

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing Nos. 14,779,

) 14,859,

Appeal of) & 14,865

)

INTRODUCTION

The petitioners, whose cases have been consolidated by agreement of the parties,⁽¹⁾ appeal the decisions by the Department of Social Welfare denying their applications for Supplemental Fuel Assistance. The issue is whether the Vermont statute and regulation defining a "household" are consistent with the definition in the federal statutes, particularly as concerns the status of roomers and boarders. In lieu of oral hearings the parties have submitted written statements of facts and legal arguments.

DISCUSSION

The petitioners in Fair Hearing Nos. 14,779 and 14,859 applied for fuel assistance and were denied by the Department because they failed to provide information about the income and resources of individuals who are "boarders" in their homes. The petitioner in Fair Hearing No. 14,865 was denied fuel assistance because he did not provide information regarding the owners of the house in which he is a boarder. In each case it appears the boarder rents a separate room in the house and either prepares his meals or eats with the rest of the household in a common kitchen and dining area. The boarders do not purchase their own heat, and share the heating facilities of the houses in which they live.

There is no question in these matters that the Department's denial of separate fuel assistance to any of the petitioners is in accord with the state program regulations. Welfare Assistance Manual (W.A.M.) § 2904 requires that the combined income and resources of "all members of the household" must be considered in determining eligibility for fuel assistance. W.A.M. § 2901.1(4) provides:

Household

A household is defined as one or more persons living in a unit who share a primary heating source, regardless of:

the cost-sharing arrangement for living and heating expenses among those people, or

whether secondary heating sources are shared, or

the relationship of each person to other persons in the living unit.

The above regulations are based, at least in part, on the following provision in the Vermont 1997 Budget Adjustment Act (effective February 12, 1997) at 33 V.S.A. § 2604(c)(1):

Residents of a household who pay room rent are household subunits and shall not be considered separate households for purposes of the home heating fuel assistance program. Such subunits of larger households may receive home heating fuel assistance only as members of the larger household.

The petitioners argue that neither the above provision nor anything else in the Vermont fuel assistance statutes specifically mandates the inclusion of boarders in a fuel household. However, whether or not the Department's regulation, W.A.M. § 2901.1(4) (supra), is mandated by the above provision in the Vermont fuel assistance statutes, the petitioners do not contend that the regulation conflicts with the state statutes.⁽²⁾ The issue in these cases is whether the Department's regulation (whether or not it is mandated by state statute) is consistent with the federal fuel assistance statute that defines "household". For the reasons set forth below it is concluded that the Department's regulation does not violate federal law.⁽³⁾

The Department correctly argues that federal court decisions have consistently affirmed the wide latitude and discretion the federal Low-Income Home Energy Assistance Program (LIHEAP) statutes cede to the states. See 42 U.S.C. § 8624(c); Marbley v. Bane, 57 F.3d 224 (2d Cir. 1995); Rodriguez v. Cuomo, 953 F.2d 33 (2d Cir. 1992); and Cabinet for Human Resources v. Kentucky, 954 F.2d 1179 (6th Cir. 1992). The petitioners are certainly correct, however, in arguing that it is a well-settled matter of law that a state's discretion in administering a federal program does not extend to altering "minimal program requirements" that are clearly set forth in the federal statutes as applying to all states. See e.g., Rodriguez, 953 F.2d at 34; Fair Hearing Nos. 12,424 et al. The question in these cases is whether the Department's definition of household in the Vermont Supplemental Fuel program conflicts with the federal definition of household under LIHEAP.

The federal LIHEAP statute at 42 U.S.C. § 8622(4) sets forth the following:

The term "household" means any individual or group of individuals who are living together as one economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.

The above section was adopted as part of the LIHEAP statutes in 1981. Prior to that, the federal LIHEAP definition of household was "all individuals who occupy a housing unit".

