

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 14,821

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare finding that she was ineligible for assistance through the Home Heating Fuel Assistance program because her application was filed too late.

FINDINGS OF FACT

1. The petitioner lives in a single family home which is heated with oil. Sometime prior to September 30, 1997, the petitioner applied for assistance with heating her home. At that time she was working and living with her domestic partner who also works. She indicated on her application that her household number would increase and her income would go down near the end of October 1996, because she was expecting a baby in early November and would have to cease working for a while.
2. She called the office several times to check on her application in the ensuing months but learned nothing until she was mailed a denial notice on December 6, 1996, due to excess income. That notice told her that she could reapply before January 1, 1997, if her household had a loss of income. The petitioner does not dispute the correctness of that determination of ineligibility.
3. A few days later (well before December 31, 1996), in response to that letter, the petitioner called the number of the Office of Home Heating Fuel Assistance and spoke to an unidentified woman who answered the phone. She told the woman that her situation had changed, that she had a baby on November 5, 1996, and that her income had decreased when she stopped working at the end of October 1996. She was asked by the woman for the number in the household and the new income figure and was told that the information she gave over the phone was being "put into the computer" and would be considered in determining her eligibility. She was told as well that she would likely be eligible for the second fuel assistance disbursement, the larger of the two, which was expected to occur in February of 1997. The petitioner asked at the end of the conversation if there was anything else she needed to do. She was told no. She was not told that she was expected to fill out a new application form and did not receive one in the mail.
4. In mid-January 1997, the petitioner again called the Office of Home Heating Assistance to ask why she had not received any decision on her fuel eligibility. She spoke to a different unidentified woman who told her that she had to fill out a new written application in order to be considered under the program and that one would be mailed to her. This was the first time the petitioner had been given this

information.

5. The petitioner filled out and returned the application on January 22, 1997, the day after she received it. She reported the household and income changes. In response to a question as to why she did not apply before September 30, 1996, the petitioner responded:

I did send in an application in September which listed our income at that time. I made it clear on the application that by the end of October our income would be substantially lower and also that in November our household size would increase by one. We were denied assistance because our income was too high. I contacted the office in early to mid December to explain our situation and was told that we would be considered for the second disbursement of funds with the updated information I provided over the phone. I was not told during any of the conversations (I called the office several times) that I needed to fill out another application. I called the office in mid- January to check on our status and was told at that time that I needed to complete another application.

6. On January 24, 1997, the Department mailed the petitioner a notice that her benefits had been denied because she did not submit her "application during the specified application period, August 15 through September 30. After December 31, no exceptions to the application period are allowed."

7. The Department agrees that if the petitioner had filed a timely application, she would have been eligible for benefits. The Department does not agree that one of its ten telephone workers would have failed to have told the petitioner that she needed to file a new written application because they had received training in handling late applications. Workers are instructed to mail new applications to persons who had been denied during the prior application period and are not supposed to have computer access to information regarding applicants who have been denied. The Department had no record of the petitioner's telephone calls because it does not keep such records. In spite of the director's testimony, it cannot be found that a mistake was not made in this instance. The program is new, the workers are new and the applications were many. The Department's lack of records when compared with the detailed and entirely credible testimony of the petitioner make it more likely than not that the petitioner's version of events is true.

### ORDER

The decision of the Department is reversed.

### REASONS

The home heating fuel assistance program adopted by the legislature last spring specifically requires the Department of Social Welfare to establish an annual period for accepting applications for assistance:

(a) In order to make a timely determination of benefit levels, there shall be an application period during which all beneficiaries shall apply for home heating fuel assistance for the ensuing heating season . . .

For the 1996-1997 heating season, the application period shall begin no later than August 15 and extend no longer than 47 calendar days.

(b) The secretary may accept applications after the application period has closed only in unanticipated

circumstances or for good cause shown, such as loss of employment of the applicant.

### 33 V.S.A. § 2606

The Department adopted regulations pursuant to this statutory mandate establishing an application period as follows:

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 last day of the application period by the Office of Home Heating Fuel 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.

### W.A.M. § 2902.1

The regulations also provide for a late period for

filing applications under special circumstances:

Applications received after the close of the application period but no later than November 30, may be found eligible only under one of the circumstances listed in this section. For the 1996-1997 heating season only, the final submission date for an application under one of these circumstances is December 31, 1996.

a) Households that applied during the application period and were denied as a result of excess income and who have subsequently experienced a loss of income

sufficient to meet the income requirements specified in Section 2904.

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### W.A.M. § 2902.2

The petitioner did apply during the initial application period, was denied due to excess income and subsequently experienced a loss of income which the Department agrees is sufficient to meet the income requirements specified in Section 2904. If her application had been received prior to December 31, 1996, she would have met the requirements for an exception to the application period. If her application came in after December 31, 1996, the regulations exclude her from eligibility regardless of the reason for the late filing.

The rules adopted by the Department require that applications for fuel be completed, signed and submitted to either the Office of Home Heating Fuel Assistance in Waterbury or one of the twelve district offices. W.A.M. 2902. Signing is required to certify the correctness of the information on the

application. W.A.M. § 2902. The regulation can only be interpreted as requiring a written application, not a phoned in application. Therefore, the petitioner's phone call in December of 1996, would not qualify as an application under the regulations.

The petitioner, however, contends that it would be unfair to her not to treat the December phone call as an application because the worker who answered the phone led her to believe that she had applied over the telephone and had nothing left to do. The legal question for purposes of this appeal is whether the petitioner can prevent, or equitably estop, the Department from denying her application for fuel assistance based on the Department's failure to advise her during her phone call that she needed to file a written application before December 31.

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 worker who answered the phone certainly knew or should have known that applications could not be taken over the phone. Proper procedure in such an inquiry would have been to send an application to the caller for completion, signature and submission. The worker who answered the phone was aware as well that the petitioner was alleging facts which would likely have made her eligible if she had gotten a written application in prior to December 31, 1996.

The Department has a well-established obligation to inform applicants of the eligibility requirements for programs and applicants have a right to expect to rely on that information. Lavigne v. D.S.W., 139 Vt 114 (1980). The petitioner was informed in writing at the time of her initial denial on December 6, 1996, that she had to reapply before January 1, 1997, if she experienced a loss of income. The petitioner did not know, however, that she had to file a written application and there was no reason that she should know that. The information that she gave the Department over the phone would have required little verification since she was confirming a loss of her income and the addition of a household member which she had anticipated and had told the Department that she anticipated in the initial application. There was no reason for her not to believe the worker who told her that she had done all she needed to do to update her prior application.

Relying on this information, the petitioner did not file a written reapplication before January 1, 1997. She did file a written reapplication on January 22, 1997 as soon as she was informed of the true facts. However, by that time it was too late and the petitioner could not meet the application period deadline. The petitioner has demonstrated that her situation does meet the elements of estoppel because the Department gave her erroneous information which she had a right to rely on, she did rely on that information being ignorant of the correct information and suffered a loss of eligibility thereby.

Because the elements of estoppel are met, the Department should be prohibited from enforcing the

regulations in the deadline against the petitioner. Her application should be treated as having been submitted in December of 1996, the time when it would have been submitted if she had not been misled as to her obligations. In that event, her application would have to be considered timely in order to obtain an exception for loss of income and the Department's decision to the contrary is reversed.

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