

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. A-08/13-572  
 )  
 Appeal of )

# INTRODUCTION

Petitioner appeals the determination of the Vermont Department for Children and Families ("Department") that she is not eligible for temporary housing assistance through the General Assistance program. The following facts are adduced from an evidentiary hearing held August 14, 2013, a telephone status conference on September 11, and post-hearing filings of the parties.

## FINDINGS OF FACT

1. Petitioner is homeless and lives with her two children, one of whom is age seventeen and disabled. She has been homeless since leaving her apartment under circumstances that are further detailed below.

2. Petitioner receives SSI and suffers from significant anxiety.

3. Petitioner has a Section 8 voucher through her local housing authority.

4. Prior to leaving her apartment, petitioner described a deteriorating relationship with her landlord. She did not always pay her rent on time. The landlord indicated at some point that he wanted the apartment vacated in order to make repairs.

5. At some point in the month prior to her departure, petitioner's landlord informed her that he would file eviction proceedings against her unless she agreed to leave the apartment by a date certain in July.

6. During this time, petitioner was consulting with her caseworker at the housing authority. Her caseworker advised her that she would risk losing her voucher if her tenancy led to eviction proceedings. In a letter submitted post-hearing, petitioner's caseworker states that the housing authority "agreed to continue assistance after [petitioner] vacated the unit . . . as long as she left in good standing with the landlord . . . the reason she wished to vacate the unit was to preserve her voucher."<sup>1</sup>

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<sup>1</sup> It is noticed that the Section 8 program has experienced substantial cutbacks and housing authorities across the state have applied increasingly strict measures in terminating existing vouchers to meet federal cuts. See "Gimme Shelter: In Vermont, Sequestration Leads to Homelessness," *Seven Days*, August 14, 2013 (<http://www.7dvt.com/2013gimme-shelter-vermont-sequestration-leads-homelessness>).

7. Petitioner vacated the unit in July, was left homeless, and preserved her voucher.<sup>2</sup> But for the landlord's clearly stated intent to evict her, in conjunction with her need to preserve her Section 8 voucher, petitioner would have remained in her apartment.<sup>3</sup>

8. Petitioner applied for housing assistance through the General Assistance program on behalf of herself and her minor son. She was denied assistance under both "temporary" and "emergency" criteria.

9. Petitioner requested an expedited hearing and was granted expedited relief by the hearing officer. After hearing, the parties briefed the question of her eligibility. The Department now takes the position that petitioner is eligible for emergency housing because she is a member of a vulnerable population and did not "cause her own loss of housing," but disputes that petitioner is eligible for temporary housing because she has not suffered a constructive

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<sup>2</sup> Neither party presented evidence or argued that petitioner had an intervening source of "housing" that ended after she vacated her apartment and applied for GA assistance in August. The only housing the parties dispute here is the apartment she vacated in July. Presently, petitioner's counsel represents that she will be moving into a new apartment as of October 1 with retention of her voucher.

<sup>3</sup> Based on the representations of petitioner's attorney, there was no indication of whether petitioner's landlord would have moved forward with eviction based on cause or no-cause.

eviction.<sup>4</sup> Petitioner argues that she has experienced a constructive eviction and is thus eligible for temporary housing.

ORDER

The Department's decision is reversed.

REASONS

The Department has promulgated an emergency rule as to "emergency housing" eligibility for individuals who meet "vulnerable population" criteria. That petitioner, as a recipient of SSI, is categorically eligible for emergency housing is not in dispute. See General Assistance (GA) Emergency Rule 2652.3. In dispute is whether she is eligible for "temporary housing" assistance because of a "catastrophic" situation, which includes a constructive eviction. This is a material distinction because of the difference in the number of nights of assistance granted under each rule.<sup>5</sup>

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<sup>4</sup> The Department's initial determination was that petitioner, while in a vulnerable population, had caused her own loss of housing and was thus ineligible.

<sup>5</sup> Eligibility for emergency housing is limited to 28 nights of housing assistance within the 12 months prior to application, see GA Emergency Rule 2652.3, while eligibility for temporary housing is limited to 84 nights. See GA Rule 2652.2.