These cases turn on whether § 8622(4) was intended to allow states to exclude boarders in their definitions of households or to require states to do so. The legislative history accompanying the amended definition (supra) includes only the following statement, at 127 Cong. Rec. 26234 (1981):

The definition that is now in the Low Income Home Energy Act does not adequately address the needs of low-income owners who have lodgers living in their homes. There was not intent of Congress to exclude these persons and this amendment would cover them by defining household as any individual or group of individuals who are living together as one economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.

The petitioners in these matters maintain that the boarders in their households are not part of the same "economic unit" as the other household members, and that the Department's policy of mandating the inclusion of all individuals in a housing "unit" who share a common heat source is, therefore, violative of the above federal definition of a household. The petitioners' interpretation of § 8622(4) requires the assumption that a boarder in a household cannot, under any circumstances or definition, be considered part of an "economic unit" with the rest of the household. This assumption, however, is not compelled either by the plain language of § 8622(4) or by the legislative history cited above.

The first problem is with the language of § 8622(4) itself. If Congress had intended to require all households that contain boarders to receive fuel benefits separate from their boarders it could have easily, and much more clearly, said so. However, section 8622(4) refers only to an "...economic unit for whom residential energy is customarily purchased in common..." It does not specify any financial arrangements between household members. Other than tying the concept of a household to the common acquisition of heat, the statutes leave anything further as to what constitutes an "economic unit" completely undefined.

As is the case of the households of the petitioners herein, most boarders share the heating energy that is purchased by the household they live with. They don't purchase fuel themselves; rather the rent they pay to the household includes the provision of their heat. Certainly, nothing in the plain language of § 8622 (4) compels the conclusion that states are prohibited from considering such an arrangement to be an "...economic unit for whom residential energy is customarily purchased in common..."

The above-cited legislative history of § 8622(4) is only slightly less problematic. It evinces only a vaguely worded intent to "cover...low income owners who have lodgers in their homes". Curiously--and, perhaps, tellingly--it does not reveal any intent to make the lodgers (or boarders) themselves eligible for assistance. And, as in the statute itself, it reiterates the vague concept of a household as an "economic unit" that uses heat in common.

In light of the above, it takes a considerable leap to conclude that in adopting the present language in § 8622(4) Congress clearly intended to require states to grant separate household status to any and all households with boarders and to all the boarders in those larger households.⁽⁴⁾ Nothing in the statute or the legislative history suggests that states, if they choose to do so, are prohibited from defining households with boarders as a single "economic unit". To the contrary, as the cases cited by the Department (see supra) make clear, the LIHEAP statutes encourage states to establish their own individualized methods of best delivering fuel aid to those who need it most. Therefore, it must be concluded that, unlike the prior federal LIHEAP definition of household as "all individuals who occupy a housing unit", under § 8622(4) states now have the option to "cover" households with boarders as separate household units--if they choose to exclude boarders from their definitions of an "...economic unit for whom residential energy is purchased in common..."

For years, apparently, Vermont chose to allow separate household status for boarders. Clearly, however, the legislature has chosen to discontinue doing so. 33 V.S.A. § 2604(c) (supra), adopted last year, specifically defines boarders as "household subunits...not...considered separate households..." As discussed above, this definition is more or less reflected in W.A.M. § 2901.1(4) (supra).

Absent any further definition in the federal statutes as to what constitutes an "economic unit", and absent a clear expression of Congressional intent to require states to conform to any specific treatment of households with boarders (or any other "economic unit"), it cannot be concluded that the Department's

regulation is proscribed by the federal LIHEAP statute.

ORDER

The Department's decisions in these matters is affirmed.

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1. See Fair Hearing Rule No. 21.

2. See 33 V.S.A. § 2604(a).

3. If it were determined that WAM § 2901.1(4) is mandated by 33 V.S.A. § 2604(c), and both were held to be in conflict with federal statute, a jurisdictional issue of first impression would also arise--i.e., whether the Board has the authority to declare a state statute to be invalid.

4. Such a leap, and nothing more, appears to be the basis of an unreported Federal District Court decision cited by the parties, Mitchell v. Hayt, No. 88-CV-382, N.D.N.Y. (1988). Therefore, the reasoning of that decision is found to be unpersuasive.