

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing Nos. 18,158
) 18,187
Appeal of) & 18,218
)

INTRODUCTION

The petitioner appeals three decisions of the Department of Prevention, Assistance, Transition, and Health Access (PATH) which have been consolidated at her request. The first is a decision that the petitioner is eligible for a "roomer" benefit only in the home heating fuel assistance program. The second is a denial of the petitioner's application for crisis fuel assistance due to a transfer of assets which could have been used to provide fuel. The third is a denial of the petitioner's application for "essential person" benefits based on her refusal to provide information regarding the essential person's income and resources.

FINDINGS OF FACT

1. The petitioner is an eighty-eight-year-old woman who lives with and is cared for by her sixty-one-year-old nephew in a six-bedroom home which he has owned for about twenty-five years. The petitioner moved in with her nephew in November of 1999. In September of 2001, the petitioner gave her nephew a

"general power of attorney" authorizing him to "perform all acts, deeds, matters and things whatsoever concerning [the petitioner's] property and personal affairs necessary and advisable" as he sees fit on her behalf. Pursuant to this authority it is the nephew who has actually filed the applications for benefits in both cases and has appeared with her attorney at the hearings.

2. The petitioner's sole source of income is \$624 per month from Social Security Disability and SSI income. The petitioner has no current assets but did own two homes, one in Vermont and one in Florida. The titles to both of those homes were transferred to the petitioner's nephew in 1999. The nephew did not pay the petitioner for the homes. He contends that the petitioner transferred them to him as compensation for care he gave both her and her late husband over a number of years. The nephew sold the two properties for a combined net gain of \$120,000.

3. Sometime in late 2001, the petitioner applied through her nephew for Food Stamp and fuel benefits. She disagreed with PATH about its decisions with regard to her applications and filed appeals. In the course of those appeals, which were later withdrawn, a great deal of confusion was apparent regarding the petitioner's living situation which was

inconsistently reported on the different applications. At that time, the hearing officer suggested to the petitioner that she clarify and formalize her living and working relationships with her nephew to avoid such problems in the future.

4. The petitioner's nephew, acting on her behalf, consulted an attorney, and with his assistance drew up a "lease and employment agreement" dated February 8, 2002. That document stipulated that the petitioner would lease the entire home owned by her nephew for \$400 per month. She was also entirely responsible for the electric bill, phone bill and heating bill for the home. The document also stipulated that the nephew could continue to live in the home to provide care for the petitioner, which was laid out in some detail in the document. For these services the petitioner was to pay the nephew \$600 per month in addition to allowing him to live in the home. The agreement could be terminated by either party upon thirty days advance notice to the other.

5. When the petitioner's income decreased later in 2002¹, a new "lease and employment agreement" was drawn up which contained the same provisions as above but changed the

¹The petitioner had been receiving Essential Person benefits which were terminated during 2002.

amount for caretaker services to \$224 per month. This lease obligated the petitioner to pay the entire amount of her income towards the rent and caretaker services. Even though her entire income was consumed by those expenses, the lease further obligated her to pay all of the utilities for the home.

6. The nephew's name is on the petitioner's bank accounts and he withdraws whatever she owes to him from those accounts. He admits that she has insufficient income to pay for the care, the rent, the home's utilities, her own food, her personal expenses and her medical co-payments. He says he often pays these amounts out of his own salary.

7. On August 13, 2002, the petitioner applied for fuel assistance through her nephew. In her application, she reported that she rents the entire six-bedroom house as opposed to just renting a room in the home of her nephew and that she was responsible for paying the entire heating bill. She described her nephew as a person who lived in her home as her "caregiver" and as such gave no information on his resources.

8. On September 19, 2002, the Office of Home Heating Fuel Assistance notified the petitioner that she would be eligible for a \$50 one-time benefit as a "roomer" in the

household. The Chief of the program advised the petitioner that she had been so classified based on the fact that the owner (the nephew) also lived in the home full-time and had represented to PATH in October of 2001 and December of 2001 that he was the live-in owner of the home when he got assistance from them at that time for weatherization benefits.

