

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,753

)

Appeal of)

)

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 fifty-eight-year-old disabled woman who has unearned income of \$544.91 per month from Social Security disability payments. She lives in a single family one bedroom home and heats primarily with propane gas, although she also uses electric space heaters. The petitioner receives a Section 8 subsidy to help pay her rent. The Vermont State Housing Authority has given the petitioner a \$69 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. Prior to October 3, 1996, the petitioner was living in a housing complex where her heat was included in the rent. However, because she has a neurological disorder she needed a quiet and stress-free environment and decided to move to a single family home. She was advised by the Vermont State Housing Authority that she would be more successful in finding a single family house if she did not insist on a rental with utilities. The petitioner did find a rental but she was required to pay her own utilities.
3. The petitioner filled out an application for heating fuel for her new house on September 19, 1996. She was advised by the Department that she could update the application by telephone if and when she moved. After that time, but before she moved to her new house on October 3, 1996, the petitioner called the Office of Home Heating Assistance to ask whether she would be eligible for heating fuel assistance if she took the new place. If she could not get heating assistance, the petitioner did not feel she could afford the private house and would not move there.
4. During her phone conversations with the Office of Home Heating Assistance she was told by a worker named "Mary" that standards and regulations were still in flux for that program and that no decisions on eligibility would actually be made for a few weeks. The petitioner asked for some

reassurance that she would be eligible. She told the worker on the phone that she was disabled, low-income and her rent was \$500 per month and was required to pay her own utilities. She also told the worker that she had a Section 8 certificate to help with the rent but no utility allowance, because the petitioner did not understand at that time that she had one.⁽¹⁾ The petitioner was told that based on the information she had given them at that time she appeared to be eligible but it was emphasized that this was a threshold decision and that no final decision could be made until November or December of 1996.

5. The petitioner at that point felt sufficiently reassured to move into her new house. On December 11, 1996, the Department mailed the petitioner a notice advising her that her application for fuel was 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, was 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 \$444 (her income of \$544 minus a \$100 disabled deduction) was less than the \$807 maximum income eligibility figure. 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. The petitioner was contacted by telephone at the time of her denial and attempts were made to explain to her the significance of the \$69 fuel utility allowance which had been verified with the Housing Authority. However, the petitioner continued to deny that she got such an allowance.

6. The petitioner appealed this decision on January 8, 1997, and was provided by the Department with a further narrative explanation of her ineligibility on February 11, 1997 as follows:

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.

7. The petitioner presented evidence at the hearing that she has fibromyalgia and myofascial pain syndrome which she feels caused her difficulty in presenting her case at the hearing although she was assisted by a Community Action Program (CAP) worker. The evidence also showed that although the petitioner was not found eligible for the supplemental fuel program, she has received six grants of fuel through the crisis fuel program (November 28, December 13, 1996, January 2, January 21, February 11 and April 10, 1997) and when she was found ineligible for a seventh payment on March 18, 1997 by the CAP agency because of all the prior help she had received, the fuel director himself intervened and assisted her through another fuel fund. The petitioner was not in need of fuel at the time of the hearing on April 17, 1997. To date, the petitioner has received about \$777 in crisis fuel assistance.

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 did not live there last year. 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 use by the Department of a standardized figure for a utility allowance to the petitioner of \$57 was to her benefit since she actually receives \$69 per month. As the petitioner's assistance appears to have been properly calculated under the Department's valid regulations, the decision must be upheld unless there is some other reason to invalidate it. 3 V.S.A. § 3091(d).

The petitioner argues that the Department should not be allowed to deny her eligibility for assistance because it misled her as to her actual eligibility. The Board clearly has the power to make such a ruling, see Stevens v. Department of Social Welfare 159 Vt. 408, 620 A.2d 737 (1992), but in order to do so, the petitioner must show that the elements necessary for estoppel are met.

The four essential elements of equitable 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 the 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.

Burlington Fire Fighter's Ass'n v. City of Burlington, 149 Vt. 293, 299 (1988); and Stevens, supra.

The elements listed above are not present in this case. The Department did not know all of the pertinent facts because the petitioner reported the wrong information over the phone with regard to her receipt of a heating allowance by the housing authority. The petitioner on the other hand was aware that the Department's determination was not final and would not be until she received a written determination in November or December of 1996. It cannot be said on these facts that the Department misled the petitioner as to her eligibility for fuel assistance. The petitioner was taking a risk which she should have realized by moving to her new apartment before she had a final decision on her heating eligibility. Much of the petitioner's misfortune has arisen because she has been unable to understand the concept of her heating fuel allowance, although many attempts have been made to explain it to her. Given these facts, the Board has no grounds for preventing the Department from imposing its eligibility requirements on the petitioner.

###

1. At the hearing, the petitioner asserted that she did not have a utility allowance, a fact disputed by the Department based on information they had obtained over the telephone from the Vermont State Housing Authority. The petitioner was given an opportunity to provide written verification of her assertion from VSHA. The petitioner did send a verification from VSHA after the hearing. However, that verification showed that the Department was correct and that the petitioner did, indeed, have a \$69 per month fuel allowance.

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. § 8624 (Pub. Law 103-185, Title IX, § 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. § 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. § 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.