

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,745

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Appeal of)

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INTRODUCTION

The petitioner appeals a determination by the Office of Home Heating Fuel Assistance of the Department of Social Welfare finding the petitioner ineligible for fuel assistance for the 1996-1997 heating season. The issues are whether the petitioner filed a timely application and whether subsequent crisis assistance has rendered the petitioner's application moot.

FINDINGS OF FACT

1. On Monday, September 30, 1996, the petitioner, who was then a New Hampshire resident, called the district office of the Department of Social Welfare and asked to apply for fuel assistance, Food Stamps and Medicaid. The petitioner told the worker that he had rented a house in Vermont the previous Friday, but could not move in until October 4, 1996. He was told by the worker that he had to live in the state for at least twenty-four hours before he could file an application for benefits. He was not told that there was a deadline for filing for fuel assistance. 2. The petitioner testified credibly that he actually moved into his new rental home on October 4, 1996. That testimony is consistent with information he provided to the Department soon thereafter about his address and is not contradicted by any other evidence in the record. Relying on the information he received from the worker, he waited until then to call the Department of Social Welfare to request an application which he filled out and returned to the Office of Home Heating Assistance. Records from the Office of Home Heating Fuel Assistance show that the application was returned there on October 14, 1996. That application included information on the petitioner's Vermont address, the fact that he was fifty-six and lived in his home with his eighteen-year-old granddaughter, and that the sole source of income for the household was his Social Security disability payment of \$695. He also informed the Department that he was renting a two bedroom single family home which used oil for heating, that he was required to pay for that heat himself with his name on the bill and that the oil would be provided by a certain fuel company. In response to a question on the form as to why he was applying after September 30, he stated, "just moved in here". There is nothing in the evidence to indicate that this information could not have been supplied by the petitioner if he had filed his application by October 4, 1996.

3. After getting no response to his application for several weeks, the petitioner called the Office of Home Heating fuel on December 4, 1996, to ask why it was taking so long to process his application. He was told that because he was a "latecomer" he would not get an answer until January. On January 30,

1997, the petitioner was notified that his application was denied because he did not submit his application during the August 15 through September 30 period and "after December 31, no exceptions to the later period are allowed." Following this letter, someone apparently noticed the error in the latter statement since the application had been received by October 14, 1996, and sent the petitioner a "corrected" notice of decision on which a box was checked which read:

You submitted your application after the specified application period, August 15 through September 30, 1996, and your circumstances do not meet the criteria for an exception to this period.

The first box on the form which could have been checked

as a reason for denying the application, but which was not

checked, read "you do not reside in Vermont".

4. The petitioner was determined to be ineligible for a "good cause" exception to the late filing because his move had not been occasioned by a financial crisis, death or illness of a family member.

5. The deadline for applications was originally set for September 30, 1997, but was administratively extended to October 4, 1997. If the petitioner had been told by the worker that there was a deadline date for application for the fuel assistance and that he could apply for benefits, he would have had the ability to have made a timely application and would have done so. He did not do so because he was prevented from filing an application during the applicable period both because of the misinformation he received about his inability to file an application and the lack of information he received about the deadline. Although the petitioner was originally from Vermont and had received assistance through the Vermont fuel program in the past, the petitioner had received heating assistance through the New Hampshire Department of Social Welfare for the past two years.

5. At the time this hearing was originally held on February 13, 1997, the petitioner was being assisted by the crisis component of the home fuel program with the costs of

his heating fuel.

6. The chief of the Home Heating Assistance office had no knowledge of the conversation between the petitioner and the district worker which occurred on September 30, 1997, but stated that it is not the policy of the program to require a physical presence in the state to file an application but a physical presence is required to receive benefits. Had he been handling the matter, he would have taken the application but would have asked for some proof that a move to Vermont was imminent in order to continue to process it and stated that he would be willing to reconsider the matter if he could get some clear proof that the petitioner had agreed to take a Vermont residence before the deadline on October 4, 1997.

7. The matter was adjourned in order to allow the petitioner to provide information which the Department felt was necessary to resolve this issue in his favor. However, after several weeks of back and forth between the petitioner and the Department, nothing could be resolved on this issue. At that point, the winter heating system was over and the Department again raised the issue of mootness. The hearing officer asked the parties to agree as to what benefits he would have received if he had been found eligible, what crisis fuel benefits he had actually received and what out of pocket expenses, if any,

he had incurred for fuel.