GA Rule 2620 provides in part:

Applicants with an emergency need attributable to a catastrophic situation (rule 2621) may qualify for GA to address that need. . .

To qualify for such assistance, applicants must meet all of the following eligibility criteria:

- A. They must have an emergency need attributable to a catastrophic situation, as defined in rule 2621.
- B. They must have exhausted all available income and resources.
- C. They must explore and pursue or have explored and pursued all alternatives for addressing the need, such as family, credit or loans, private or community resources, and private or government-sponsored health insurance. . .

Temporary housing assistance is described in GA Rule 2652.2 as follows:

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).<sup>6</sup>

"Catastrophic Situation" as defined at Rule 2621(4) includes the following:

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<sup>6</sup>A currently proposed amendment to this provision provides (with original emphasis):

Temporary housing is intended to provide short-term shelter (84-day maximum) for applicants who are without housing due to a catastrophic situation as defined in rule 2621(A), (C) or (D).

A court ordered or constructive eviction, as defined at rule 2622, due to circumstances over which the applicant had no control.

"Constructive Eviction", as defined in Rule 2622, includes the following:

Constructive eviction is defined as any disturbance caused by a landlord, or someone acting on the landlord's behalf, that makes the premises unfit for occupation. The motive for the disturbance, which may be inferred from the act, is the eviction of the occupant.

Petitioner persuasively argues that "any" disturbance means just that - any action of the landlord which, under the circumstances, renders the premises not fit for occupation by petitioner. The Department argues for a narrower interpretation, in part based on the legislature's recent passage of Act 50, which established non-catastrophic eligibility for those considered members of a vulnerable population. See Emergency Rule 2652.3, cited *supra*; see also, Act No. 50, Acts and Resolves of the 2013-2014 General Assembly, Section E.321.1.

However, nothing in Act 50 or the creation of the vulnerable population rule narrowed or otherwise changed the definition of constructive eviction. The Department cites several prior fair hearing decisions which discuss constructive eviction, but none of these decisions entail

circumstances similar to those faced by the petitioner.<sup>7</sup> The phrase "any disturbance caused by a landlord" contemplates, on its face, a wide breadth of situations.

Petitioner has established that her circumstances were untenable - faced with the prospect of eviction proceedings pursued by her landlord, staying in her apartment would have resulted in the loss of her voucher and in turn would have risked the loss of permanent housing for her and her family in the future. The preponderance of evidence established this fact.<sup>8</sup> Moreover, petitioner's situation involved an effort initiated by her landlord constituting a disturbance that made continuing occupation of the premises unfit for

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<sup>7</sup> The constructive eviction rule also provides that:

A situation in which the landlord has not provided heat, utilities, or water within a reasonable period of time and there is an agreement to furnish these items shall be considered a constructive eviction when the applicant is pursuing legal resolution of these offenses through the Vermont Department of Health or appropriate local officials, such as the local housing inspector or town health officer. The department shall not deny benefits to an individual in a constructive eviction situation because the individual chooses not to pursue legal action such as withholding rent, obtaining a court order, suing the landlord, or terminating the rental agreement.

GA Rule 2622. This language merely describes the operation of the rule in particular circumstances, but does not limit the rule to those circumstances.

<sup>8</sup> In support of her argument, petitioner cites the federal rules relating to the grounds for Section 8 voucher terminations. 24 C.F.R. § 982.552(c) (Denial or Termination of Assistance). While this construction of the Section 8 rules may be reasonable, in any event the letter from the housing authority makes clear that petitioner had to vacate her apartment in "good standing" in order to preserve her voucher.

petitioner - the sole and obvious motive of the landlord being her eviction.<sup>9</sup> See GA Rule 2622, *supra*.

Thus, the Department's denial of temporary housing eligibility based on petitioner's failure to establish catastrophic criteria is inconsistent with the applicable regulations, and the Board must reverse. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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<sup>9</sup> That the Department now deems petitioner eligible under the "vulnerable population" rules is irrelevant to this analysis. It is merely by chance that petitioner fits into the definition of "vulnerable"; if she did not, she would be with no recourse if the Department's arguments are accepted. That she was forced to leave her apartment by a disturbance of the landlord is the determining factor here.