9. October 21, 2002, the petitioner's attorney contacted PATH saying that it was incorrect to consider the petitioner a "roomer" and that she should be considered the "head of household" tenant of the entire property based on the lease entered into with her nephew. Furthermore, he argued that none of the nephew's income could be considered since he lived in her home for the purpose of providing necessary care to her. He provided PATH with a copy of the agreement.

10. The fuel assistance program chief replied to the petitioner's attorney on November 14, 2002 that he would not consider the petitioner the "head of household" because the home was owned by her nephew; because as a person with her power of attorney he is required to provide her with living quarters; because the nephew has total control over her financial affairs; and because the nephew had already represented that he was the owner-occupant of the premises in

prior dealings with PATH in October and December of 2001. The nephew was urged to file his own application for fuel.²

11. The petitioner appealed on November 20, 2002. Subsequent to this appeal, the petitioner applied on November 26, 2002 for "crisis fuel" assistance. That assistance was denied to the petitioner because she had not used her assets to prevent a home heating crisis. This decision was based on her transfer of her Vermont home to her nephew. At that time, PATH was not aware that the home in Florida had also been transferred to the nephew. PATH also notified the petitioner that if she had not had an appeal pending of her "roomer" status she also would have been denied for that reason as "roomers" are not eligible for this assistance. The petitioner appealed that decision on December 3, 2002.

12. Based on the above facts, it cannot be found that the petitioner is anything other than a "roomer" in her nephew's home. The lease entered into by the petitioner is a sham constructed for no other reason than to allow the nephew to receive heating assistance for his home without going through the application process. There was no rationale offered as to

² The nephew was advised by PATH at the hearing that it does not count vehicles as resources for the fuel program and urged him again to reapply for his own assistance.

why the petitioner, a frail elderly woman, would need to rent a six bedroom home and incur the substantial heating and utility costs which go with such a home. Neither was there any explanation offered as to why the petitioner would enter into an employment and housing contract which she clearly had no financial ability to perform. Furthermore, based on the yearly taxes (see paragraph 12 below) and size of this home, it is unlikely that the fair market rental of this home could be as little as \$400 per month. Finally, the petitioner had no real right to exclusively occupy the premises as her nephew had a right to live in the premises under the lease and as he could end the "lease" at any time with thirty days' notice. It cannot be found under these facts that the petitioner is the head of household of the premises for which heating assistance is sought.

13. On November 12, 2002, the petitioner applied for Essential Person benefits at the PATH district office. At that time she reported that in addition to her income she had \$5.00 in a joint savings account with her nephew. She reported as well that her nephew had \$25.00 in a checking account and owned some vehicles but did not provide any details about the vehicles. She also reported that her nephew owned a farm and the home in which they live and that she paid

\$400 per month to rent that home. She further reported that her nephew has no mortgage but had a property tax liability on the home of \$17,000 per year. Finally, she reported that she pays all of the utilities and that her nephew paid the taxes and maintenance on the vehicles.

14. Pursuant to this application, an interview was set up for November 15, 2002 which was postponed until November 22. The notice of interview asked the nephew to bring in verification of all bank accounts and vehicles for the petitioner and for himself. The nephew attended the interview and brought information regarding the petitioner but did not bring in any information on himself. The worker handling the application told the nephew that she needed to see all of the assets and resources of both the person to be assisted and the essential person. The nephew said he would not agree to provide any information on himself.

15. The nephew was given a written verification request at the interview. That notice said that PATH needed a list of all vehicles owned by the nephew with the amount owed and the value of each. PATH believed based on information it claims to have received from the Department of Motor Vehicles that the petitioner has twenty registered vehicles. This list was to be provided by December 4, 2002 and the petitioner was

advised that without this information it could not determine her eligibility for Essential Person benefits. She was also told that the deadline could be extended if there was difficulty getting the information and that she should call if she needed an extension or had any questions.

16. When no information had been received by December 4, the eligibility worker mailed another letter on December 5, again asking for a list of all vehicles owned by the nephew with the value of each and the amount still owed, if any. This notice advised the petitioner that the proof was needed by December 12, 2002. It also contained a "warning" that without this information or the provision of a good reason for not providing it by the 30th day after the application (which was December 12), the application would be denied. Again, the petitioner was urged to call the worker upon receipt of the notice if she had a problem or needed help in obtaining the verification.

