

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 18,835
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) with regard to the amount of her fuel assistance benefit. The issue is whether the petitioner should be considered the head of household or a roomer in her nephew's home.

FINDINGS OF FACT

1. The petitioner is an eighty-nine-year-old woman who has lived with her sixty-two-year-old nephew caretaker for many years. He also has power of attorney to act in her behalf. The house they now live in was once owned, but not lived in, by the petitioner and her late husband. The house was deeded over to her nephew as part of their estate planning some fourteen years ago. The nephew has legal title to the home and pays taxes (\$1,748 per year), maintenance and other expenses associated with home ownership. The home is a large antique farmhouse on a considerable tract of land out in the

country. The house is expensive to maintain, in need of repairs and much of it is closed off and unused in the winter.

2. In 1997, after her husband's death, the petitioner and her nephew moved from the petitioner's home into her nephew's home. The nephew has no other employment than caring for his aunt, which is a full-time job. Acting on her behalf, the nephew applied for fuel assistance for his aunt during the 2001-2002 fuel year. She was found eligible for fuel assistance as head of household that year and also received "crisis" fuel assistance. However in 2202-2003, the petitioner was found eligible for only a \$50 fuel benefit because PATH, taking a closer look at the situation, determined that the petitioner was actually a "roomer" in her nephew's home. PATH has invited the petitioner's nephew to apply for fuel assistance for himself and his aunt as head of household but thus far he has declined to make such an application because he is unwilling to divulge his own total income and resources to PATH.

3. The petitioner's nephew has attempted in the past to change her status back to "head of household" by creating various employment and rental agreements between himself and his aunt. An employment and rental agreement made in 2002 was rejected by PATH as a contrivance and not representative of

the true situation. That decision was upheld by the Board on appeal and by the Supreme Court of Vermont on further appeal. See Fair Hearing Nos. 18,158, 18,187 and 18,218; In re Helen Potter, Supreme Court Docket No. 2003-227, October 2003.

4. On April 20, 2003, the petitioner entered into a new agreement with her nephew under which she pays \$500 of her \$636 monthly Social Security and SSI benefit to him as rent for the premises. Under the agreement, she is to pay all of the utilities for the premises, including electricity, heating bills, garbage and snow removal. The rental agreement has no stated period and appears to be a month to month tenancy as the petitioner can terminate the agreement with thirty days' notice. The electricity charge is about \$200 per month in the heating season as the petitioner heats her own bedroom with electricity. The rest of the house is heated with firewood and fuel oil which costs about \$900 per heating season. The nephew has placed the utilities payments in the petitioner's name. He says that she can use any and all rooms of the house under this agreement.

5. The petitioner's nephew will continue to live in the house while it is "rented" to his aunt as her unpaid caretaker. In fact, he continued to reside in the home while she was in a nursing home for several weeks this spring. He

has no other home. He himself has Social Security income of \$820 per year. It is not clear if he has other income or resources. The petitioner herself also receives Food Stamps of \$141 per month and Medicaid benefits.

6. The petitioner applied for assistance during the 2003-2004 fuel year claiming again to be head of household based on her new rental agreement. PATH again declined to find that she was the "head of household" and sent her a \$50 check paid by the fuel program to "roomers" on October 31, 2004.

7. The petitioner asked PATH to reconsider and provided a copy of the rental agreement and an affidavit containing most of the facts recited above. On May 5, 2004 in a written decision, PATH declined upon reconsideration to make a different decision saying that the person whose name appears on the deed of the living unit is considered "head of household". PATH said that it saw little difference between the current rental agreement and the one rejected by it, the Board and the Supreme Court a year ago and would continue to classify the petitioner as a "roomer" in her nephew's home.

8. It is concluded based on the above that the "rental agreement" is nothing more than a legal fiction devised to turn the actual situation on its head in order to maximize the

petitioner's fuel benefits and to exclude all of the income and resources of the petitioner's nephew from consideration in the fuel assistance eligibility for this household. As was found in her prior "agreement", the petitioner has no real ability to pay both the rent of \$500 and the utility costs that in the winter exceed \$350 per month from her \$636 benefit check, not even counting snow and rubbish removal. It is obvious that the amounts needed to pay the actual expenses for the home are contributed to and subsidized from her nephew's income. The nephew has offered no rationale as to why an elderly woman on a fixed low-income would choose to move to and rent a large, expensive-to-heat house in an isolated area. It must be found that the petitioner lives in this home for her nephew's convenience because he owns the home, it is his primary residence and that he pools his money and his aunt's to pay the expenses associated with their shelter. In spite of the nephew's attempts to style the situation in other terms, he is the person responsible for the cost of maintaining and occupying the living unit. The petitioner is an elderly woman living in the home of her nephew and paying him rent as a roomer in that home.

ORDER

The decision of PATH finding that the petitioner is a "roomer" and entitled to only a \$50 fuel assistance payment is affirmed.

REASONS

The fuel regulations adopted by PATH create different categories based on household situation for fuel applicants which categories affect the amount of fuel benefits that can be paid. Fuel Program § 2901. Persons classified as "head of household" must meet the following definition:

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.

Fuel Program § 2901.1(3)

The person in the petitioner's household who meets the above definition is her nephew. His name, not the petitioner's, is on the real estate deed. He lives full-time in the house and is the only one with the financial wherewithal to take responsibility for the cost of occupying this large, expensive-to-maintain living unit. His attempt to shift the responsibility to his aunt by "leasing" the home to her is nothing but a sham created in attempt to remove himself as head of household. PATH was correct to find that the petitioner was not the head of household and thus entitled to the full seasonal assistance available to persons truly responsible for paying the heat in a living unit. See Fuel Program § 2906.2.

PATH's regulations allow a person who is a "roomer" in someone else's house to receive an annual benefit of \$50 towards paying their heat costs. Fuel Program § 2906(d). A "roomer" is defined in the regulations, in pertinent part, as follows:

A roomer . . . fuel household is one or more persons that pay reasonable room rent (compensation) to the living unit's head of household . . . for exclusive occupation of one or more rooms as separate living quarters within the head of household's living unit.

Fuel Program § 2901.1(5)

PATH has generously classified the petitioner as a "roomer" given the fact that she apparently uses the entire house and pays well in excess of a "reasonable room rent" which under PATH's regulations is about \$200 per month. See Fuel Program § 2901.1(6)(b) and General Assistance regulation 2613.1. The regulations usually require that relatives living in the same household be considered together for fuel benefits unless they provide "reasonable evidence that the person is a roomer" as defined above. Fuel Program § 2901.2(3)(c). However, as PATH has determined not to quarrel with this special designation, PATH correctly gave her the \$50 annual benefit.

The petitioner and her nephew have the option of applying together for full seasonal fuel benefits in the upcoming year to have their eligibility determined. Of course if they do so, the nephew, as well as the petitioner, will have to reveal the full extent of his financial situation. If they do not want to apply together, the best the petitioner can do while living in her nephew's home is to receive a grant designated for roomers.

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