

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-05/14-414
)
Appeal of)

INTRODUCTION

Petitioner appeals a denial of General Assistance ("GA") housing by the Vermont Department for Children and Families ("Department"). Expedited relief was granted by the hearing officer. The following facts are adduced from a merits hearing and documents and memoranda submitted by the parties.¹

FINDINGS OF FACT

1. Petitioner is homeless and was initially granted temporary housing assistance in spring of 2014 as a victim of domestic violence.
2. After she was granted assistance, petitioner found a bed at a local homeless shelter.
3. After staying at the shelter for several nights, petitioner lost her bed for violating shelter rules on April 24. She reapplied for housing assistance on May 16 and told

¹ It is noted that petitioner has presently utilized the maximum amount of benefits allowed under the temporary housing program (84 nights of housing). The Department has requested the matter be submitted to the Board, as per Board practice in conjunction with Department allowance of expedited relief under GA procedures. See PP&D Interpretive Memorandum, Re: GA Rules § 2606 (7/1/86).

the Department's GA worker that she had violated the shelter's curfew rule. However, when this appeal went to hearing, petitioner disclosed through counsel that she had been asked to leave the previous shelter because of a violation of the shelter's "zero tolerance" substance abuse policy, specifically with a positive urinalysis.

4. The Department denied petitioner's May 16 reapplication on the grounds that she had lost her shelter bed for reasons within her control and thus had caused her own homelessness.

5. Petitioner was then housed in a motel for 3 nights by a local battered women's program. This assistance ended, and petitioner subsequently reapplied for GA housing assistance on May 22, and was denied for the same reason as the May 16 application, that she had caused her own homelessness. Petitioner filed an appeal and the matter was set for hearing on June 10.²

6. In the interim, having lost her shelter bed and denied housing assistance by the Department, petitioner stayed outside for several nights in a tent. Camping in the

² While GA housing appeals are typically scheduled on an expedited basis, in this case the information supplied by the Department to the Board was insufficient to establish, at the time, expedited treatment.

same area was a man petitioner knew to be a close friend of her abuser.

7. During this time petitioner also applied for a continuation of her relief from abuse order. She was granted a two year order on May 15 by the Family Division of the Superior Court, based on findings that her abuser had "attempted to cause physical harm," placing her "in fear of imminent serious physical harm," and resulting in "an immediate danger of further abuse."

8. Petitioner testified credibly at hearing that she sought to renew the relief from abuse order because of repeated violations of the order by her abuser, such as attempts to contact her and stalking her, in the preceding months.

9. After being asked to leave the shelter, petitioner made repeated and bona fide attempts to access a different shelter in the area, which was ultimately not an option for her because her abuser was housed there during the same period. Petitioner therefore never got into a bed at the other shelter. However, credible evidence from the shelter director was admitted at hearing that at least one bed space

was intermittently available much of the time over the same time period.³

10. The Department's decision disqualified petitioner from GA housing for a period of six (6) months. This is based on the Department's understanding that the shelter bed she lost would have been available to her for a period of three (3) to six (6) months - in effect, that being the extent of the housing she lost through being ejected.

11. The Department reconsiders an applicant's prior, disqualifying loss of housing if there is an intervening event which also constitutes a loss of housing for circumstances beyond the person's control. In this case, for example, the Department would have reconsidered petitioner's application if she had accessed a bed at the other shelter for just one night, and then discovered her abuser was staying there already and was forced to leave. The Department does not, however, recognize petitioner being precluded from accessing the other shelter in the first instance as an intervening loss of housing.

12. Likewise, the Department does not recognize petitioner's renewed relief from abuse order, obtained after

³ Because of the presence of her abuser, the Department waived any obligation petitioner may have had to accept a bed at the other shelter.

she lost her shelter bed in April, as an intervening event which conveys eligibility, where normally a relief from abuse order is equated with a constructive eviction under the rules.

13. Petitioner was granted expedited relief by the hearing officer.

ORDER

The Department's decision is reversed.