17. When the petitioner failed to respond to this last letter by the deadline, she was sent a letter of denial. She appealed that denial on December 19, 2002. The fuel assistance appeals were set for December 20, 2002. However, PATH's attorney was unable to make the hearing due to bad

weather and the matters were consolidated and reset for hearing on January 28, 2003.³

ORDER

The decisions of PATH classifying the petitioner as a "roomer" for fuel assistance program purposes, denying her request for crisis fuel assistance, and denying her application for essential person benefits is affirmed.

REASONS

The regulations adopted in the fuel assistance program allow a person who is the head of or member of a household of a particular living unit to apply for heating assistance. W.A.M. 2901 et seq. The regulations distinguish between a "living unit" and "separate living quarters" for purposes of classifying potential recipients. The former is defined as a place with "one or more rooms within a permanent structure that is used customarily as a domicile for one or more persons, contains bathroom and kitchen facilities specific to that living unit, and has its own private entrance from the

³ PATH agreed to pay the petitioner the amount she would have received for the season if she had prevailed due to the fuel hearing delay. In addition to the \$50, the petitioner was granted \$445 in benefits. PATH notified the petitioner that it would recoup the benefits if it prevailed at the hearing.

outside or off an enclosed hallway leading from the outside that does not pass through or offer open access to any other living unit within the structure." W.A.M. § 2901.1(1).

"Separate living quarters" are defined as "one or more rooms within a living unit for which a roomer (or roomer/boarder) fuel household . . . provides reasonable room rent (compensation) . . . to the head of household of the living unit . . . in return for exclusive occupation of a designated room or rooms within the living unit. To qualify as separate living quarters the roomer fuel household must have exclusive occupation of the room or rooms the roomer fuel household uses for sleeping." W.A.M. 2901.1(2). The "head of the household" is further defined as follows:

The head of household is the person, his or her spouse, or his or her civil union partner who is financially responsible for the cost of occupying the living unit or separate living quarters. In the case of home ownership, the head of household is the person whose name appears on the real estate deed for the living unit or that person's spouse or civil union partner. In the case of a tenancy based on a lease or an oral contract for payment of rent or reasonable room rent, the head of household is the person whose name appears on the lease or the person who has entered into an oral contract with the property owner or his or her agent) to pay rent for the living unit or, in the case of separate living quarters, to pay room rent to the living unit's head of household or that person's spouse or civil union partner. In situations, in which more than one person qualifies as the head of household, the head of household may be any one of the persons who

qualify or the spouse or civil union partner of a person who qualifies as a head of household.

W.A.M. 2901.1(3)

A person who is the head of household of a living unit can be considered for a fuel assistance amount which takes into account the cost of running the entire living unit. The benefit comes in the form of a payment to the fuel provider, not to the recipient. W.A.M. 2906.2, 2906.3 and 2906.4. In addition, the person who is the head of a household can exclude any person from his household (including that person's income) who is providing caretaker or companionship services so long as that person is living in a separate quarter of the home and is provided housing as reasonable compensation for those services. W.A.M. 2901.2(3)(c)(2). A person who is designated as a "roomer", in contrast, is limited to an "annual benefit in the amount of \$50.00" paid directly to the roomer as he or she has no separate fuel account from the owner of the unit. W.A.M. 2906(d).

The petitioner's nephew, purportedly acting on her behalf, has contrived to structure their household to appear to be exactly the opposite of what it is in order to gain the benefit of the above regulation. Although he is the owner of record and occupant of this large house and has been for many

years, he now claims that his aunt is actually the one who is financially responsible for all of the expenses in that she has leased the entire premises from him and has obligated herself to pay all the utilities. The petitioner and her nephew expect that this characterization will allow the petitioner to be considered for a larger fuel award. They also expect that it will lead to the exclusion of the nephew from the petitioner's household because he provides caretaker services to her.

