

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gerhard J. Sweetman, :
Petitioner :
 :
v. : No. 786 C.D. 2009
 : Submitted: November 6, 2009
Department of Public Welfare, :
Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE McCLOSKEY

FILED: December 15, 2009

Gerhard J. Sweetman (Petitioner) petitions pro se for review from a final administrative action order issued by the Department of Public Welfare's (DPW's) Bureau of Hearings and Appeals (BHA), affirming the order of the administrative law judge (ALJ) denying his appeal. We now affirm.

On December 21, 2007, Petitioner applied for Low-Income Home Energy Assistance Program (LIHEAP) cash benefits for his one person household.¹ As part of the application process, Petitioner's landlord submitted a form to DPW indicating that he rented a unit to Petitioner, that the unit was a subsidized housing unit, that the rent included heat, that the rent cost was based upon a fixed percentage of Petitioner's

¹ LIHEAP is a program that provides, *inter alia*, cash payments to help eligible low-income households pay home heating costs, as authorized by the Low Income Home Energy Assistance Act, 42 U.S.C. §§ 8621 - 8629.

income, that Petitioner did not pay the utility company for the electricity that runs the heating system and that the main source of heat was natural gas.²

On March 13, 2008, the Montgomery County Assistance Office (CAO) issued a LIHEAP eligibility notice informing Petitioner that it was denying his application for LIHEAP. The CAO indicated that it found that Petitioner was ineligible for benefits because his heating costs were included as an undesignated portion of his rent, which was based upon a fixed percentage of his income. On March 28, 2008, Petitioner filed an appeal to BHA.

An administrative hearing was scheduled and held before the ALJ on May 21, 2008. Shirley Williams, CAO Energy Assistance Employee, testified on behalf of DPW. Petitioner appeared and testified on his own behalf. Ms. Williams testified that both Petitioner and his landlord had provided information indicating that Petitioner resided in a subsidized housing unit, that the rent included the cost of heating the residence and that the rent was based upon a fixed percentage of Petitioner's income. Ms. Williams testified that Petitioner had submitted a copy of his electric bill to the CAO which indicated that he paid for residential electric service, but not for heating service. Thus, based upon the documentary evidence, Ms. Williams testified that Petitioner was ineligible for LIHEAP benefits.

Petitioner testified that he believed that he should have been found eligible for LIHEAP cash benefits based on the fact that the "landlord provide[d] inadequate heat which required him to use space heaters to supplement the heat." (Petitioner's Brief at 8). Petitioner testified that during October, April and May, he used his space heater as his primary source of heat. Petitioner testified that his landlord "has a primary heating system for the whole building and one thermostat somewhere else." (N.T. at

² The landlord submitted Form PWEA 36, Landlord Statement Form, as requested by DPW.

21). Further, Petitioner testified that he supplied “primary heat to the building” when his landlord supplied “zero heat.” (N.T. at 22). Petitioner also testified that “there are times in the year where the heat is not included in the rent” because the landlord failed to supply adequate heat, such as in April and May. (N.T. at 31). Petitioner testified that he had obtained statements from other tenants in the building which supported his assertion that he used electricity as his primary heat source. Finally, Petitioner testified that the landlord had allowed him to use a space heater and that was the “most I could get him to bend to admit that he had problems because he’ll have contractual problems if he admits he wasn’t supplying heat.” (N.T. at 23, 24).

The ALJ noted that Section 601.31(2)(i)(B) of the LIHEAP regulations, 55 Pa. Code § 601.31(2)(i)(B), provided that renters whose heating cost was included as an undesignated portion of their rent and whose rent was based upon a fixed income percentage were ineligible for LIHEAP benefits. The ALJ found that the documents considered by the CAO in denying eligibility verified that Petitioner resided in subsidized housing, that his heating costs were included as an undesignated portion of his rent and that his rent was based upon a percentage of his income. The ALJ found that the PECO bill corroborated the CAO’s conclusion that Petitioner did not pay for his heating costs. The ALJ also noted that Petitioner did not provide any evidence to refute any of the CAO’s evidence. Thus, the ALJ denied Petitioner’s appeal and on July 18, 2008, BHA issued a final administrative action order and adjudication denying the appeal.

