

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,728

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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 her fuel expenses did not meet the minimum eligible for assistance. The issue is whether the petitioner's fuel obligation in her Section 8 subsidized housing was correctly calculated.

FINDINGS OF FACT

1. The petitioner lives with her thirteen-year-old son in a two bedroom apartment which is heated with propane gas which she is required to purchase herself. In order to make this purchase, she is provided with a \$62 per month "allowance" or deduction from the rent she is required to pay to the landlord based on her participation in a federally subsidized housing program known as "Section 8".

2. The petitioner's income based on disability is \$1,069.82 per month. In order to calculate her eligibility, the Department deducted \$200⁽¹⁾ from her income based on her disability and determined that she met the income guidelines. Then the Department calculated her heat liability as follows:

1. A standardized allowance for her heat as set forth in the regulations was calculated on a yearly basis. The standardized allowance was \$62 per month, coincidentally the same as her actual utility allowance. The Department figured that her yearly allowance from the housing authority for fuel was \$744.

This represents the amount of rent she was not required to pay and could save to pay for her fuel.

2. A "proxy table" was used to calculate the typical heating cost in a two bedroom apartment that is heated with gas, which indicated a figure of \$713.

3. The fuel allowance amount of \$744 was subtracted from the "proxy table" figure and a balance of less than zero was obtained for a minimum heating cost figure.

4. The Department compared that amount with a minimum heating cost figure of \$314 and determined that the petitioner was way under that figure and was not eligible for fuel assistance.

3. The petitioner was notified on December 13, 1996 that her fuel had been denied because she "lives in subsidized housing and [her] annual heating cost, after deducting [her] annual heat subsidy based on Vermont State Housing Authority standards, is less than the minimum heating cost."

4. The petitioner appeals this decision because she believes her heating costs are actually more than \$744 per year although she produced no evidence to the contrary. She believes that she should get heating assistance as she has in the past.

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). The proxy table adopted in the regulations sets an annual fuel consumption amount of \$713 for two bedroom multi-family homes which use propane gas. W.A.M. § 2906.4. The petitioner did not provide any evidence that her heating expenses last year were in excess of \$713. Even if she had, she has advanced no argument that the Department had illegally used the "proxy table" in her case.

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 in conflict with federal heating regulations. 33 V.S.A. § 2604(c)(2). 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 two bedroom multi-family subsidized dwelling and who use bottled gas will typically get a \$744 per year subsidy for the payment of that heat. P-2905 C. In this matter, the petitioner actually did get a \$744 allowance. She is not arguing, therefore, that it was inappropriate to figure her allowance by using the table. The regulations require that this figure be deducted from her 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 negative balance. In other words, the amount of allowance granted to the petitioner to pay her heating fuel is actually \$31 more than she was predicted to need to heat her apartment.

The net income used for the petitioner, \$869, is a significant figure in determining the amount of the benefit the petitioner can receive. 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 \$869 in monthly countable income puts her in the 95-104% range of the poverty guidelines for a family of two. P-2905B. Under that guideline, a household must have at least \$314 in fuel expenses to minimally qualify for the program. W.A.M. § 2906.3. As stated above, the petitioner has no countable fuel expenses, as the difference between her estimated costs and fuel allowance is a negative number. The regulations specifically provide that "[i]f the household's fuel costs for its primary heating source are equal to or less than the minimum fuel cost set forth in this table, the household will be ineligible for the Fuel Program benefits. W.A.M. 2906.2(c). In this matter, the Department appears to have followed its regulations and its regulations appear to harmonize with the law. As such, the petitioner was correctly found to be ineligible for benefits and the decision of the Department must be upheld. 3 V.S.A § 3091(d) and Fair Hearing Rule No. 17.

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1. It is not clear why \$200 was deducted as the regulation appears to allow for a \$100 deduction for each elderly or disabled person. W.A.M. § 2904.3. However, it will be assumed for purposes of this decision that such a deduction was correct as it is favorable to the petitioner.