

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. H-01/21-018
)
Appeal of)
)

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families ("Department") that he is ineligible for the General Assistance ("GA") Temporary Housing program for seven (7) days based on the violation of a motel rule and Department Temporary Housing policy GA-120. The following is based on an expedited telephone hearing was held January 19, 2021.

FINDINGS OF FACT

1. Petitioner is homeless and was granted temporary housing by the Department on December 28, 2020. His grant of housing was for 30 days and he was placed at a local motel (where he had already been staying, through the GA program). The motel where he was staying had a rule prohibiting smoking in rooms; violation of the rule was grounds for ejection from the motel.

2. Petitioner was subsequently asked to leave the motel on January 10, 2021, for two separate reasons: 1) for

disturbing the quiet enjoyment of other guests, and 2) for smoking in his room.

3. Testimony submitted by the Department from the motel manager established that petitioner had been belligerent, loud, inebriated and physically aggressive with the motel manager on December 29, 2020, after the manager asked petitioner to leave a room (not his) while it was being cleaned. This incident did not lead to petitioner's immediate ejection from the motel.

4. On January 9, 2021, another guest (in an adjoining room) reported that petitioner had been threatening, aggressive and used profanity towards her over the previous night, making her extremely uncomfortable. The motel manager spoke to petitioner on January 9, 2021, to advise him that this (reported) behavior was not acceptable.

5. On January 10, 2021, the same guest reported that petitioner had been excessively noisy overnight. The evidence of these reports to the motel manager is deemed credible and reliable; they contained specific descriptions of petitioner's conduct, were made within a matter of hours to the motel manager (the events occurred overnight and were reported the next morning), and the reporter was visibly

shaken and upset by the events.¹

6. Following the January 9th report, the motel manager spoke to petitioner and told him that he would need to leave the motel the next day. In the process of inspecting petitioner's room, the motel manager discovered an ashtray with numerous smoked cigarettes, detected excessively high nicotine levels in the room (using a nicotine meter), and ultimately needed to clean the walls and curtains of the room and replace the linens due to the smell of cigarette smoke. The manager concluded that petitioner had been smoking in the room (despite denying that he had done so) - this conclusion is adopted as reasonable and based on credible evidence.

7. Petitioner was given a notice to vacate the hotel for disturbing the quiet enjoyment of other guests and smoking in his room. Petitioner left the motel on January 10, 2021.

8. On the same day, petitioner contacted the Department for assistance and was housed for one (1) night at another motel. On January 11, 2021, the Department was informed of the reasons that petitioner was asked to leave

¹ Under the circumstances, including the expedited nature of this proceeding, it was an unnecessary hardship (if not impossible) to produce the other hotel guest to testify at hearing. See Fair Hearing Rule 1000.3.0.5.

his first motel placement. As a result, petitioner was given a period of ineligibility from the GA temporary housing program for 15 days, which has since been reduced to seven (7) days because petitioner is working with a housing case manager. Petitioner's period of ineligibility is the subject of this appeal. He was being housed pending the issuance of the hearing officer's recommendation.

9. Petitioner testified at hearing and denied the allegations, alleging that the other guest fabricated the reports (because he had spurned her romantic interest and she was upset at him) and that the motel manager wanted to throw him out of the motel for no apparent reason, suggesting that the manager's testimony was fabricated or exaggerated.

10. The Department's evidence carries greater weight and credibility than petitioner's testimony. As such, the preponderance of evidence in the record establishes that petitioner disturbed the quiet enjoyment of other guests and was smoking in his room.

ORDER

The decision of the Department imposing a period of ineligibility ("POI") 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.O.4.

On August 11, 2020, the Department promulgated a comprehensive policy, referred to here as the GA Covid-19 Rules, to govern the administration of the "motel voucher program" during the pandemic. The GA Covid-19 Rules include a penalty provision if an individual is issued a Notice to Vacate by a motel due to the violation of a motel rule, as follows (in relevant part):

GA-120 Period of Ineligibility

You will not be eligible to be placed in a hotel/motel by the Department for a period of time if you are asked to leave a hotel/motel for:

. . . .

- Disturbing other guests' quiet enjoyment of the property

. . . .

- Use of lighted tobacco products, tobacco substitutes, in any form, indoors or any place on the property where smoking is not permitted.

. . . .

If it is determined by the Department that you are not eligible for a period, the Department will not pay for

you to stay in a hotel/motel during that time. This is called a Period of Ineligibility (POI).

- For a first violation, the POI is 15 days. *You will be rehoused after serving 7 days of the POI if your case worker informs the Department that you are working with them to find permanent housing.*
- For a second and any other violations, the POI will be 30 days.

GA COVID-19 Rules, GA-120 Period of Ineligibility.²

The factual record establishes that the motel had sufficient reason to ask petitioner to leave and the reasons he was asked to leave support the Department's imposition of a period of ineligibility under GA-120 for "disturbing other guests' quiet enjoyment of the property" and, independently, "use of lighted tobacco products."

As such the Department's imposition of a seven (7) day POI is consistent with the rules and must be affirmed. See 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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² See <https://dcf.vermont.gov/sites/dcf/files/CVD19/ESD/Temp-Housing-COVID-19-%2811.9.20%29.pdf>.