

3. Shortly thereafter, apparently settling this aspect of their domestic dispute, the petitioner's wife moved out of the apartment and joined the petitioner and their child in the family shelter, where they still reside. Although there was a sizable rent arrearage, there is no dispute that the wife's decision to leave the apartment was also not the result of any legal action taken against her by the landlord.

4. During the months in question the petitioner's and his wife's income consisted solely of RUFA benefits. At the time they respectively left the apartment (December and/or January) their RUFA grant was \$484 a month. The rent for their apartment was \$725 a month, plus utilities.

5. Since at least December 2004 the petitioner and his wife have both been under a RUFA sanction for not having cooperated with Reach Up in job searches and accepting community service employment. Without these sanctions, the petitioner's Reach Up grant would be between \$700 and \$800 a month. The petitioner did not file an appeal of the Department's decisions regarding these sanctions until sometime in March 2005.¹

¹ These sanctions are the subject of a separate fair hearing.

6. The petitioner applied for EA on or about January 11, 2005. At the time, he and his wife and child were living in the family shelter. The petitioner alleged that he owed his former landlord \$1,826 in back rent, but that if he paid this amount his landlord would let them move back into their apartment. The Department denied the petitioner's application based on its determination that the payment of back rent would not be likely to prevent the petitioner's future homelessness, in that the rent on the apartment was \$725 plus utilities and the petitioner's income was only \$484 a month in RUFA benefits.

7. A hearing was held in the matter on March 22, 2005 (following the petitioner's failure to appear at a previously scheduled hearing on February 8, 2005). At that time, the petitioner alleged that his landlord had formally evicted him from his previous apartment, but that the landlord had told him that he could move into another apartment for the same price (\$725 plus utilities) if the entire amount of back rent on the old apartment (\$1,826) was paid. The petitioner also alleged that beginning April 1, 2005 he was beginning a seasonal business that would provide him with sufficient income to pay rent. The petitioner was advised to reapply

for EA based on this new information, and the hearing was continued.

8. The Department denied this application and a hearing was held on April 1, 2005. At that hearing the petitioner alleged that he had begun selling sunglasses and accessories out of a stand with inventory that he had purchased from a friend. The petitioner admitted that he still owed his friend for the business, but that his friend would not press him for immediate payment. The petitioner maintains that he is unlikely to be able to move out of the shelter into any other housing (without paying his former landlord \$1,826 in back rent) because he won't be able to get a reference from this landlord.

9. Other than his stated optimism in this regard, the petitioner presented no evidence as to the likely success or longevity of his new business venture.

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The Department's decision is affirmed.

REASONS

The Department's EA regulations are reproduced in their entirety below.

In this case, there is no dispute that the funding for Category II assistance is depleted, and that the petitioner had to show eligibility for Category I assistance in order to qualify for EA for this purpose. The Department denied the petitioner's application for at least two reasons, both of which appear to be supported by the evidence and the wording of the above regulations.

First, the Department determined that when the petitioner applied for EA back rent (in January and March 2005) the family was not actually "at risk of losing their housing", as specified in § 2813.3, above. Rather, by voluntarily moving out of their apartment, the family had already lost their housing. Thus, any payment of EA would be to restore *lost* housing, rather than to maintain *current* housing, the latter of which, the Department maintains, is all that the above regulations contemplate. However, even if the regulations can be read more broadly, despite the petitioner's pessimism in regard to whether he can secure housing from any source other than his former landlord, it cannot be concluded that the Department is being unreasonable in expecting the petitioner to further pursue permanent

housing that would *not* require an arrearage payment of \$1,826.²

Second, the Department determined that even if the petitioner received payment of EA for back rent there is not "a likely probability that the payment will actually prevent homelessness, rather than postpone it", as required by § 2813.31(2), above. As noted above, the petitioner is only eligible for a RUFA grant of \$484 a month. Under the Reach Up regulations, any net income from his new business, albeit after some disregards, would be in lieu of RUFA benefits, not in addition to them. (See W.A.M. § 2253.12.) The petitioner presented no credible evidence that selling sunglasses from a cart is likely to produce net income sufficient to pay \$725 a month plus utilities, *plus other living expenses*, on a regular and sustained basis.³

Inasmuch as the Department's decisions are found to be in accord with the credible facts of the case and the

² There is no dispute that the family shelter where the petitioner currently resides has the resources, commitment, and incentive to help the petitioner secure permanent housing. There is no indication that this agency supports the petitioner's allegation that his former landlord is the petitioner's *only* likely source of permanent housing.

³ If and when this business proves to be successful, the petitioner is free to reapply for EA if he still has not located permanent housing. The viability of this business venture is also the subject of the petitioner's pending appeal of his Reach Up sanctions.

pertinent regulations they must be affirmed.⁴ 3 V.S.A. §
3091(d), Fair Hearing Rule No. 17.

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⁴ The Department's denial was also based on information it had regarding the petitioner's financial resources. However, the question of these resources is also pertinent to the petitioner's other pending fair hearing, and it need not be addressed in order to affirm the Department's decision in the instant matter.