

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,693

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare denying her fuel assistance because she does not have a minimum heating obligation required for eligibility by the regulations. The question is whether the Department correctly calculated the petitioner's obligation in her Section 8 subsidized apartment.

FINDINGS OF FACT

1. The petitioner is a disabled woman who has earned income of \$99.76 per month and unearned income in the form of Social Security benefits of \$501 per month. She lives in a single family home and heats primarily with wood with a propane backup system. The petitioner receives a Section 8 subsidy to help pay her rent. The Vermont State Housing Authority has given the petitioner a \$52 per month heating allowance which reduces the amount of rent she has to pay and keeps that amount in her pocket for fuel expenses.
2. On August 14, 1996, the petitioner signed an application for fuel assistance through DSW's Home Heating Fuel Assistance program, which was received August 20, 1996. On September 21, 1996, the petitioner notified the Department that she wished to change her application for assistance from wood to propane because her wood dealer refused to become certified.
3. On November 14, 1996, the Department mailed the petitioner a letter denying her application because:

You live in subsidized housing and your annual heating cost, after deducting your annual heat subsidy based on Vermont State Housing Authority standards, is less than the allowed minimum heating cost.

Attached to that notice was a calculation sheet showing that the petitioner had passed the income test for eligibility because her countable income of \$480⁽¹⁾ was less than the \$807 maximum. The calculation worksheet also showed that she had been allocated a figure of \$867 as an "annual heat cost" for propane, a figure of \$684 as a "subsidy", a "min[imum] heat cost" of \$196, and a max[imum] benefit of \$750. The worksheet did not attempt to explain how these figures were derived or how they interacted with each other. 4. The petitioner appealed this decision because she could not understand the basis for it and

thought she should have credit for considerable medical expenses. In response to this appeal, the Department offered the following explanation:

In calculating [petitioner's] eligibility for fuel benefits the following steps took place:

1. The annual heating fuel cost by housing type, number of bedrooms and fuel type was determined pursuant to WAM 2906.2b. For [petitioner] this was \$867.
2. Because [petitioner] lives in subsidized housing, the annual heating cost was reduced by an annual utility allowance pursuant to 2906.1 and 2906.2b. For [petitioner] this was -\$684 (\$57 per month) resulting in an annual heating cost of \$183.
3. The adjusted annual heating cost was then compared to an established "minimum heating fuel cost." See WAM 2906.2c. For [petitioner] this minimum was \$196 which she "failed" by \$13.

[Petitioner] was thus determined ineligible for supplemental fuel benefits.

5. The petitioner presented evidence at the hearing that she has chronic fatigue immune deficiency syndrome which is treated through nutritional supplements which cost from \$50 -\$70 per month. She also presented evidence that she paid \$270 for cord wood for this coming heating season and that as of January 3, 1997, she owed her landlady \$65.82 for propane delivered to her cottage.

ORDER

The decision of the Department is affirmed.

REASONS

The Department in this matter is relying on regulations it adopted on September 1, 1996, pursuant to the authority granted it by the new "Home Heating Fuel Assistance" statute at 33 V.S.A. § 2602(b). That statute specifically requires the Department to use a "proxy table" to determine households' annual heating fuel costs for the year from July 1, 1996 through June 30, 1997 and thereafter to use actual costs. 33 V.S.A. § 2604 (b), W.A.M. § 2906.2(b). The proxy table adopted in the regulations sets an annual fuel consumption amount of \$867 for a one bedroom single family dwelling which uses propane as a heating source. W.A.M. § 2906.4 When the new law is read as a whole, it appears that these proxy tables are being used this year because "certified fuel suppliers" were not required to keep records of fuel consumption for the last year as they must currently and in the future. As a matter of administrative convenience for this year alone, the Department is using standardized procedures in order to avoid asking for a retroactive accounting from fuel dealers who may not have kept accurate records as they are now required to do. The petitioner herself could offer no exact heating figures for her dwelling unit since she is changing her primary type of fuel. She does not argue that use of this proxy table is inappropriate.

