

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,694

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare denying him fuel assistance because he 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 his Section 8 subsidized apartment.

FINDINGS OF FACT

1. The petitioner, who is disabled and receives Social Security and disability benefits of \$686 per month, applied for benefits through the fuel assistance program on August 14, 1996. At that time he reported that he is directly responsible for paying for heat in his one bedroom apartment which is provided primarily through electric baseboard and portable ceramic heaters. He also reported that his rent is subsidized through a Vermont Housing Authority certificate.

2. On November 23, 1996, the Department notified the petitioner that he would not be eligible for fuel assistance for the following reason:

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 his countable income of \$686 was less than the \$807 maximum. However the petitioner did not receive any deduction based on his disability. The calculation worksheet also showed that he had been allocated a figure of \$633 as an "annual heat cost", a figure of \$300 as a "subsidy", a "min[imum] heat cost" of \$353, a max[imum] benefit of \$550 and a "ratable reduction" of .75. The worksheet did not attempt to explain how these figures were derived or how they interacted with each other.

3. The petitioner appealed this decision, in part because he could not understand the basis for it. 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 \$633.

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 -\$300 (\$25 per month) resulting in an annual heating cost of \$333.

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 \$353 which he "failed" by \$20.

[Petitioner] was thus determined ineligible for supplemental fuel benefits. A notice of decision was mailed November 23, 1996.

4. Because the petitioner's primary electric heating source is so expensive, he uses kerosene whenever he can. The total combined electricity (based on his electric bills) and kerosene costs for him from June 26, 1995 to June 28, 1996 was actually \$1753.72.⁽¹⁾

5. The petitioner receives a \$100 per month utility allowance from the housing authority to pay his heat, lights, hot water and cooking fuel (all electric). (The petitioner did not provide a figure for a specific allowance for heat alone.) That allowance is not a direct payment to him but effectively reduces the amount he must pay as rent so he can keep money to pay for his utilities. The petitioner disagrees with the utility allowance actually established for him by the housing authority and the one used in the table because it does not reflect his actual total utility expenses which average closer to \$150 per month. He feels he should get more of an allowance because his apartment is shaded, has high ceilings, is as large as a two-bedroom apartment in terms of square footage and because he must spend more time in his unit than average because of his disability.

ORDER

The decision of the Department is reversed and remanded for the calculation of benefits.

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). The proxy table adopted in the regulations sets an annual fuel consumption amount of \$633 for one bedroom multi-family homes which use electricity as a heating source. W.A.M. § 2906. 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's own accounting shows how difficult it is to construct a heating cost in an all electric unit on a retroactive basis. The petitioner's actual fuel expenses appear to be in excess of the \$633 established

by the Department for annual electric heating use. During the next heating season, the petitioner will be allowed to use the actual figures supplied by his fuel dealer who will be required to report the electricity used just for heating. The petitioner has advanced no argument under which it could be concluded that the legislature acted illegally in ordering the Department to calculate heating costs in this way this year through use of the "proxy table".

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

The procedures manual provides that persons who live in a one bedroom multi-family subsidized dwelling and who use electricity will typically get a \$300 per year subsidy for the payment of that heat. P-2905 C. In this matter, the petitioner actually did get a \$1200 yearly allowance,⁽²⁾ although not all of the allowance was for heat. It is difficult to see how he is being harmed by the use of this table which may actually give him some favorable treatment.⁽³⁾

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 \$333. The petitioner's net income ultimately determines whether that figure meets the minimum. 33 V.S.A. § 2604(b) 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." The petitioner's \$686 monthly countable income should have been reduced by \$100 because he is a disabled person. W.A.M. 2904.3. There is nothing in the calculation worksheets provided on behalf of the petitioner which would indicate that such a deduction had been granted to him. Therefore, the petitioner's net income should have been \$586 which puts him in a category (85 to 94 percent of the poverty guidelines for one person see P-2905(B)) which allows eligibility if the heating minimum is over \$274 per month.⁽⁴⁾

As the petitioner has \$333 in expenses, he more than meets the minimum guidelines and the case should be reversed and remanded to determine his eligibility.

The notice sent to the petitioner is attached hereto as Exhibit No. One. It is almost impossible from that notice 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 Of this amount, approximately \$38.42 was for kerosene. It also appears from figures provided by the petitioner that \$700 to \$900 per year of his electric bill is for non-heating costs, such as hot water, lights and cooking fuel, based upon a comparison of his summer and winter electric bills. However, it is not necessary to a decision in this case to calculate this amount with exact precision.

2. To the extent that the petitioner feels this allowance is too low, he must take it up with the Vermont State Housing Authority, not the Department of Social Welfare.

3. The \$1200 figure has to be subtracted from the \$633 heating figure. If that were done in this case, the petitioner would have a -\$567 heating cost. Most likely not all of the \$1200 is set aside for heating. If the petitioner were to find that less than \$25 per month were actually allowed to him for the heating portion of his electricity usage, an unlikely scenario, he might have more of a case for the unfairness of using the tables in his situation. See Fair Hearing No. 12,424 wherein the Board found that adding standardized allowance amounts in to the income of subsidized renters violated the Low Income Heating Assistance Program, 42 U.S.C. § 8624.

4. The Department erroneously used a figure in the 105-114% range of the total percentage of the poverty guidelines. Under that guideline, a household must have at least \$353 in fuel expenses to minimally qualify for the program.