

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-01/15-109
)
Appeal of)

INTRODUCTION

The petitioner appeals the denial of General Assistance (GA) emergency housing by the Vermont Department for Children and Families, Economic Services Division. The following facts are based on the representations of the parties at a telephone hearing held February 6, 2015. The petitioner was denied expedited relief at the hearing.

FINDINGS OF FACT

1. The petitioner is homeless but does not meet eligibility for temporary or emergency housing assistance through GA. He only receives housing assistance when the "cold weather exception" (CWE) applies.¹

2. The petitioner applied for GA housing at 10:40 a.m. on January 30, 2015, when the CWE was in effect, and was denied assistance because a bed at COTS, a local shelter, was available at that time. The Department advised the

¹ Generally speaking, the CWE was established by the Department to allow for the relaxation of the normal rules of eligibility during defined cold weather nights.

petitioner of the availability of the space at COTS, which is located a short walk from the Department's office.

3. The petitioner waited three and a half hours before going to COTS. By the time he arrived there, the available space had been given to someone else.

4. The petitioner returned to the Department later that afternoon on January 30 and again applied for GA. The Department denied his application because the petitioner had failed to avail himself of available space at COTS earlier that day. The Department informed the petitioner that his failure to avail himself of an available shelter bed would result in a 30-day disqualification from GA.

5. At the time he reapplied for GA in the afternoon on January 30 the petitioner told the Department that he was unable to get to COTS sooner that day because he had a job interview early that afternoon. The Department represented that when it called to verify the petitioner's allegation it learned that a job interview had not been scheduled until 1PM that day, and that the petitioner had been notified in advance that it had been cancelled.

6. At the hearing held on February 6, the petitioner alleged that immediately after applying for GA on the morning of January 30 and being told there was space at COTS, he

called COTS on his cell phone and was told that he had until 2:30 p.m. to arrive there, and that the vacant space would be held open for him until that time.

7. Inasmuch as the petitioner had not made this allegation when he applied on the afternoon of January 30, the hearing officer advised the Department to see if COTS would verify this conversation with the petitioner. The Department returned to the hearing and represented that it had confirmed with COTS that it does not hold available spaces open based on phone calls, and that it would have been contrary to its practices and policy for any of its employees to have advised the petitioner or anyone else to the contrary.

8. At the hearing the petitioner also alleged (also, according to the Department, for the first time) that on January 30 he had used the time between his application (at 10:40 a.m.) and his interview (1 PM) shopping for clothes to wear to the interview. The petitioner disputed the Department's representation that the job interview had been cancelled.

9. At the hearing the petitioner admitted that he has been homeless in Burlington for a long time. The petitioner's verbal demeanor struck the hearing officer as

knowledgeable of policies of agencies in the Burlington dealing with homeless individuals. The hearing officer advised him that without verification or corroboration he could not credit the petitioner's allegations about calling COTS or having a job interview that day. The hearing officer offered to continue the hearing to allow the petitioner to present further evidence, and he advised the petitioner to consult with Vermont Legal Aid or Law Line for assistance in obtaining and presenting additional evidence. The petitioner pointedly declined the offer to continue the matter and advised the hearing officer to proceed with his decision.

10. In the absence of any credible evidence to the contrary, it is found that the petitioner deliberately delayed going to COTS on January 30 in order to be able to receive GA housing for a motel later that day. It is found to be highly unlikely that the petitioner was not aware of the COTS first-come-first-served policy, that COTS can offer long-term shelter, and the fact that vacancies at that facility are infrequent and short-lived.

ORDER

The Department's decision is affirmed.

REASONS

The petitioner's sole eligibility for housing assistance is the cold weather exception. He does not meet eligibility for temporary housing (GA Rules § 2652.2) or emergency housing (GA Rules § 2652.3). The CWE does not directly address the situation of an applicant's refusal of available shelter space, although it does penalize applicants for 30 days if the applicant loses temporary housing at "the hotel or similar establishment for not following the rules of the establishment," with the 30 days running from the last date temporary housing was authorized. The Department construes this to allow for application of a 30 day disqualification period when someone refuses or sabotages available shelter space, in that it is tantamount to a voluntary loss of housing.

The CWE is not part of the GA rules and is a purely discretionary program on the part of the Department. Even those who are eligible for housing under GA rules would normally be denied or disqualified for refusing available shelter space. See GA Rules § 2652.2 (denial warranted for failure to accept suitable housing accommodations) and GA Rules § 2652.3 ("Assistance shall not be authorized when appropriate shelter space is available."). Moreover, the

budget act appropriating funding for the cold weather exception makes it clear that the funds may be used for the exception "except in instances when: (1) appropriate shelter space, as defined in rules adopted by the Agency pursuant to subsection © of this section, is available. . ." FY 2015 Budget Act, No. 179, § E.321.1.

As such, the Board has held that the Department's application of a 30 day disqualification period for refusing to accept available shelter space, absent any medical or other reasonable justification, is within its discretion and appropriate under the cold weather exception. Fair Hearing No. B-01/15-22. The Department's denial in this case must similarly be found to be consistent with the rules, and the Board is therefore required to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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