PATH, however, is not bound by such a characterization when it flies in the face of reason. There is no way the petitioner could afford to pay all of the expenses of this household and has no reason to undertake such a financial obligation other than to qualify for more fuel assistance. PATH was correct to characterize this situation as it really is, an elderly woman who lives in a room in her nephew's home for which she pays him rent. Furthermore, even if the petitioner had some legitimate reason for renting the entire premises, the nephew's income would have to be included in her household. This is because he does not compensate her for the cost of his housing by providing caretaker services to her. Rather he charges for these caretaker services and pays her no

rent in return. In this instance, the petitioner is not eligible for exclusion from the household.⁴

For the above reasons, it must be concluded that PATH was correct in determining that the petitioner is actually a "roomer" in her nephew's home and is thus entitled to a \$50 annual heating subsidy. As a roomer, the petitioner has no direct liability to pay a fuel provider herself and thus is not in a position to stave off any "emergency" by obtaining fuel assistance.⁵ As such she is not eligible for crisis assistance. W.A.M. 2950 et seq. Her nephew, as the owner of the house and the head of household of his own living unit may make his own application for fuel assistance if he is unable to provide heat to the house. He may also apply for seasonal fuel assistance for himself as he has been advised by PATH. Because the petitioner is ineligible as a "roomer" to receive assistance under the crisis fuel program, it is not necessary to consider whether she is disqualified because she misused her resources in the past.

The final issue which the petitioner has brought before the Board is the denial of her application for Essential

⁴ This could be different if the nephew provided "medically necessary personal care" to the petitioner but no evidence was provided on that issue. This is a moot point since it cannot be found that the petitioner is the "head of household."

Person benefits. She has argued in her brief that her nephew is an essential person and as such she is entitled to benefits. The petitioner misunderstands, however, that PATH has taken no position yet as to whether the petitioner is or is not an essential person. The petitioner has been denied at this point because she allegedly failed to cooperate in providing information needed to assess her eligibility.

PATH's regulation governing the Essential Person program requires it to grant or deny an application within 30 days. W.A.M. 2712.1. The regulation goes on to say that the application may be denied when an applicant fails to do his or her part in the eligibility investigation and thus prevents a decision within the thirty day period. Id. Specifically, the regulation allows a denial when "an applicant fails to give necessary information or proofs asked for or takes longer than expected without explaining the delay." Id.

In this case, the petitioner was asked orally and in writing on two occasions to provide information on the resources and income of her nephew as part of the application process. She was given a deadline that was thirty days away from the date of her application. She was warned that her

⁵ The crisis fuel assistance program pays certified fuel providers on behalf of persons who have accounts with them.

failure to give this information would result in her denial. The petitioner not only failed to provide this information but indicated, through her nephew, that she refused to provide this information. The only issue which must be determined at this point is whether PATH needed this information to determine the petitioner's eligibility for these benefits.

The Essential Person regulations require verification of "all income and resources" reported on an applicant's statement. W.A.M. § 2714.4. The application form asked the petitioner for the income and resources of the person for whom she is claiming benefits. The petitioner says this is not relevant since her nephew is essential to her care regardless of his financial circumstances. However, that argument indicates a grave misunderstanding of the program which was promulgated to provide cash assistance payments to cover the "needs" of an essential person. W.A.M. 2700. This is not a program which pays wages to persons who assist disabled persons but rather provides "benefits" to essential persons who are "needy." See W.A.M. 2750. The regulations specifically provide that the essential person assistance group

". . . whose resources and income must be counted together for the eligibility tests, includes any of the following persons living in the same household:

an aged, blind or disabled person; and
an aged, blind, or disabled spouse; and/or
an ineligible (not eligible for SSI/AABD or ANFC) spouse
of the aged, blind or disabled person; and/or
a non-spouse essential person.

W.A.M. 2752

Under this regulation, the resources and income of both the petitioner (the aged person) and her nephew, (the non-spouse essential person) must be counted together to determine the household's eligibility for essential person benefits since they are living together in the same household.⁶ PATH cannot determine the household's eligibility without the income and resource information of the essential person (the nephew). As the household has refused to provide this information to PATH, it was correct in denying the application and its decision must be upheld by the Board. Fair Hearing Rule 17, 3 V.S.A. § 3091(d). The household may, of course, reapply again at any time, provide this information to PATH and receive a determination on eligibility.

⁶ Unlike the fuel assistance program, this program does not allow persons living in the same dwelling to break themselves into "roomer" units for purposes of defining the household.

PETITIONER'S REQUEST FOR RULINGS ON FACTS AND LAW

Paragraphs 1, 2, 6, 13, 14, 16, 20, 22, and 24 should be granted. All others should be denied.

#