

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 16,024
)
Appeal of)
)

INTRODUCTION

The petitioner appeals two decisions of the Department of Social Welfare denying her request for emergency assistance with housing. The issue is whether the petitioner caused her own eviction from her housing.

FINDINGS OF FACT

1. The petitioner is an ANFC recipient who has two children, a seventeen-year-old girl and a thirteen-year-old boy. The petitioner works during the school year as a cook at a state college but has no employment during the summertime. Her summer monthly income is the \$441 she receives from ANFC and a sporadic \$50 pass-through from the child support payments made on behalf of her children by their father.

2. On June 25, 1999, the petitioner appeared at the district office of the Department of Social Welfare requesting financial assistance with finding a new apartment. She had been moved out of her apartment the day before by the sheriff pursuant to a writ of possession issued by a Superior Court. At the time of the request, the petitioner's daughter had "run away" and had gone to live with some friends. The petitioner and her son were

staying with friends who had agreed to keep them on a short-term basis, expecting that she would soon receive some assistance in finding a place. The petitioner wanted the Department to give her money to pay for some place of her own to live right away. As it was near the end of the month, the petitioner had none of her ANFC money left and would not receive another check for six days. Although the petitioner had a "Section 8" housing certificate under which the state housing authority would pay a good portion of her rent and said she had been looking for alternative housing for weeks, the petitioner was having no luck obtaining an apartment because she believes that landlords in the area do not want to rent to a black woman.

3. The petitioner's application was assessed immediately and the Department gave her a written notice that same day saying that her request was refused because her situation was "not considered catastrophic under the EA program guidelines." Specifically, the Department determined that the petitioner had caused her own eviction relying on a copy of the court order of eviction.

4. The order issued by the Superior Court on June 3, 1999, awarded a writ of possession to the landlord effective June 11, 1999 based on a finding that the petitioner had breached her lease by: (1) using the premises for commercial purposes; (2) unreasonably disturbing the quiet use and enjoyment of the property by

other tenants with loud noises and other disturbances; (3) engaging in criminal activity involving physical violence toward the landlord and his property as determined by the Vermont District Court on April 20, 1998; (4) threatening the use of physical violence against the landlord and his grandchildren causing great fear and concern for their safety; and (5) not paying rent in the amount of \$210.

5. The petitioner disagreed with the Department's determination and requested an expedited fair hearing. On that same day, June 25, 1999, the petitioner spoke with the hearing officer who, after hearing the petitioner's allegations at some length, upheld the EA denial and set the matter for a full hearing on July 13, 1999. The matter was deferred for a full evidentiary hearing until that time based on the current availability to the petitioner of temporary shelter for herself and her son at her friend's home, the expected receipt of a new ANFC payment within the week, and the promise of assistance to the petitioner by the Department in the form of helping her to locate, if not pay for, new housing.

6. On June 28, 1999, the petitioner again made a request for assistance with housing under the same facts and was denied again for the same reason. An expedited hearing was again requested which was reviewed by the hearing officer on June 29, 1999. The petitioner was notified again that her full hearing would be deferred

until July 13, 1999, because the situation had not changed in the last three days--the petitioner was still living with her friend, had not located a new apartment, and was waiting for her July 1 ANFC payment. The petitioner was advised that she could request an immediate full hearing if there was a significant change, such as the end of the temporary shelter being provided by her friend. She was also advised that if she remained homeless by the date of the July 13 hearing, she should be prepared to explain how she used her ANFC funds and what efforts she had made to find housing.

7. On July 13, 1999, the petitioner appeared for her fair hearing and reported that she had found a new apartment on July 9, 1999, without the assistance, financial or otherwise, of the Department, for which she was required to pay \$157 per month. She protested the Department's decision for two reasons: the first was that she disagreed with the judge's finding that she caused her own eviction; and the second was that she felt it was unfair that she had been forced to impose upon her friends for housing for over two weeks. She said that a human rights organization was looking into her eviction and alleged that it was based purely on discrimination and harassment because of her race. She was asked to provide some kind of evidence of these last allegations but did not provide any either at or

subsequent to the hearing.

ORDER

The decision of the Department denying Emergency Assistance/General Assistance to the petitioner to obtain new housing is affirmed.

REASONS

The General Assistance (Emergency Assistance for ANFC recipients) regulations provide that ANFC recipients can only receive additional financial assistance if they are experiencing a catastrophic situation. See W.A.M. 2600 et seq. The regulations define "catastrophic situation" in the context of loss of housing as follows:

Catastrophic Situations

Any applicant who has an emergency need attributable to one of the following catastrophic situations may have that need met within General Assistance benefits standards. Payment maximums as specified in sections 2611 through 2626 apply to these needs. Eligibility criteria are as follows:

- The income test at 2600 C.1 is not applicable.
- All available income and resources must be exhausted. The resource exclusion at 2600 C.5.b. does not apply if an individual qualifies only under catastrophic rules.
- Alternatives must be explored (for example, private and community resources, family, credit).

Subsequent applications must be evaluated in relation to the individual applicant's potential for having resolved the need within the time which has elapsed since the catastrophe to determine whether the need is now caused by the catastrophe or is a result of

failure on the part of the applicant to explore potential resolution of the problem.

. . .

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

. . .

W.A.M. 2602

Under the Department's regulations, homelessness due to a court ordered eviction is considered a catastrophic situation which triggers the right to financial assistance except where the tenant has been the cause of her own eviction for one of the reasons set forth in the regulation above. The court judgment against the petitioner clearly sets forth findings indicating that the petitioner's eviction is based on raucous and illegal behavior on the part of the petitioner which seriously infringed on the rights of her landlord and his family, on intentional and serious violations of the lease (using the apartment for

commercial purposes), and on non-payment of rent.¹ Any one of these would be sufficient to take the petitioner's situation out of the definition of a "catastrophic situation".

The petitioner protests that the Court's finding is inaccurate and unfair and should not be used against her in this proceeding. However, the Department and the Board are bound by a decision of the Superior Court in this matter and cannot collaterally attack the findings. The petitioner, who was not represented by counsel at the eviction, was advised to contact legal aid to see if she might be able to get some relief from the court's findings. She cannot get that relief before the Board.

The petitioner's assertion that it was illegal to require her to impose upon friends is not an assertion supported in the regulations. The above emergency assistance regulation requires persons to explore alternatives before receiving public assistance including private resources, which includes shelter with friends. As expected, the petitioner did receive an ANFC payment within a few days of losing her shelter and was able to obtain new permanent shelter shortly thereafter. She and her child were able to stay with friends in the interim. The Department's determination that the petitioner was not in a

¹ As there are other serious grounds for the eviction, it is not necessary to determine whether the petitioner actually had the financial ability to pay the rent.

"catastrophic situation" comports with the petitioner's actual status at the time of her applications, the Court's findings in the eviction proceeding, and its own regulations. As such, the denial of emergency assistance must be upheld by the Board. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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