

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. A-12/21-762  
 )  
Appeal of )  
 )  
 )

INTRODUCTION

Petitioner appeals a decision by the Economic Services Division of the Department for Children and Families ("Department") denying her application for Essential Person ("EP") benefits. The issue is whether the Department correctly denied EP eligibility under the applicable rules. The following is based upon a hearing held January 12, 2022, a telephone status conference held February 9, 2022, and documents submitted by the Department.

FINDINGS OF FACT

1. Petitioner is 50 years old, disabled, and receives a Supplemental Social Security ("SSI") benefit as her primary source of income. Petitioner lives at home with her adult daughter and three (3) grandchildren (the daughter's children).

2. Petitioner applied for Essential Person benefits on December 8, 2021, and identified her daughter as the person who would serve as her EP. The EP program pays for someone living

in the home of the applicant to provide personal care and homemaker assistance to the applicant.

3. Petitioner was initially denied EP eligibility for being over the income threshold; however, it turned out that the Department was counting a source of income (alimony) that petitioner was no longer receiving. After that issue was clarified, the Department denied petitioner's application a second time on the grounds that her daughter is eligible for Reach Up Financial Assistance ("RUFA"). Although petitioner's daughter had not applied for RUFA, the Department deemed her very likely (if not certainly) eligible based on petitioner's application which indicated the daughter - who was expecting a third child at the time of petitioner's application - had no income.

4. At hearing, petitioner indicated that her daughter was reluctant to apply for RUFA because of concerns about pursuing the non-custodial parents of the children for child support (through the Office of Child Support), which is a general condition of RUFA participation. After it was explained to petitioner and her daughter that the daughter could seek a waiver of the requirement to pursue child support based on safety concerns, it appeared that the daughter was willing to consider applying for RUFA. However, as of the

February 9, 2022, status conference in this matter, petitioner's daughter had not applied for RUFA, which petitioner explained was in great part due to her daughter recently giving birth.

5. Given the uncertainty regarding whether petitioner's daughter will actually apply for RUFA, petitioner has maintained her appeal of the Department's determination that her daughter cannot serve as her EP under the rules.

ORDER

The Department's decision is affirmed.

REASONS

Review of the Department's determination is de novo. The Department has the burden of proof at hearing if terminating or reducing existing benefits; otherwise the petitioner bears the burden. See Fair Hearing Rule 1000.3.0.4.

Vermont initially adopted the Aid to the Aged, Blind and Disabled ("AABD") program to supplement federal SSI payments received by Vermonters. See 33 V.S.A. § 1301. The Legislature expanded the AABD program in 1977 so that participants could have the assistance of an Essential Person, with one of the requirements being that the EP must be "needy." 33 V.S.A. § 1307; AABD-EP Rules § 2780. In summary, the program provides

the means for a low-income EP to remain in the applicant's household by providing the household with a stipend. Benefits are provided with "due regard" to both the applicant's financial need and "the needs, income, and resources of the needy essential person." 33 V.S.A. § 1307.

The AABD-EP rules make clear that the identified EP cannot be eligible for SSI or RUFA themselves:

An individual may qualify as an Essential Person by meeting each of the five criteria listed below:

- A. S/he is living in the applicant/recipient's household.
- B. S/he is not eligible for SSI/AABD or for Reach Up in his/her own right...

AABD-EP Rules § 2871.

The Board has considered numerous prior cases where a designated EP has been disqualified due to being eligible for SSI or RUFA and consistently affirmed the Department's denial or termination of EP benefits on that basis. See e.g., Fair Hearing Nos. M-03/16-331; R-02/16-136; and B-03/12-173. As observed in Fair Hearing No. M-03/16-331 "[t]he regulations are clear that participation in the Essential Person program is limited to those with caretakers who do not have income (or *potential income*) of their own. *Id.* at pp. 3-4 (emphasis added).

In this instance, the Department appropriately and reasonably identified petitioner's daughter as RUFA-eligible, which in turn raised a legitimate basis for the denial of petitioner's EP application under the rules. To the extent the rules or remedial authority of the Board might allow for an exception, the evidence does not warrant such; there is no reason that petitioner's daughter would not be found eligible for RUFA and no reason that she cannot apply for those benefits. Under these circumstances, the Department's denial of eligibility is reasonably based in the rules and the AABD-EP statute. AABD-EP Rules § 2871; 33 V.S.A. § 1307.<sup>1</sup>

As such, the Department's decision in this matter is consistent with the applicable rules and must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

# # #

---

<sup>1</sup> At hearing, the possibility of petitioner identifying a different EP and/or applying for the Medicaid-based Choices for Care program was also discussed. Petitioner was referred to area social service agencies to assist her in reviewing these options.