

HUMAN SERVICES BOARD

INTRODUCTION

The decision involves applications filed on March 15 and March 16, 2011. The decision is based on the evidence adduced during an expedited telephone fair hearing on March 16, 2011. The hearing officer upheld the Department upon the grounds set out below. The hearing officer indicated to petitioner that she could reapply in the future depending on her circumstances and information.

1. The petitioner is a forty-eight-year-old woman who receives Supplemental Security Income (SSI) disability

payments in the amount of \$721.00 per month. The petitioner suffers from PTSD and anxiety.

2. The petitioner is homeless. She qualified for temporary housing assistance through the general assistance program on or about October 22, 2010. The petitioner has received general assistance to pay for a motel on and off until her latest applications for temporary housing assistance on March 15 and March 16, 2011. Until the most recent applications, assistance from the Department kicked in once petitioner had used her monthly income towards temporary housing.¹

3. The petitioner received a Section 8 certificate from the local housing authority during January 2011. Petitioner is working with staff at the local housing authority to find permanent housing.

4. S.H. is the eligibility benefits specialist who processed petitioner's applications on March 15 and 16, 2011.

5. The Department denied petitioner temporary housing assistance because the Department determined petitioner had resources that could be used for housing (\$60.00 in cash) and because the Department found that petitioner exceeded the

¹ Petitioner had a prior expedited fair hearing on or about January 25, 2011 that authorized temporary housing assistance until February 1, 2011 when petitioner would receive her SSI.

maximum allowance for temporary housing assistance. On March 15, 2011, the Department found that the local homeless shelter had a bed available but the petitioner refused to go to the local homeless shelter. On March 16, 2011, the Department believed that the local homeless shelter continued to have space available. Refusing to use a shelter bed can be grounds for denial of temporary housing assistance.

6. Petitioner stated that she used the local homeless shelter in the past and found it chaotic and stressful and would not stay at the local homeless shelter.

ORDER

The Department's decision to deny temporary housing assistance based upon resources and availability of alternative shelter is affirmed. The Department's decision to deny temporary housing assistance based on a Guideline and Procedure limiting temporary housing assistance to twenty-eight days for an adult without children is reversed as such Guideline and Policy are not in conformance with the underlying regulations.

REASONS

The General Assistance program provides a safety net in limited situations provided that funds are available. 33 V.S.A. § 2103.

Temporary housing assistance is found in W.A.M. § 2652.2 that states, in part:

Temporary housing is intended to **provide short term shelter (84-day maximum)** for applicants who are involuntarily without housing through circumstances they could not reasonably have avoided and for whom permanent housing or alternative arrangements are not immediately available. "Could not reasonably have avoided" is subject to the limitation in rule 2621 (4).

Authorization for temporary housing may be issued for periods of not more than seven days. Payment may be authorized in an amount necessary to secure such housing at the least expensive rate available to the applicant at that time.

Temporary housing payments above the GA payment maximums **will be allowed for only 84 days in any consecutive 12-month period.** The 12-month period is computed from the date of application to the same day of the month 12 months prior. The 84-day period need not be consecutive. After the 84-day period, payments are allowed only up to the permanent housing payment maximum.

The 84-day temporary housing maximum is cumulative for the Emergency Assistance and General Assistance Programs. An applicant who has received 84 days in temporary housing under EA during a 12-month period is not eligible for any further temporary housing assistance under GA for the same 12-month period. Temporary housing beyond 28 cumulative days in any consecutive 12-month period is not an entitlement; payments shall cease upon expenditure of the annual appropriation for this purpose.

Housing authorizations in amounts above the GA payment maximums shall be discontinued as soon as permanent housing is located, or reduced if less expensive temporary housing becomes available while the applicant seeks permanent housing. (emphasis added.)

The above regulation needs to be read in conjunction with W.A.M. § 2620 in which applicants "must have exhausted all available income and resources" (subsection B) and must explore and use alternative resources including community resources such as available beds at a local homeless shelter (subsection C).

At the time of application, petitioner had available income that could be used towards housing. In addition, space was available at the local homeless shelter. As a result, the Department was correct in denying assistance on these grounds.

Petitioner questioned the suitability of the local homeless shelter. There may be situations in which a bed at a local shelter is not appropriate based on medical grounds whether the medical grounds stem from an applicant's physical and/or mental conditions. However, before the shelter option can be foreclosed, there needs to be documentation from a medical provider or mental health provider to support the applicant's argument. Such evidence was not available at this hearing.

In addition, the Department argued that applicants with no minor children are limited to twenty-eight days of temporary housing assistance.² They cited a procedure the Department issued in 2009. GA Emergency Housing Operational Guidelines and Procedures, Effective 10/01/2009.

Even though the Department is being affirmed on other grounds, it is important to address this argument because it is capable of repetition. Department regulations are adopted through Department compliance with the Vermont Administrative Procedures Act. 3 V.S.A. §§ 801 *et seq.* Procedures and guidelines are not adopted through administrative rule making.

In this case, the above GA Guideline and Procedure attempts to nullify a regulatory provision. As a result, the Department's reliance on this procedure is misplaced. The pertinent regulation, W.A.M. § 2652.2, states that temporary

² The Department attached to their materials a copy of Bouvier v. Wilson, 139 Vt. 494 (1981) as support for limiting temporary housing assistance to twenty-eight days. The Bouvier case involved whether W.A.M. § 2613.2 was consistent with the underlying general assistance statute. A Superior Court judgment invalidated the regulation as inconsistent with statute and the Supreme Court reversed the Superior Court decision. W.A.M. § 2613.2 does not exist and has not existed for years. W.A.M. § 2613.2 is a predecessor to the present temporary housing assistance regulation found at W.A.M. § 2652.2 that allows temporary housing assistance up to eighty-four days provided the other eligibility criteria are met. The Bouvier case has no applicability to the within decision.

housing assistance can be authorized for a maximum of eighty-four days; this regulation controls.

As the Vermont Supreme Court stated in In re Peel Gallery, 149 Vt. 348 (1988) at page 351, "[a]n administrative agency must abide by its regulations as written until it rescinds or amends them". See Lanphear v. Tognelli, 157 Vt. 560, 563 (1991) (Remedy for regulation is modification not disregard of the regulation's language.). See also Slocum v. Department of Social Welfare, 154 Vt. 474, 482 (1990) and Burbo v. Department of Social Welfare, 157 Vt. 664, 665 (1991), Fair Hearing No. 10,060, and Fair Hearing No. 17,070 *et al.*

The Department's decision to deny temporary housing assistance based on petitioner receiving the maximum amount of assistance under the regulations is reversed.

However, the Department has shown other reasons for the denial; namely, petitioner's resources and income and petitioner's decision not to use the local homeless shelter. Accordingly, the Department's decision is affirmed as set out above. 3 V.S.A. § 3091(d), Fair Hearing Rule 1000.4D.

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