8. In response to that request, the parties stipulated in late July to the following:

Petitioner received two grants from DSW crisis fuel, \$97.00 on December 3, 1996 and \$125.97 on January 17, 1997. He received two grants from SHAREHEAT, \$97.00 on November 8, 1996 and \$97.00 on February 27, 1997.

If petitioner had applied during the fuel application period last season, his benefit would have been \$528.00. If he had been found to have good reason for applying late, his benefit would have been \$356.00.

The petitioner has no outstanding balance with [Name], the dealer who supplied him with oil last season.

9. After the Department refused to accept an affidavit dated September 8, 1997 from the secretary at the fuel company with regard to purchases made by the petitioner from his personal funds, the hearing was briefly reconvened to take her testimony. Her testimony, which is found to be entirely credible, was that the fuel company made deliveries to the petitioner's home in Vermont during the winter of 1996 and 1997. The crisis assistance program paid for his fuel on several occasions but that on at least two occasions during the winter the petitioner came in and paid from his own funds for a one hundred gallon delivery of oil, the company's minimum, paying at least \$1.00 a gallon. He paid for the two deliveries by leaving a check as collateral for payment which he redeemed by paying cash on the first of the month when he received his check. The petitioner was not allowed to buy fuel on credit and no record was kept of the total amounts of fuel bought during the heating season or who made the payments for them by the oil company. All of their Vermont receipts (it was a New Hampshire based oil company), which included thousands of accounts, were simply thrown into a box. Based on this testimony it is found that the petitioner paid at least \$200 out of his own pocket for fuel heating expenses during the last heating season.

ORDER

The decision of the Department denying the petitioner's application for fuel assistance for the 1996-1997 heating season is reversed.

REASONS

The Department does not maintain in this matter that the petitioner would not have been eligible for the fuel assistance program if he had made a timely application. He was not denied because he did not live in Vermont, did not provide all the information needed on his application, or for any other reason other than that his application was too late. The Department denied the petitioner eligibility solely because he did not make a timely application under the following regulation:

For the 1996-1997 heating season (from November 1, 1996 through March 1997), the application period will begin on August 15, 1996, and close on September 30, 1996 . . . Applicants must submit applications during the specified application period in order to have their eligibility determined for the Fuel program for the ensuing heating season. Applications must be received by the 1st day of the application period by the Office of Heating Assistance, or by any of the twelve Department of Social Welfare's District Offices; if mailed, the application must be postmarked no later than the last day of the application period. . . Applicants who are found eligible will have their benefits established for the entire period from November 1 through March 31.

W.A.M. 2902.1

The petitioner does not dispute the fact that he did not meet the above deadline. However, he contends that he was prevented from meeting that deadline by misinformation given to him by a worker in one of the Department's district offices, both about his right to file an application and the deadline for the fuel program.

The Department's duty to inform applicants of the requirements for eligibility for its programs is well established. See Lavigne v. Department of Social Welfare, 139 Vt. 114, 118 (1980) and Stevens v. Department of Social Welfare, 159 Vt. 408 (1992). The general regulations governing all Department of Social Welfare administered programs require that:

. . . all contacts (e.g., in person, by telephone, by mail, by referral from another agency) shall be considered inquiries up to the point of Department receipt of a signed application form. Department response to inquiries shall include:

1. Furnishing application forms.
2. Appropriate explanation of programs inquired about, including eligibility standards and criteria.
3. Explanation of applicant rights and responsibilities, including penalties for fraudulent acquisition and use of aid or benefits.

W.A.M. 2110

There is nothing in the Fuel regulations, or indeed any DSW program regulation, which requires a twenty-four hour residency period for applications.⁽¹⁾ The above regulation makes it clear that the Departmental employee who talked to the petitioner should have mailed him an application without restriction and informed him of the deadline for the fuel program.

