

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. B-06/15-618  
 )  
Appeal of )

INTRODUCTION

Petitioner appeals the denial of General Assistance ("GA") temporary housing by the Vermont Department for Children and Families ("Department"). Petitioner's appeal was scheduled and heard on June 18, 2015 as an expedited hearing. Expedited relief was granted by the hearing officer through June 27. As the Department indicated a desire for Board review of the expedited relief, briefing of the issues (based on hearing officer questions for the Department) delayed the issuance of a recommendation. This is with no prejudice to the Department given that the case involves a closed period of nine days of eligibility, and was not capable of Board review prior to the expiration of expedited relief.

FINDINGS OF FACT

1. Petitioner was granted GA temporary housing assistance on May 29, 2015, through the Department's

Burlington district office, based on catastrophic eligibility due to domestic violence. That status is not at issue here.

2. Petitioner's initial grant of housing was from May 29 through June 27 and included two minor children ages two and five. Petitioner also has a fifteen-year-old daughter, from a different father than her younger children, who lives with her aunt; she gave up physical and legal custody of her daughter to her aunt but has maintained regular contact with her. Petitioner acknowledges that she has no legal relationship with her older daughter following the involvement of the Family Services Division at some point in the past; however, she testified credibly that she currently has a good and ongoing relationship with her in conjunction with her aunt's support and involvement, nor was this disputed by the Department.

3. Applicants eligible for temporary housing under catastrophic rules may receive up to 84 nights of housing in a 12-month period. The rules allow the Department to allocate housing grants for periods of up to 28 nights and the current practice in the Burlington district office is to provide grants for 28 nights at a time.

4. On June 5, petitioner's aunt had a family emergency and asked her to pick up her daughter from school and take

care of her that night and potentially several following nights.

5. Petitioner picked up her daughter from school and began to look for a place for her to stay that night. She testified credibly to her efforts contacting friends and family in the area, without success.

6. On the same day, petitioner also went to the Department's local district office to submit an application for temporary housing which included her daughter on the grant. However, she left after making the application while waiting for her interview, because she believed it would be fruitless and wanted to use the time remaining to find a place for her daughter to stay.

7. On this point, the Department asserts that there is no way to know whether her daughter would have been added to her housing grant, because petitioner left before completing the interview. Despite this assertion, the Department's own case notes clearly indicate that petitioner was advised her daughter could not be allowed to stay with her. At hearing, the Department also represented that the daughter could not be added to the housing grant because she was not legally in the custody of petitioner.

8. Believing that she had no other practical choice, petitioner brought her daughter to her motel room without permission; her daughter was subsequently discovered hiding under some bedding. They were allowed to stay the night but then asked to leave the next morning, June 6.

9. When petitioner went back to the local district office on June 8 (Monday) to, in effect, reapply for housing, she was told she was disqualified for the remainder of her grant, until June 27, because she had been asked to leave the motel for violating the rules on having guests. By that time, her daughter had a place to stay so she was not seeking to include her in the housing grant.

10. Petitioner's aunt contacted the Department on her behalf to explain that she had asked her to take her daughter due to an emergency, and that petitioner was not responsible for the circumstances. It is found that, under these circumstances, petitioner's actions were not unreasonable.

11. At hearing, the Department indicated that staff do not exercise discretion in reviewing the circumstances of a recipient's failure to comply with a motel rule when imposing a disqualification on this basis. Instead, their determination is based solely on the motel's decision to deny further accommodations to someone violating one of its rules.

ORDER

The Department's decision is reversed.

REASONS

Review of the Department's determination is de novo. As this involves, in effect, a termination of eligibility, it is the Department's burden to establish the appropriateness of its decision under the rules. See Fair Hearing Rule 1000.3.0(4).

The rules allow up to 84 nights of housing for individuals in catastrophic situations, through application of the "Temporary Housing in Catastrophic Situations" rule. See GA Rules §§ 2621 and 2652.2; see also FY15 Appropriations Act, No. 179, Section E.321.1 (2014) (limiting emergency housing assistance to vulnerable populations, individuals in catastrophic situations, and the cold weather exception). This is opposed to a maximum of 28 nights of housing under the "Temporary Housing for Vulnerable Populations" rule. See GA Rules § 2652.3.

Despite providing the same type (if not amount) of benefit i.e., temporary housing in a motel, the vulnerable population rule (§ 2652.3) has a specific provision for disqualifying households forced to leave a motel for a rules

violation, whereas the catastrophic rule does not. Rather, in imposing a disqualification period here, the Department relies on an interpretive memo dated August 27, 2014, providing that:

A catastrophic temporary housing assistance recipient who is denied further accommodations at a motel, shelter, or similar establishment for disorderly conduct, or otherwise not following the motel's rules, is ineligible for additional assistance until the authorization period for the current grant expires.

Interpretive Memo dated 8/27/14 (facing page 2652.2).

The interpretive memo goes on to provide an example involving someone on a grant for seven nights of housing, ejected from a motel for disorderly behavior, who would then be disqualified for the remaining nights out of seven. At the time, allocation of temporary housing under catastrophic eligibility was limited to seven nights of housing (up to a total of 84 nights). The rules were subsequently amended to allow for allocations of up to 28 nights of housing. See DCF Bulletin No. 15-06F (March 28, 2015).

There are several potential overarching questions about the Department's application of a disqualification period in these situations. The underlying basis for the policy interpretation is that to be eligible one must be "involuntarily without housing through circumstances they

could reasonably have avoided." GA Rules § 2652.2. However, this appears to be applicable to one's loss of more permanent housing as a precursor to eligibility, not the loss of a motel room provided by the Department - at which point the applicant has already been determined eligible. Secondly, this underlying basis requires a review of whether the loss of housing could have "reasonably" been avoided i.e., a review of the circumstances. However, the Department's policy interpretation and its stated practice is to *not* do a review of the reasonableness of the circumstances, in effect failing to exercise any discretion in these situations.<sup>1</sup>

Finally, the policy interpretation was made when interim housing grants were limited to seven nights, thereby limiting the length of any disqualification period to the same. After the rules change allowing interim housing grants of up to 28 days, this arguably calls for a fresh review of the interpretation - given a quadrupling of the potential period of disqualification. Moreover, it illustrates the possible arbitrariness of the policy interpretation when the grant, and corresponding period of disqualification, can be "up to" 28 nights. Different recipients could therefore be subject

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<sup>1</sup> The Board has ruled in prior cases that this language in the rules necessitates a review of the circumstances. See e.g., Fair Hearing No. B-08/13-583 and Fair Hearing No. B-09/13-662.

to different periods of disqualification, depending on the length of their housing grant, despite identical rules violations.

While these issues should be noted, they need not be reached here, where the facts do not establish that petitioner was without housing through circumstances she "reasonably could have avoided." GA Rules § 2652.2. By all accounts she was placed in a difficult situation when asked to care for her biological child on an emergent basis.<sup>2</sup> She made attempts to address the problem, though unsuccessfully. It cannot be found that petitioner acted "unreasonably" under the circumstances.

As such, the Department's decision is inconsistent with the rules and the Board must therefore reverse. See 33 V.S.A. § 3091(d); Fair Hearing Rule No. 1000.4(D).

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<sup>2</sup> In post-hearing submissions, the Department continues to argue both that the daughter could not be considered part of the household and that petitioner failed to cooperate when she decided not to complete her application to include her daughter in the household. The facts (as well as the Department's own position) support petitioner's reasonable belief that her daughter would not have been allowed on her grant, and her time was better spent trying to locate a place for her to stay.