STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. B-01/14-26
	)	& B-02/14-127
Appeal of	)	

INTRODUCTION

The petitioner appeals decisions by the Department for Children and Families, Economic Services denying her and her husband's application for temporary housing assistance under the General Assistance (GA) program. The issue is whether the petitioner meets the criteria for "catastrophic" eligibility. Expedited fair hearings were held by telephone on January 10 and 14, 2014, and a telephone hearing was held on March 12, 2014. The following findings of fact are based solely on the representations of and the written record supplied by the Department pursuant to those hearings.

FINDINGS OF FACT

1. The petitioner is unemployed and her husband is disabled. According to the Department their sole income is the husband's Social Security Disability benefit of $1,069.94 per month and Food Stamps (3SquaresVT) of $113.[1]

[1] It is assumed that prior to January 1, 2014, the amount of Social Security benefits was somewhat less.

2. In August 2013 the couple was living in an apartment pursuant to a written lease they had entered into in 2008. The rent under that lease was $850 a month. There is no dispute that sometime thereafter the landlord notified the couple that their rent was being raised to $900.

3. The Department's records show that the landlord notified the couple by certified letter dated August 9, 2013 that their tenancy would be terminated effective October 13, 2013 for "no cause". There is no allegation or indication in the record that the couple was behind on their rent at the time of the notice of termination.

4. The Department's records show that the petitioner consulted with an attorney at Vermont Legal Services Law Line who advised her not to continue paying rent, and to try to save that money to apply toward finding another rental. In a letter dated January 14, 2014 that attorney summarized the advice he had given the petitioner as follows:[2]

> I am writing this letter at the behest of (petitioner) to confirm that I advised her not to pay her rent into court. To elaborate I advise several hundred low income tenants annually. In my opinion, a person of limited means who receives only Social Security or SSI benefits is incapable of both paying rent into court and paying a first and last month's rent and security deposit to rent another apartment.

[2] The Board makes no findings as to the accurace or legitimacy of this advice.

> It was clear from the circumstances surrounding (petitioner's) case that she was not able to avoid being evicted. All that her resources would permit was to pay rent into court until her merits hearing at which time possession would be granted to her landlord based on their no cause eviction. I advised her as I have many many limited income tenants that the best opportunity for her was to hold whatever money she could, not pay her rent into court and try to find a place to move by the time the writ was executed. Although I am sorry to hear she did not find an apartment, I am confident that my advice not to pay rent into court permitted the (petitioners) to retain some meager resources that they would not otherwise have had.

5. There is no issue that the couple was not able to secure alternative permanent housing in the weeks and months after their lease was terminated.

6. Court records obtained by the Department show that on October 16, 2013 the couple's landlord filed a complaint against them seeking a writ of possession and payment of back rent of $1,700, which appears to be for the months of September and October 2013. The complaint included a motion to have the couple escrow a continuing rent obligation of $850 a month into court. Court records indicate that on November 26, 2013 the court granted the landlord's motion to escrow rent.

7. There is no dispute that the petitioner and her husband did not make the escrow payments into court.

8. The Department does not dispute that the couple left their apartment after being served with the eviction complaint, and that they used their money to pay for a motel room. There is no allegation or indication in the record that the couple did not diligently attempt to locate permanent housing during this time.

9. The record shows that the court issued a writ of possession to the landlord on December 23, 2013 due to the tenants' failure to have paid their rent into court.[3]

10. The record shows that the petitioner first applied for GA on January 10, 2014. She stated on her application that she and her husband had been living in a motel and paying $55 a day (allegedly a reduced rate based on the petitioner's husband being a veteran). There is no dispute that the cost of this temporary housing from October 2013 through early January 2014 was roughly the same as the five months of rent they had not paid since August 2013. There is no dispute that they had run out of money when they applied for GA.

[3] The record also shows that on February 20, 2014, the Court issued a final Judgment Order against the petitioner and her husband for back rent and court costs.

11. The Department denied the petitioner's application for GA due to the petitioner having caused the loss of her last permanent housing by failing to pay her rent into court.

12. In an expedited ruling on January 10, 2014 the hearing officer ordered the Department to house the couple for four nights to allow them to verify that they had been advised by an attorney not to pay their rent into court.[4] A hearing was scheduled for January 16, 2014.

13. On January 14, 2014, the hearing officer extended his expedited ruling based on the petitioner's verification that they had acted on the advice of an attorney (see *supra*).

14. In an email dated January 15, 2014 the hearing officer advised the parties that he did not perceive any facts to be in dispute, and that there was no need for a hearing the next day. The hearing officer advised the Department that it could "submit proposed written findings of fact for the record with any further written argument; or it

[4] See GA Rule 2652.3.

can request . . . a recommendation to the board based on the record as it now stands."[5]

15. In a memo to the parties dated January 31, 2014 the hearing officer gave the Department a deadline of February 7, 2014 to submit any additional written filing.

16. On February 7, 2014 the Department filed a written argument reiterating the facts and arguments it had raised on January 15, 2014, and requesting an "actual hearing" (without identifying any disputed facts). In a subsequent email the petitioner requested until February 24, 2014 to file a written reply. The Department made no objection to this request.

17. On February 19, 2014, the Board received notice from the Department of another expedited appeal by the petitioner stating that the issue was whether the petitioner could be granted GA pursuant to a "catastrophic situation". The hearing officer responded to the parties with the following email:

> My office informs me than an expedited appeal was called in today for these petitioners. Our information

[5] It can be noted that at that time the Department did not have verification of the court proceedings against the petitioner, but there was no indication that the Department had ever questioned or disputed the petitioner's version of those court proceedings, and the record is clear that eventually the Department did obtain verification of the court proceedings described above.