Petitioner filed a request for rehearing or reconsideration with DPW on August 4, 2008. Petitioner alleged that there was an “error” in the ALJ’s conclusion about the information in his electric bill as the “bill clearly show[ed] a spike in heating season & spike in cooling season.” (O.R. at Document No. 8). The request was granted

by DPW order dated August 14, 2008. Subsequently, on February 23, 2009, DPW upheld the order entered by BHA. Petitioner then filed an appeal with this Court.

On appeal,³ Petitioner argues that the ALJ erred because “simple english says that [he] clearly has the right to receive LIHEAP benefits.” (Petitioner’s Brief at 16). Petitioner alleges that the following language contained in the LIHEAP eligibility requirements supports his argument that he is eligible for benefits:

If a household in subsidized housing which pays for rent and utilities as a fixed portion of its income, becomes responsible for payment to a vendor, either in full or in part, for its primary heating costs, that household then becomes eligible for cash benefit, if otherwise eligible.

(Petitioner’s Brief at 16).

Petitioner argues that his PECO electric bill has three components, including normal household electric usage; supplemental heating when a landlord provides insufficient heating; and primary heating when a landlord provides no heat. Petitioner argues that his space heater “becomes the primary heat when the landlord does not provide heat or if there is heating failure.” (Petitioner’s Brief at 13). Petitioner asserts that he and his fellow tenants “were required to use supplemental heating” which became primary heating when the heat was turned off. *Id.* Petitioner argues that the ALJ erred in finding that he paid for residential electric services and not heating services because “residential heating services is inapplicable to the [Petitioner’s] apartment.” *Id.* Finally, Petitioner argues that although his landlord has a “separate”

³ Our review of DPW’s final order is limited to determining whether an error of law was committed, whether constitutional rights were violated or whether necessary findings of fact were supported by substantial evidence. *Wood Services Inc. v. Department of Public Welfare*, 803 A.2d 260 (Pa. Cmwlth. 2002), *affirmed*, 576 Pa. 228, 839 A.2d 184 (2003).

heating account, he should be granted LIHEAP benefits because he must pay additional costs for heating when the landlord's primary heating is off in the building or if the heating fails. Id.

If otherwise eligible, an individual may receive LIHEAP cash benefits to help pay for the main energy source for heat. See Section 601.31(2) of the regulations. For a cash benefit, the household shall be responsible for paying for its main source of heat either directly to a vendor or indirectly as an undesignated part of rent. Id. Section 601.31(2)(i)(B) of the regulations provides that the following persons and members of their households are considered to have a home heating responsibility:

Renters, including subsidized housing tenants, who pay for heat indirectly as an undesignated part of rent. Renters, including subsidized housing tenants, are ineligible if their rental charge includes an undesignated amount for heat and is based on a fixed percentage of their income or on their source of income.

55 Pa. Code § 601.31(2)(i)(B).

The regulations provide that the individual may use the cash benefit to pay the vendor of a secondary fuel type only if the applicant establishes direct payment responsibility for both the main and the secondary fuel types. See 55 Pa. Code § 601.104. Therefore, if Petitioner directly paid a vendor for the main source of his heat or paid indirectly for heat, but not as a fixed percentage of his income, he would be eligible for LIHEAP cash benefits. In the present matter, Petitioner does not pay directly for his heat, but pays for his heat as part of his rent, which is a fixed percentage of his income.

Moreover, although Petitioner asserts that his space heaters are the "main" source of heat, Section 601.3 of the regulations provides that the "main" fuel type is the source of energy for the central heating system of the residence, or if the residence is not centrally heated, the source of energy used most by the household. 55 Pa. Code § 601.3.

Thus, Petitioner’s main fuel type is natural gas and Petitioner has not established that electricity, as the source used to supply Petitioner’s space heaters, is the “main” fuel type for his home. Therefore, we cannot say that DPW/BHA or the ALJ erred in concluding that Petitioner was ineligible for LIHEAP benefits.

Accordingly, the final administrative order of BHA is affirmed.

JOSEPH F. McCLOSKEY, Senior Judge

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ORDER

AND NOW, this 15th day of December, 2009, the final administrative action order of the Department of Public Welfare, Bureau of Hearings and Appeals, is affirmed.

JOSEPH F. McCLOSKEY, Senior Judge