

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-04/14-331
)
Appeal of)

INTRODUCTION

The petitioner appeals decisions by the Department for Children and Families, Economic Services denying her and her adult daughter's applications for temporary housing assistance under the General Assistance (GA) program. The issue is whether the petitioner meets the criteria for "catastrophic" eligibility.

An expedited fair hearing was held by telephone on May 1, 2014, and an in-person hearing was held on May 14, 2014. The following findings of fact are based on the representations of the parties and on the written record supplied by the Department pursuant to those hearings.

FINDINGS OF FACT

1. The petitioner is a sixty-nine-year-old disabled woman. She receives SSI benefits of \$743 a month and Food Stamps (3SquaresVT) of \$189. She also receives an "essential person" benefit of \$189 a month due to her adult daughter living with her and providing her with domestic services.

Prior to April 2014 the petitioner lived with her daughter in an apartment she rented in Burlington from the Champlain Housing Trust (CHT).

2. The petitioner's present housing problem began in March 2013 when she applied to CHT to have her adult daughter move into her apartment as a live-in care attendant. In a letter dated March 8, 2013 CHT informed the petitioner that because her daughter (and her daughter's son) had previously been evicted from the property, CHT would not allow her daughter to reside in the petitioner's apartment, but that she could have another "approved" caretaker live with her if she so wished.

3. There is no dispute that despite receiving the above letter the petitioner allowed her daughter, her daughter's son, and her son's girlfriend to move into her apartment without CHT's permission.

4. In a certified letter dated April 19, 2013, CHT gave formal notice to the petitioner that it was terminating her tenancy due to unauthorized persons residing in the apartment. This was followed by an eviction action filed by CHT.

5. The petitioner and her daughter remained in the apartment for several months. CHT's eviction suit was heard in Superior Court on October 28, 2013. The petitioner was

represented by an attorney from the Vermont Legal Aid Elderly Law Project. On January 2, 2014 the Court issued Findings of Fact, Conclusions of Law, and Final Order allowing a writ of possession to issue within 30 days. The Court's decision is incorporated by reference herein.

6. The Department's records show that the Court subsequently denied the petitioner's motion to stay the writ of possession pending an appeal. However, it is not clear from the record and from the petitioner's and her daughter's representations at the hearings in the instant matter whether the petitioner actually filed such an appeal.

7. Sometime in April it appears the petitioner and her daughter were forced to leave the apartment. At first they moved to a motel. On April 25, 2014 (a Friday) they applied for GA. The Department denied this application in part because the petitioner had "prepaid" for a motel room through April 27, 2014. The petitioner filed an expedited appeal of this decision.

8. That afternoon the Board informed the petitioner by phone (and mailed a written notice) that a hearing in the matter would be held on May 14, 2014, but that she should reapply for GA on Monday, April 27, and request an expedited hearing at that time if she was again denied. The Board also

advised the petitioner (by phone and in its written hearing notice) to seek legal assistance through Legal Aid or Law Line.

9. The Department's records show that the petitioner and her daughter again applied for GA for temporary housing on April 28, 2014, which the Department denied due to its determination that the petitioner had caused her eviction from her last permanent housing. The Department's records further indicate that the petitioner requested an expedited appeal of this decision on April 30, 2024. Immediately upon receiving this request the Board informed the petitioner and the Department by phone that an expedited hearing would be held in Burlington on May 1, 2014.

10. This hearing officer conducted the hearing on May 1 by phone. The petitioner and her daughter and the Department's attorney and witnesses were present in the hearing room, along with another Human Services Board Hearing Officer (who had previously scheduled hearings that day) who observed the proceedings. Both the petitioner and her daughter were *pro se*.

11. The petitioner's daughter did almost all of the talking for the petitioner at the hearing. She did not dispute the essential details of the petitioner's eviction.

The hearing officer directed the Department to request the petitioner to continue her participation in the hearing without her daughter being present, but the Department reported that the petitioner refused. The hearing officer then orally denied the petitioner's request for expedited relief, and continued the matter to the previously-scheduled hearing date on May 14, 2014. The hearing officer strongly advised the petitioner to seek legal help.

12. Nothing further was heard from the petitioner until she and her daughter appeared at the hearing on May 14, 2014. At that time the petitioner did not make any claim or present any evidence contradicting the findings of the Superior Court in its January 2, 2014 decision (see *supra*).

13. Based on the January 2, 2014 decision by the Superior Court it is found that the petitioner and her daughter were evicted from their last housing due to intentional and serious violations of the petitioner's tenant agreement with CHT.

14. There is no claim or evidence that the petitioner, or anyone purportedly acting in her behalf, has ever sought to obtain caretaker services for the petitioner, live-in or otherwise, from any person or service agency other than her daughter, or that such services would not have been available.

15. There is no claim or evidence either that the petitioner's daughter is the only suitable or qualified individual to perform whatever caretaker services the petitioner may require, or that the petitioner does not have the means to obtain such services from an alternative source.

16. There is no claim or evidence that the petitioner (who had lived at the apartment on her own for nine years) ever made any attempt to obtain any alternative assistance with her rent or any other household expense from any person or agency other than her daughter, or that such an attempt would not have been reasonable under the circumstances.

17. There is no claim or evidence that any attorney or other person ever counseled or advised the petitioner or her daughter not to pursue any of the alternatives set forth in paragraphs 14-16, *supra*.

18. At this time there is no claim or evidence that the petitioner lacks the capacity to make decisions in her own interest or that she is not free from duress or undue influence in this regard (see fn. 1, *supra*).

ORDER

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

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 can be determined to be without fault regarding his or her homelessness. See Fair Hearing Nos. B-01/14-26 and B-10/12-635. In this case, there is no dispute that the petitioner applied for GA after a writ of possession had been issued evicting her and her daughter from their previous apartment. However, it must be concluded that the evidence in this matter supports the Department's decision that the loss of this housing was within the petitioner's "control" under the above regulation due to her unreasonable insistence that her daughter move in with her after she had been specifically

advised by her landlord that this arrangement would constitute a violation of her lease.

Accordingly, the Department's decision to deny the petitioner's application for GA for temporary housing under Rule 2652.2 must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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