Additionally, the statute calls for an assessment of the amount of subsidy available to renters in government subsidized housing units which are generally deemed to have no annual home heating fuel costs unless such a deeming is inconsistent with federal fuel regulations. 33 V.S.A. § 2604(c)(2). Unlike the heating cost provisions of the statute, the details of dealing with subsidized renters are left to the Department. The regulation in this regard adopted by the Department states as follows:

Each household living in subsidized housing will have its actual heating costs reduced by an annualized standard heating subsidy deduction prior to determining the percentage of heating cost to be met by the Fuel Program. This standard is derived from Housing and Urban Development (HUD) heating subsidy amounts, called allowances by HUD, which are developed by the Vermont State Housing Authority and are specific by housing type, fuel type, and number of bedrooms. These subsidy amounts and the percentage deducted from heating costs are located in the Fuel Program section of the welfare procedures manual.

W.A.M. 2906.1⁽²⁾

The procedures manual provides that persons who live in a one bedroom single family subsidized dwelling and who use propane gas will typically get a \$684 per year subsidy for the payment of that heat. P-2905 C. The regulations require that this subsidy figure be deducted from the annual heating cost to obtain a "net annual heating fuel cost." W.A.M. 2906.2(b). Such a deduction in this case results in a balance of \$183 which is considered the amount of fuel cost for which the petitioner is not subsidized.

The Department's regulations require that the net cost of fuel be greater than that found in a table of minimum heating fuel and costs established in the regulations. W.A.M. § 2906.2(c). The state heating assistance statute specifically requires the Department to establish a minimum amount of heating fuel cost for eligibility that varies "based on a household's size and annual income." 33 V.S.A. § 2604(b). For a person with the petitioner's income and family size (which is 65-74% of the poverty guidelines per P-2905B) the minimum heating fuel cost is \$196.00. W.A.M. 2906.3. Table II.

Under this final step, the petitioner cannot be found eligible for fuel assistance because her net heating cost of \$183 is \$13 less than the minimum of \$196. The Department followed its regulations in making this determination. The petitioner argues that she should have received additional deductions for her medical expenses. However, there is no authority for such a deduction beyond a general \$100 deduction from monthly income for each household member who is elderly or disabled. W.A.M. 2904.3(3). The amount of that deduction is specified by the Home Heating Fuel Assistance statute and already takes into consideration the greater medical expenses of disabled and elderly persons. 33 V.S.A. § 2604(a). The calculations show that the petitioner did receive that deduction. As the petitioner's assistance appears to have been properly calculated under the Department's valid regulations, the decision must be upheld. 3 V.S.A. § 3091(d).

The hearing officer noticed and raised another issue in this matter and that is whether the Department has the authority to use standardized heating allowances for applicants in the face of verification that the actual allowance figure is lower. By using the standardized amount, the petitioner is attributed \$60 per year as a heating subsidy which she does not actually get. In this case, if the Department were to use the petitioner's actual allowance of \$52 per month, or \$624 per year, she would have a net heating cost of \$243 per year which is greater than the \$196 minimum heat cost required for eligibility.

It is almost impossible from the notice sent by the Department to the petitioner to ascertain how benefits are calculated since the numbers are derived from tables and are not related to each other. A clear calculation would certainly be more fair to applicants and would also assist those who are attempting to review those calculations.

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1. The net fuel income used was calculated after the petitioner received a 20% reduction of her earned income and a \$100 deduction for disability. The calculation of her net fuel income is not in dispute.

2. The use of a "standardized" rent subsidy and utility allowance figure which was included as "unearned income" to households under the Department's predecessor fuel program was found by the Board to be in violation of the federal Low Income Heating Energy Assistance Act's "equal treatment" provision found in the note at 42 U.S.C. Sec. 8624 (Pub. Law 103-185, Title IX, Sec. 927, Dec. 14, 1993) because it treated tenants who were subsidized differently from those who were not by imputing income to them. See Fair Hearing No. 12,424.

The new heating assistance act is in part financed through LIHEAA funds and so must still conform to federal eligibility requirements for subsidized renters. 33 V.S.A. Sec, 2604(c)(2). However, the use of the heating component of the utility allowance to reduce the amount of benefits paid, which is a feature of the current scheme, is specifically authorized by LIHEAA (see paragraph (d) of the note cited above under 42 U.S.C. Sec. 8624), even though it treats subsidized renters differently from other applicants.

The statute allows reductions of the heating benefits so long as they are "reasonably related to the amount of the heating . . . component of the utility allowance received. . ." It cannot be said that the deduction from the net heating costs of a "standardized" utility amount deemed to be available for payment of some of those costs which amount is figured by the housing authority with regard to type of fuel used and size of dwelling is not reasonably related to the amount of the heating component of the utility allowance which is actually received by subsidized renters.