The petitioner argues that because of the failure of the Department to give him correct and complete information, it should be estopped from using the lateness of his application as a reason for denying him eligibility. The Supreme Court has held that a government agency "may be estopped where the four elements of estoppel are present and the injustice that would result from a failure to uphold an estoppel is of sufficient magnitude to justify any effect upon public policy that would result from raising estoppel." Stevens, at 419.

The four essential elements of estoppel are: (1) the party to be estopped must know the facts; (2) the party to be estopped must intend that its conduct shall be acted upon or the acts must be such that the party asserting estoppel has a right to believe it is so intended; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must detrimentally rely on the conduct of the party to be estopped. *Id.* at p. 421, Burlington Fire Fighter's Association. v. City of Burlington, 149 Vt. 293,299 (1988).

In applying these elements to the facts herein, first it is clear that the Department knew that the petitioner had to file an application by a deadline or he would be precluded from getting the benefits when he became a Vermont resident and that it had an obligation to inform him of that fact and to take his application immediately as was discussed above.

Second, the Department told the petitioner that he could not file an application and failed to tell him that a deadline for the benefits was fast approaching. The petitioner had a right to rely on what the worker said and based on the advice of the Departmental worker, the petitioner waited to file his application for fuel assistance until he had resided in Vermont for at least one day thereby missing the deadline. There is no doubt that the Department knew and intended that the petitioner would act on that advice and that he had every reason to expect to rely on the advice given to him.

Third, the evidence clearly establishes that the petitioner was unaware that he could file an application immediately or what the deadline was for the program. The petitioner, who had been living out of state for two years on the day that he called, had no reason to know or suspect that there was a deadline for application under this new state program.

And finally, there is no question that the petitioner relied to his detriment on the Departmental worker's statements because he thereby lost his right to receive \$528 in fuel assistance benefits for the last heating season. The Department argues that his receipt of \$326.97 from the emergency program and his lack of any unpaid fuel bills at the end of the season show that there was no harm to him. That argument ignores several crucial facts: (1) the petitioner could have gotten crisis assistance in addition to benefits he might have received through the regular fuel program. W.A.M. 2951; (2) at the end of the heating season, the petitioner could have used any remaining funds in his account to fill his tank in anticipation of the next season, a benefit he could not get through the crisis fuel program, and (3) that he was forced to pay for at least \$200 of his heating fuel from his own pocket. His lack of a remaining bill for the heating season is not a reflection of his ability to pay for his heat, but of the fact, testified to by the fuel company, that he was not allowed to buy any fuel on credit.

Thus, it must be concluded that the elements of estoppel are met and the only question remaining is whether the injustice which would result to the petitioner from not granting estoppel is of sufficient magnitude to justify the effect on public policy. The petitioner, who has a very limited income and is disabled, apparently managed to survive through last winter by getting crisis fuel and making some large fuel payments himself. He was unable to put anything in his tank for this year through the regular fuel program and may well have foregone paying other bills to provide heat necessary for himself and his granddaughter. The injustice to the petitioner during the last heating season was palpable and undoubtedly has a continuing financial impact on him. It would be unfair to allow the Department to avoid its obligations to him now because this matter could not be resolved before the end of the heating season. The burden on the Department is minimal since its liability is closed and limited to \$528. Requiring the Department to do now what it should have done a year ago promotes public policy because it requires the Department to be responsive to its obligations to assist recipients to understand

and meet eligibility requirements. If the petitioner is not allowed to recover now, an incentive is given to the Department to "wait out" these cases until the heating season is completed in order to avoid any liability for payment.

Because the four elements of estoppel are met and because public policy weighs in favor of granting these benefits to the petitioner, the Department is estopped from denying fuel benefits for the 1996-1997 heating season to the petitioner.

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1. The issue of residency for application purposes is not the same as residency as a condition of eligibility. The fuel regulations require that "[a]pplicants for assistance must be physically present in a living unit in Vermont in order to receive benefits under the Fuel Program." W.A.M. 2901. (Emphasis supplied) The benefit period for payments of assistance in the Fuel Program is November 1 through March 31. W.A.M. 2907. There is no dispute that the petitioner lived in Vermont at least through those times periods and that the Department knew and believed at the time it made the eligibility determination in the petitioner's case, which was not until January of 1997, that he had been residing in Vermont since at least mid-October of 1996.