

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,389

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare terminating his ANFC and Medicaid benefits. The issue is whether the petitioner can be exempted from the provision in the regulations that considers the value of non-exempt real property owned by a recipient to be a resource.

FINDINGS OF FACT

The facts are not in dispute. The petitioner, who was the subject of Fair Hearing No. 13,885, moved to Vermont from Hawaii in February, 1995. When he applied for ANFC the petitioner informed the Department that he owns outright a house in Hawaii that is worth in excess of \$200,000. The petitioner informed the Department that he had placed the house on the market and was making a good faith effort to sell it.

Under the regulations (see infra) individuals who own non-exempt real property are allowed an exemption from the ANFC resource limitations for that property for a maximum of nine months if they are making a good faith effort to sell it. After that time, the property is considered a resource to the individual in determining continuing eligibility for ANFC. The regulations also require individuals who own real property to agree to reimburse the Department from any proceeds of the sale of the property all ANFC paid to them during the time that the property is on the market.

In Fair Hearing No 13,885, the Board affirmed that the petitioner was not entitled to an exception from the above provisions. There is no dispute in this matter that the nine-month period of resource exemption pending the sale of the petitioner's property began in August, 1995. It ended in May, 1996, and the petitioner filed the instant appeal.

At this time the petitioner raises essentially the same arguments he did in Fair Hearing No. 13,885--i.e., that because he suffers from an asthma condition and left Hawaii because of environmental irritants to his condition he should be granted an "exception" from the requirement that the house be counted as a resource, even though the nine- month period has elapsed. The Department does not dispute that the petitioner is continuing to make a good faith effort to sell the house.

ORDER

The Department's decision is affirmed.

REASONS

Welfare Assistance Manual (WAM) § 2262, amended effective November 1, 1994, includes the following provisions:

The value of the applicant's or recipient's equity in real property which is owned, but is not being occupied as a home by the applicant or recipient or spouse or minor child(ren), may be excluded from the total combined resources for a period of up to 6 months provided the family is making a good faith effort to sell the property. Assistance paid during this period shall be considered an overpayment, since ANFC would not have been granted had the owner had the proceeds of the sale in hand. The recipient must agree that the proceeds of the sale shall be used to repay the ANFC paid. The balance shall be counted as a resource.

If at the end of six months the property has not sold, and the recipient continues to demonstrate a good faith effort to sell, the equity may be excluded from resources for a further period of 3 months with the approval of the District Director. At the end of that time the equity in the property, if still unsold, must be considered as a resource.

(Emphasis added.)

As was unfortunately the case in Fair Hearing No. 13,885, the petitioner does not cite, and the hearing officer is unaware of, any provision in the law that provides an exemption from the above provisions under any conditions, including medical considerations or any other circumstances or status of the recipient. The above regulation is clear that when a recipient owns real property that is not being used as a residence, an exemption from the resource provisions is allowed only for a maximum of nine months. As noted above, there is no dispute in this matter that those nine months have elapsed.

Inasmuch as the Department's decision in this matter is in accord with the above regulation the Board is bound by law to affirm it. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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