> is that they were granted GA for tonight under the CWE. It appears the petitioners allege that they were informed by the Department today that were it not for CWE they do not qualify under the regular temporary housing rules for the same reason that formed the basis of the Department's denials on January 10 and 14. Unless there are some new facts regarding their situation that were not available to the Department of January 14, and assuming that the petitioners are otherwise eligible, I do not see the point of another "expedited" hearing of the issue of "fault" . . . Further, my understanding of the status of the hearing held on Jan 14 is that the petitioners will be responding in writing by Feb. 24 to the Department's written argument filed on Feb. 7. If anything in the above in incorrect, please let me know.
>
> The parties should confer with each other and let me know immediately if there is anything I need to resolve on an expedited basis at this time.

18. That same day the Department responded by email that it considered the petitioner's request for a hearing "premature" because she had been granted GA for one night under the cold weather exception (CWE). The hearing officer sent the parties the following response:

> It appears to me at this time that the petitioners' latest request for an expedited hearing can be considered "premature" only as a technicality. My notes and recollection of the hearings on January 10 and 14 do not reflect whether my order was limited to 28 days, but even if it was, I do not see any distinction between 2652.2 and 2652.3 in terms of the grounds for my expedited order. If the Department feels there is a distinction (as opposed to a reargument of the factual basis of my 1/14 ruling), please identify it immediately in writing, or allow the petitioners to continue to receive GA on an expedited basis under the 84-day limit in 2652.2 as per my order of January 14. Upon the 2/21 expected receipt of the petitioners' written argument, I

> will proceed either with a recommendation to the Board regarding my 1/10-1/14 rulings or schedule the matter for further hearing if I deem it necessary. Please let me know immediately if there is any need for further expedited relief in the meantime.

19. The petitioner filed a memorandum of law on February 21, 2014. On February 25, 2014 the Board notified the parties that the matter would be set for hearing on March 12, 2014.

20. At the scheduled hearing on March 12, 2014 the hearing officer informed the Department that in lieu of testimony he would deem stipulated and admitted the facts alleged by the Department as supported by its written records. The Department submitted its statement of facts, exhibits, and arguments on March 25, 2014. As noted above, the facts and exhibits submitted by the Department provided the sole basis for the foregoing findings of fact in this matter.

ORDER

The Department's decision to deny the petitioner GA temporary housing assistance is reversed.

REASONS

The General Assistance program provides a safety net in limited situations provided that funds are available. 33

V.S.A. § 2103. Under the regulations, temporary housing assistance up to a maximum of 84 days is available only to those who meet the criteria for "catastrophic" eligibility.

W.A.M. § 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 W.A.M. § 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 (D).

"Catastrophic Situation" as defined at W.A.M. § 2621(D) includes the following:

> A court ordered or constructive eviction, as defined at rule 2622, due to circumstances over which the applicant had no control.
>
> A court-ordered eviction resulting from intentional, serious property damage caused by the applicant, other household members, or their guests; repeated instances of raucous and illegal behavior that seriously infringed on the rights of the landlord or other tenants of the landlord; or intentional and serious violation of a tenant agreement is not considered a catastrophic situation. Violation of a tenant agreement shall include nonpayment of rent if the tenant had sufficient income to pay the rent and did not use the income to cover other basic necessities or withhold rent pursuant to efforts to correct substandard housing.

The Board has noted that an essential underpinning of the above regulations is to determine whether an individual (adult) can be determined to be without fault regarding his or her homelessness. See e.g., Fair Hearing Nos. B-10/12-635. In this case, there is no dispute that the petitioner applied for GA only after a writ of possession had been issued evicting her and her husband from their previous apartment. Nonetheless, the Department argues that their loss of housing should be considered to have been within their "control" under the above regulation because they did not pay their rent into escrow after the eviction complaint against them had been filed. This argument is faulty for several reasons.

First, the record is clear that the petitioner and her husband were served with an eviction notice in August 2013 that was for "no cause", even though their rent was current at that time. There is no question in this case that *whether or not the petitioner subsequently paid her rent into court*, she and her husband still would have been evicted. The worst that can be said is that they may have somewhat hastened the actual date of their inevitable eviction by not paying rent into escrow,[6] but it cannot fairly be said that their nonpayment of rent into court "caused" their eviction.

Moreover, the non-payment of rent into court and the timing of their eviction was inconsequential vis-à-vis their eligibility for GA. As noted above, the couple used virtually all the money they didn't pay into court to obtain temporary housing on their own for several months, *before they applied for GA*. Clearly, any rent that they might have paid into escrow during those months would not have been available for their temporary housing, and they would not have been in any different financial position if they had applied for GA after "delaying" their eviction by making escrow payments.

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[6] The record shows a gap of less than two months between the court's issuance of the writ of possession and its final order (see footnote 2, *supra*).

It seems reasonable that once the petitioner and her husband knew (in August) that they couldn't stay in their apartment, they should try to do everything within their extremely limited means to secure alternative housing. As it was, their rent was over 80 percent of their income.[7] Continuing to pay that rent to their landlord would have left them with virtually nothing when the time eventually and inevitably came that they would be evicted. In retrospect, it may be that they (and their attorney) were overly optimistic about their prospects for locating affordable alternative housing, but the fact remains that they were able to house themselves for over five months before they applied for GA.

Based on the undisputed record in this matter, it must be concluded that the petitioner and her husband have shown that their eviction was court-ordered, and for reasons beyond their control. Accordingly, the Department's decision to deny the petitioner's application for GA for temporary housing under Rule 2652.2 must be reversed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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[7] As a comparison, the Department's policy is that GA recipients are expected to pay only 50 percent of their income toward housing.