REASONS

The Department allows up to 84 nights of housing for individuals in catastrophic situations, through application of the temporary housing 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). Petitioner was initially found eligible under catastrophic rules as a victim of domestic violence, and subsequently disqualified because of her loss of a shelter bed on April 24. It is immaterial whether petitioner lost that bed because of a curfew violation or the shelter's substance abuse policy, as she would have been, and was, disqualified by the Department in

either case. Rather, this appeal concerns the sole issue of whether petitioner experienced an intervening event that supersedes her loss of the shelter bed.

The Department does not indefinitely disqualify applicants when they are determined to have caused their own loss of housing. Those who experience a new loss of housing or new circumstances which might convey eligibility under the rules are reconsidered for housing assistance. To its credit the Department acknowledged it would have reconsidered petitioner's situation if she had obtained and subsequently lost new shelter space. However, the Department does not recognize her being precluded from that shelter bed in the first instance as a "loss" of housing.

The distinction made by the Department is arbitrary. This is especially the case where petitioner made repeated and bona fide attempts to access the shelter, there was a substantial possibility she could have obtained a bed, and the reason she was precluded from the shelter - her status as a victim of domestic violence - is the very same basis of her underlying eligibility for housing.

Moreover, it is impossible to reconcile the Department's position in this case with its position in Fair Hearing No. B-07/14-596, where petitioner's disqualification for

previously losing a shelter bed would have been superseded, thus restoring her eligibility, if she followed through on the steps to re-enter the same shelter and was denied entry *for lack of an available bed*. See Fair Hearing No. B-07/14-596 at ¶6. Petitioner is in no different a position, in effect, merely because she is precluded from accessing a bed in the first place under the conditions described above. In these circumstances petitioner experienced a subsequent loss of housing, for circumstances reasonably out of her control, that supersedes her prior loss of housing and conveys eligibility for GA temporary housing. See GA Rules § 2652.2.

Even if that were not the case, petitioner's subsequent relief from abuse order must also be considered. The Department argues that the domestic violence must have led to a loss of housing in order to be newly considered for the purposes of eligibility, that petitioner "was not forced out of an existing apartment because of an abusive spouse, nor was she forced out of an existing motel because of the arrival of an abuser." Department Brief at p. 3.

Even assuming that petitioner was not, in effect, forced out of the second shelter by the presence of her abuser, the GA rules do not support the distinction made by the Department. The rules state that "verifiable battering

qualifies as constructive eviction." GA Rules § 2622. Moreover, "[a]cceptable verification of battering includes a relief from abuse restraining order." Id. Nowhere in the rules is there a requirement that the abuse directly lead to the loss of housing, nor is it reasonable to interpret the rules in such a way. See Interpretive Memo dated 12/12/1983 ("verifiable battering [sic] is considered as constructive eviction and the application should be treated the same as any applicant."). Thus, it is the existence, in and of itself, of the relief from abuse order and the person's status as a victim of domestic abuse that automatically equates with a constructive eviction.⁴

A constructive eviction in turn means eligibility for GA housing under catastrophic rules. See GA Rule § 2620. This is, in fact, the basis for petitioner's eligibility in the first instance, before she was disqualified. She subsequently obtained a new relief from abuse order with findings that her abuser had "attempted to cause physical harm," placing her "in fear of imminent serious physical harm," and resulting in "an immediate danger of further

⁴ Further buttressing this point is the Department's recent proposal to change the rules to require a direct causal relationship between the loss of housing and the domestic violence. See DCF Bulletin No. 15-06P (dated 9/29/14).

abuse.” The new order conveys new eligibility which, under the rules and the Department’s acknowledged approach to a subsequent loss of housing, is a constructive eviction superseding the prior shelter disqualification.⁵

For these reasons the Department’s denial is inconsistent with the applicable regulations and the Board is required to reverse. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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⁵ It should be noted that the mere existence of a relief from abuse order does not prevent the Department from disqualifying an individual already determined eligible. That the order - with a new finding of a risk of immediate harm - was obtained *after* the disqualification is the dispositive fact here. It is not material that the new order concerns the same abuser as the initial order, as the rules make no such distinction, for readily apparent policy reasons.