial of eligibility for supplemental fuel assistance and asked "for a Director's Hearing to continue that benefit". Since it was summer, the petitioner was not receiving fuel assistance checks. Based upon her knowledge of facts about the 1995-1996 heating program, gleaned from her membership on a state low-income advisory board, the petitioner did not expect to get a check until December of 1995. As it actually turned out, the first fuel assistance checks for eligible persons were mailed on December 29, 1995.
5. One week later, in response to her August 26, 1995, appeal letter, which also included an appeal of a Food Stamp reduction, the district director called the petitioner to talk about her appeal. Before the call,

the petitioner thought that her Food Stamp reductions and Fuel Assistance denial occurred because of a mistake in her income but she was informed during the call that her new housing situation had caused the changes. Most of their phone conversation focused on the Food Stamp question, as that was the more complex one. If fuel assistance was discussed at all, it was only very briefly. That phone conversation was not styled as a "director's hearing" by either party and no further written notice based on her conversation was sent to the petitioner.

6. In October of 1995, the petitioner's appeal came before the Board's hearing officer and evidence was taken regarding her housing situation. Due to a misunderstanding, about the complete subject of the appeal, the recommended decision and order adopted by the Board in November only concerned the Food Stamp reduction. See Fair Hearing No. 13,864. In early December of 1995, the hearing officer issued a recommendation on the supplemental fuel eligibility which was postponed for final Board action, at the petitioner's request, from December 14, 1995 until January 17, 1996. Both the recommendation and final action taken by the Board found that the petitioner was not eligible for supplemental fuel. See Fair Hearing No. 14,076.

7. The petitioner did not receive a fuel check in late December of 1995. She has presented some new evidence to her caseworker just this month asking that her eligibility for fuel be reevaluated. She did not present that new evidence at the latest hearing. She asks for purposes of this appeal that the December 29, 1995, fuel check be issued to her because she had a right to have her benefits continue until she had a director's hearing. Such a formalized hearing, the Department agrees, never occurred.

ORDER

The petitioner's request to receive retroactive continuing benefits is denied.

REASONS

The petitioner is correct that she had a right to receive a "director's hearing" before her supplemental fuel benefits were terminated.⁽¹⁾ The Department's regulations provide her with such a hearing if she makes the request in five working days of the termination notice and require that such a hearing be held within ten working days of the request. W.A.M. 2909.1. The regulations further provide:

At the hearing, the applicant may be represented by counsel, friend or advisor. He or she may present witnesses, relevant evidence and argument, and cross-examine Department witnesses on relevant points. A written decision will be mailed to the applicant, within five working days after the hearing, which will state the decision reached and the reasons for the decision. The decision will state that it may be appealed within thirty days to the Human Services Board for a de novo hearing pursuant to 3 V.S.A. 3091.

W.A.M. 2909.2

The regulations specifically provide that once the request is made for the director's hearing "benefits will be continued at the same amount until the issue is resolved or a director's hearing has been held and a decision rendered", unless a waiver of benefits has been signed. W.A.M. 2909.3.

The petitioner is correct that she should have been eligible to receive the December 29, 1995, check

because it was mailed before she had a director's hearing or a final decision by the Human Services Board.⁽²⁾ However, the fact that she should have received the benefits then does not mean that she can be granted them retroactively now. The decision of the Board in Fair Hearing No. 14,076 issued January 23, 1996, was that the petitioner was not eligible for fuel assistance benefits. If she had been receiving benefits up until that time, the petitioner would have been overpaid and would be liable to repay the benefits to the Department. The pertinent regulations provide:

When a request is made for a hearing on a decrease or termination decision and benefits are continued, the recipient shall be advised that if the Department's position is upheld at the hearing, the Department will pursue recoupment of any excess payment which was continued as a result of the hearing request.

W.A.M. 2909.3

The Department will seek recoupment of benefits representing an overpayment pending a director's hearing decision.

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a. Overpayments paid pending a hearing decision shall be subject to recoupment when the recipient fails to prevail at the hearing or withdraws the hearing request after an overpayment has been received.

Recoupment in such cases may be accomplished by a cash repayment to the Department by the recipient, or by the Department withholding an equivalent amount of benefits to which the appellant would otherwise be entitled in the future under this program. No further benefit will be issued until the full amount of the overpayment is recouped under this program.

W.A.M. 2911

Under the above regulations, if the petitioner had received a fuel assistance check on December 29, 1995, she would have been overpaid and attempts would be made as set forth above to recover the assistance. The Board cannot now require the Department to pay amounts to the petitioner which have been shown (admittedly, in hindsight) were not owed to her due to her lack of eligibility for the program and which she would be immediately required to pay back.

The Board is not in a position to grant any relief to the petitioner on this failure by the Department to follow its own rules other than to declare that it was a failure. The Department does not deny that an error was committed in this matter and would do well to redouble its efforts to insure that persons requesting director's hearings get them in a timely fashion. The only solace that can be offered to the petitioner is that she did get a hearing and recommendation from a hearing officer of the Board before her December check was withheld wherein she received the same protections she should have gotten from the director's hearing in terms of an opportunity to be heard before a person who did not make the denial decision. In this case at least, the Board's hearing process was more swift than the Department's internal process and, in effect, took its place. As the petitioner has received all the benefits to which she is entitled under the eligibility requirements of the supplemental fuel program per Fair Hearing No. 14,067, the retroactive money relief she requests cannot be granted.

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1. Ordinarily, public benefits continue when a timely appeal has been made until a decision is made by the Human Services Board following a fair hearing. However, the fuel assistance regulations set up a director's review and allow benefit termination following a director's written decision "due to the seasonal nature of the program" in order to "effect rapid, reliable decisions to protect program applicants and to conserve limited program funds". W.A.M. 2909.3.

2. No one knew when the recommendation was issued in Fair Hearing No. 14,076 in early December of 1995 that the director's meeting and continuing benefits were an issue for the petitioner. If that ground had been made known at that time, it is likely that the Department would have opposed the continuance to the January board meeting which was after the time when the first check would have been issued. The Department argued as much at the latest hearing. If the Department had prevailed, the decision would have been finalized before the first fuel check was payable.