

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. A-02/08-54
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families (DCF) denying his application for replacement of kerosene monitor heater through the Emergency Heating System Grant Program (EHSGP) administered by the Vermont Office of Economic Opportunity (OEO). The issue is whether the above denial is an abuse of discretion.

FINDINGS OF FACT

1. The petitioner is a disabled individual who owns a one story modular home that his family moved into during 1999. Petitioner's home has a basement. During 2000 or 2001, petitioner added a bedroom for his children; this addition created an ell to the house.

2. When the petitioner first moved into the house, there was a propane heater in the kitchen that did not work properly and a wood stove in the living room area. In addition, there was an electric heater in the basement to keep the pipes warm. The petitioner testified that he has

not only relied on more than one heating source to heat the house, but that he has used different heating systems due to the need to replace nonfunctioning systems.

3. The present case involves a request to replace the kerosene monitor heater in the basement.

4. The following information details the present configuration of heaters and wood stove within petitioner's house.

(a) The petitioner has a kerosene monitor heater in the children's bedroom. According to the petitioner, this heater only heats the children's bedroom due to the layout of the house.

(b) Petitioner has a wood stove in the living room that replaced the earlier wood stove that broke. The present wood stove does not work properly and has never been used as a primary heating source. Petitioner testified that even if the wood stove operated properly, the wood stove could not be used as a primary heating source based on safety and insurance concerns. Petitioner testified that he was informed a few years ago by his insurance company that they would not insure his home if he used the wood stove for heat. Petitioner provided a statement from his insurance company to that effect.

(c) Petitioner has a kerosene monitor heater in the basement; he installed this heater during 2006. The basement heater has not been operational this heating season. In the past, this heater provided heat for the pipes and provided heat to other parts of the home by heating the floorboards. Petitioner has a full tank of kerosene for this heater. To keep the pipes from freezing, petitioner is using an electric heater in the basement which is very costly.

5. Vermont OEO uses the local Community Action Agencies (CAP) to determine financial eligibility for the EHSGP program. The next step is a review by the weatherization program.

6. Petitioner applied through the local CAP for a replacement of the basement monitor heater. The CAP found that petitioner met the financial eligibility criteria for EHSGP and sent petitioner to the weatherization program where arrangements were made for a heating contractor to check out the appropriate action in petitioner's case.

7. A report was returned to the CAP that the basement monitor heater was used to keep the pipes from freezing.

8. T.P., director of the county CAP, testified that the report caused the CAP to look at petitioner's request again because they assumed he was seeking a replacement for a

monitor heater that had been previously repaired under EHSGB. T.P. testified that a search of the CAP records found that in 2006, CAP authorized funds for the repair of the monitor heater in the children's bedroom. T.P. testified that EHSGB funds can be authorized for repairs or replacements of the household's primary heating source. It was their impression that the bedroom monitor heater was the primary source of heat for the house.

They considered that petitioner had been without heat from the basement monitor heater this heating season as a factor in whether that heater was a primary source of heat. They also considered that petitioner received other weatherization services through the addition of insulation below the roof during the recent past.

9. CAP issued petitioner a denial on January 10, 2008 based on (a) the basement monitor heater is not the primary source of heat, (b) length of period the basement heater has not been working, (c) repairs to the bedroom monitor heater dated November 29, 2006, and (d) the decision of the technical staff. OEO supported this decision.

10. Petitioner appealed the denial and a fair hearing was held on February 20, 2008.

ORDER

The decision by Vermont OEO is affirmed.

REASONS

The regulations for the crisis assistance program provide the framework for determining action to alleviate an "emergency due to lack of heating capacity" in a household. W.A.M. §§ 2950, *et seq.* W.A.M. § 2951 specifically states, in part:

It is not the intent of these regulations to define a program of entitlement. . . . It is the intent of this regulation to provide a framework within which staff, based on their judgment, may grant assistance to households who face a heating crisis.

. . .

Households will be expected to decline or delay payment for non-essentials in favor of assuring themselves an adequate fuel supply. . . . This includes exploring options for heating system replacements, including home equity loans or other forms of assistance. The decision to recommend a heating system replacement through referral to a local Weatherization operator shall be based on the assessment of malfunctions in the heating system that represent a danger to the health and safety of the household. Such decisions shall be made by the director or his/her designee.

Within this framework, staff will determine eligibility on the basis of conserving program funds and utilizing client resources to the maximum extent reasonably possible. Staff will make every effort to assist those who are denied eligibility to find alternative solutions to their problem.

The CAPs, the Department through Economic Services and Vermont OEO, and the Weatherization Assistance Programs have agreed to EHSGP Procedures, Guidelines, and Policy References. These guidelines are similar to the PP&D's found in the WAM. These guidelines recognize that the EHSGP is not part of the regular weatherization contract; this program is funded through a trust fund from receipts from the retail sale of fuel imposed by 33 V.S.A. § 2503 and funds that may be allocated from the oil overcharge fund or from the federal low income energy assistance program. 33 V.S.A. § 2501(b).

The above guidelines set out the criteria for emergency eligibility including information on:

- (a) whether there is a danger to health and safety,
- (b) proof of home ownership by the applicant
- (c) the length of time the applicant has owned the home and the condition of the heating system at the time of sale,
- (d) whether the system has been red-tagged,
- (e) the source of the problem,
- (f) whether the home was recently weatherized, and
- (g) whether work has been done on the heating system recently.

The EHSGP is a discretionary program. The above regulations and guidelines give the CAP agency and OEO a

great deal of discretion when making decisions on a particular application for repairs or replacement of a heating system. The issue is whether there has been an abuse of discretion. See Fair Hearing No. 14,952.

Petitioner's situation is complicated. From the time of his purchase of the house, there have been a series of heating problems and different heating sources. Part of the problem is that there is no one workable heating source for the entire house.

In this case, petitioner previously received assistance through EHSGB when funds were authorized in November 2006 for the repair of the bedroom monitor heater. That heater had been identified as the primary heating source for the family. In addition, petitioner then received weatherization assistance for additional insulation.

Further, when petitioner moved into the house, there was an electric heater in the basement to protect the pipes, not for use as the primary heating source for the house. This electric heater was not replaced by a monitor heater until two years ago.

Although the situation is not optimal, CAP and OEO have considered the totality of the facts in this case. One cannot say that they have abused their discretion by denying

a piecemeal response to petitioner's situation, especially when the evidence does not support the proposition that the basement monitor heater is the primary heating source. The above regulations indicate that CAP and/or OEO should help petitioner find an alternative solution, and the hope is that they will work together to explore other sources such as energy efficiency programs.

In light of the discretionary nature of this program, the EHSGB denial is affirmed.

#