

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 14,872

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare denying her fuel assistance because her application was filed past the deadline.

FINDINGS OF FACT

1. The petitioner is a fifty-one-year-old disabled woman who lives in a one room apartment which is heated by propane gas. Her sole source of income is \$860 per month in Social Security benefits.
2. The petitioner moved to Vermont from North Carolina at the end of December of 1996, on medical advice that she live in a place which is relatively free of pesticide residue. She has a disease caused by pesticide poisoning which has partially paralyzed her and caused her to be housebound. She has difficulty regulating her body temperature because of her illness.
3. On the first of February 1997, the petitioner moved to her current address and subsequently filed an application for fuel assistance dated February 6, 1997. On February 11, 1997, the Department denied her application for fuel assistance because she filed her application after December 31, 1996, the final date for applications under the regulations.
4. The petitioner has applied for and received assistance through the emergency fuel program on two occasions. At the time of the hearing, she was not without fuel but feared that she might be turned down for payment of future deliveries although she has never been told that.

ORDER

The decision of the Department is affirmed.

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.

### W.A.M. § 2902.2

The petitioner did not file her application until February of 1997. That application is considerably out of time for both the regular and the extended application periods. The petitioner argues that the deadline is unfair because she is a person who needs assistance with fuel and there was no way she could have met the deadlines because she did not need the fuel at that time.

The burden is on the applicant wishing to invalidate a regulation to show that its adoption was contrary to statutory authority or that the statute and regulation are unreasonable and arbitrary. The regulation adopted by the Department setting a closed period of time in this matter is directly required and specified by 33 V.S.A. § 2606(a). The only question remaining is whether the Department's adoption of the December 31, 1996 deadline for consideration of late applications with extenuating circumstances is

authorized by statute and is otherwise reasonable.

The statute set forth above at 33 V.S.A. § 2606(b) does not specify a closing date for consideration of late applications but rather leaves it within the discretion of the Secretary through the use of the word "may." This program is unique among programs administered by the Department in that it has a closed period of application. The Department argues that a finite application period is important because it is mandated by the statute to set benefit levels, in part, upon the total number of eligible households participating in the program:

Annually, based on the number of eligible households that have applied, their individual incomes and individual annual heating fuel cost for the previous year; and the amount of funds available in the home weatherization and home heating fuel assistance trust fund for the purpose of providing annual home heating fuel assistance benefits, the secretary shall, by procedure, set the payment rate that shall be used to determine the amount of annual home heating fuel assistance for which each household qualified. . . .

33 V.S.A. § 2606(c)

(emphasis supplied)

The Department points out that the Appropriation Section of the Statute provides a set amount of money which may not be exceeded by the program:

. . . Benefit levels for home heating fuel assistance payments made to certified fuel suppliers on behalf of eligible households through December 31, 1996, shall be based on an annual program budget of \$5,000,000 ... Subsequent payments under the home heating fuel assistance program shall not precede January 25, 1997. Notwithstanding any other provisions of law, payments authorized by the Office of Home Heating Fuel Assistance shall not exceed funds available, except that for fuel assistance payments made through December 31, 1996 the Commissioner of Finance and Management may anticipate receipts into the Home Weatherization Assistance Trust Fund.

Public Act No. 158, § 6(b) Effective May 10, 1996

The regulations adopted by the Department pursuant to

this appropriation section set a benefit period of November 1 through March 31,

. . . or until Fuel Program funds are exhausted or redesignated to the crisis component. Notwithstanding any other provision or rules governing the administration of the Fuel Program, payment of benefits shall be made only to the extent that funds are actually available.

W.A.M. § 2907

The program also structures payments in two periods

during the heating season as follows:

Benefits will be issued on behalf of an eligible household in the form of a line of credit established by the Department of Social Welfare with the primary heating fuel supplier identified by the household on its application form . . .

a. For eligible households whose applications were received during the application period, benefits will be issued to their fuel suppliers in two payments. If the payment rate for the benefit issuances remains the same for the entire heating season, then:

Approximately thirty-four percent of the total estimated benefit amount will be deposited with the fuel supplier in November and may be drawn on only for payment of fuel deliveries made in the months of November and December or as provided in 2907.2. <sup>(1)</sup>

Approximately sixty-six percent of the total estimated benefit amount will be deposited with the fuel supplier in February and may be drawn on only for payment of fuel deliveries made in the months of January, February, and March.

Any credit balance outstanding at the end of the first benefit period may be carried forward and used in the second benefit period. Any credit balances outstanding on March 31 may be applied to fuel deliveries in the month of April.

b. Households whose applications were received after the close of the application period but no later than November 30 (or December 31 for the 1996-1997 heating season only), and who are found eligible, will receive assistance in the form of a line of credit issued to their certified primary fuel supplier for the period of January through March.

W.A.M. § 2907.1

What the above statute and regulations make clear is that this a program with a finite pot of money which is being divided among those who are found eligible. There is no guarantee of any particular level of benefits. The scheme which sets up payment of two lines of credits, one for November/December and another for January/February/

March necessitates some fairly accurate knowledge of how many persons need benefits prior to the two disbursements. The regular application period which ended in September gave the Department a fairly accurate count for the November disbursement and a rough idea of how many persons would need assistance in January. The late application period this year extended to the very last day before the January payment period in order to include persons who had some "unanticipated circumstances" or "other good cause" arise since September 30 to be added to the group which was assisted. Under this scheme, which uses and divides all the money, benefits would have been paid up and gone before this petitioner even applied in February.

It cannot be said that this scheme is unreasonable or that it is unnecessary for the Department to set a deadline even for late applications because of the unique features of this program in which benefits fluctuate depending on the number of people in the pool. This does not mean that the petitioner cannot be assisted under the Home Heating Fuel Program because the statute mandates a separate "crisis reserve" (\$550,000 for this heating season) for emergency situations. The petitioner is currently being

assisted under that component of the program and to date has never been denied assistance. If she is denied assistance and is without heat, she can also apply for General Assistance and appeal any denial of that program or the emergency fuel program and receive a hearing on an expedited basis.

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1. This section concerns payments for outstanding heating fuel bills.