

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. S-01/21-028
)
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 housed at a motel under a granted temporary housing by the Department on December 28, 2020.

2. The motel where he was staying had a rule prohibiting smoking in rooms; violation of the rule was grounds for ejection from the motel.

3. Petitioner was asked to leave the motel on January 12, 2021 for smoking in his room. As a result of his ejection from the motel, 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.

4. The manager of the motel testified at hearing. During his stay, the manager had consistently found ashtrays with cigarette butts in his room which also smelled like cigarette smoke. On January 11, 2021, the motel manager confronted petitioner about whether he had been smoking in his room, and petitioner admitted that he had done so. The motel manager informed him he would have to leave the next day because smoking was not permitted.¹ At the time, petitioner did not appear to actively object to or dispute his ejection.

5. At hearing, petitioner testified that he believed the motel manager was biased against him because he (petitioner) is originally from the United Kingdom. In addition, petitioner alleges that the manager misheard him in

¹ The motel manager prepared a written "notice to vacate" to give to petitioner the next morning; however, petitioner had checked out before this could be personally given to him. Given that petitioner was informed of the reasons for the ejection and that he appealed his disqualification the day after he left the motel, petitioner was not prejudiced by not receiving the notice to vacate.

saying that he admitted smoking in his room. Petitioner acknowledged that this was the first time he had raised these concerns or objections; and he passed on the opportunity to question the motel manager about these allegations during the hearing.

6. 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 was smoking in his room, in violation of the rules of the motel.

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 1000.3.0.4.

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:

. . . .

- 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 the "use of

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

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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