

MEMORANDUM



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TO: Brenda Siegel, Petitioner's Representative, and Caroline Badinelli,
Assistant Attorney General, Department for Children and Families

FROM: Laurie Izutsu, Hearing Officer

DATE: December 13, 2024

RE: George Flannery, Fair Hearing No. R-12/24-1051

RULING ON PETITIONER'S REQUEST TO BE HOUSED PENDING HEARING

Mr. Flannery requests, in essence, an order that the Department implement his reasonable accommodation request by placing him at the Extol Inn during the pendency of his fair hearing, citing significant health conditions, the need for a ground floor unit with a kitchen, and explaining that the hotel is located across the street from his primary care provider. He acknowledges that the Department has taken the hotel "offline," but asserts that other people with disabilities have been placed there as a reasonable accommodation. The Department has denied Mr. Flannery's request, asserting that it no longer works with that hotel, except for instances where an individual who requires a wheelchair-accessible room has been granted a variance to stay there. The following preliminary findings are based on a hearing held on petitioner's request that occurred over December 12, 2024 and December 13, 2024.

PRELIMINARY FINDINGS

Mr. Flannery is a patient of REACH Accessible Community Health in Rutland, Vermont. He has multiple ongoing medical conditions, including end stage chronic obstructive pulmonary disease. Due to these conditions, it is medically necessary for Mr. Flannery to be housed on the first floor with electricity and easy access to kitchen and bathroom facilities. He is not able to ambulate more than 15 feet without resting

and requires assistance of a cane and/or a walker when ambulating, in addition to constant supplementation of oxygen and the use of a CPAP (continuous positive airway pressure) machine at night for life sustaining treatment. If he does not have access to a living unit with these features, along with this medical equipment, his medical provider believes he “will most likely die from respiratory arrest.” There is no dispute that he has a disability or disabilities.

Mr. Flannery’s health has deteriorated further within the last 60 days. He has been hospitalized multiple times at Rutland Regional Medical Center in the current month. His oxygen level at times dips into the 60s and 50s. When it decreases that low, he collapses and then wakes up on the ground. The most recent such incident occurred on December 12, 2024. His medical provider has advised him to adhere to a very restricted diet, which is why he needs a unit with a kitchenette area. Mr. Flannery testified that starting a particular diet is crucial to him having a liver transplant.

Mr. Flannery’s medical providers are in Rutland. His medical team includes a cardiologist, pulmonologist, and gastroenterologist. His next regular doctor’s appointment is in two weeks from the date of the hearing on his request for temporary housing pending resolution of his appeal, but his next bloodwork was scheduled for that same afternoon. Mr. Flannery takes 32 pills a day and at times requires intravenous fluids, depending on the results of his bloodwork.

Mr. Flannery has previously been housed at the Extol Inn. He has been working with a program called End Homelessness VT to try to obtain a voucher for emergency housing. There is a ground floor unit available with a kitchen.

The Department sent the Extol Inn a letter on November 15, 2024, advising that because the hotel had moved a guest to the Cortina Inn without the prior approval of the Department after being instructed by the Department against such conduct, the Department was suspending new placements at that hotel unless a wheelchair accessible room was needed. Since December 1, 2024, the Department has placed at least two individuals at the Extol Inn, one of whom was in a wheelchair, and one of whom was placed there due to “caseworker error,” but the Department has nonetheless elected to honor that voucher. The Department’s reasoning for this “wheelchair exception,” is that there are very limited rooms in Rutland with wider door frames or the ability to have a client in a wheelchair access the hotel room, on top of already limited availability in that district.

At the time of hearing, there were 73 households approved for housing in Rutland with no availability, 41 of which are in the disability category, including Mr. Flannery’s household.

The night prior to the first day of hearing on the preliminary request for temporary housing pending the appeal, Mr. Flannery had slept on a porch.

APPLICABLE LAW AND CONCLUSIONS

Importantly, the Department has interpreted its own Emergency Assistance rules to provide that it “will authorize payment for temporary housing at accessible motel rooms, *or motel rooms otherwise accommodating a disability.*” Interpretive Memo, Facing Page 2852.2 (effective Jan. 31, 2018) (emphasis added). The Department has enumerated the measures it will take to do so, as follows:

1. The Department will first attempt to house the recipient in an accessible room, *or room otherwise reasonably accommodating a disability*, located in a motel on the Department's list of least expensive motels within the district.
2. If no room is available for the recipient at a motel on the above list, the Department will authorize payment for an accessible room, *or room otherwise reasonably accommodating the disability*, at a motel within the district at the least expensive rate available.
3. If no room is available within the district, the Department will authorize payment for an accessible room, or room otherwise reasonably accommodating the disability, at a motel nearest to the district, at the least expensive rate available. The Department will pay for accessible transportation to the motel at the least expensive mode and rate available.
4. To maintain housing for recipients requiring accessible housing or another reasonable housing accommodation, the Department will book the motel for the entire time of the recipient's potential eligibility (up to a maximum of 28 days under rule 2652.3 or 84 days under rule 2652.2). During this time, the recipient must maintain all eligibility requirements. The recipient is required to give 24-hour notice of a change of eligibility status. Should eligibility change, the Department will cancel the motel booking.

See *id.* (emphasis added).

The evidentiary record reflects that, while the Department no longer generally works with the Extol Inn, it currently places clients at this hotel as a reasonable accommodation based on their disability and there is currently a ground floor unit available. The evidence further preliminarily establishes that this unit, which is within his district, would accommodate Mr. Flannery's numerous medical needs, that he is

eligible for winter emergency housing, and that his health condition would be at substantial risk without the requested accommodation.

Although the Department's rules require the Department to attempt to house petitioner in a room within the district reasonably accommodating his disability, there is no evidence that it has attempted to do so. In this respect, the Department's decision to deny Mr. Flannery the opportunity to be placed at the Extol Inn appears to be inconsistent with the applicable rules. Because the evidentiary record establishes that no other rooms within the district are available to accommodate Mr. Flannery's disability, specifically a ground floor room with a kitchen, other than at the Extol Inn, and given that there is no evidence that the Department's decision to discontinue working with the hotel (with certain exceptions) was based on safety issues or habitability concerns, the Department must house petitioner at the Extol Inn, as required by its rules.¹

PRELIMINARY RULING

For the above reasons, **Mr. Flannery's request for a temporary voucher for the Extol Inn while awaiting a hearing on the merits of his appeal is granted**, assuming that he continues to meet all other eligibility requirements and that a room is available under any conditions (apart from the restriction of being wheelchair dependent) under which the Department issues vouchers for a reasonable accommodation at the Extol Inn.

A hearing on the merits of petitioner's appeal is set to go forward on December 18, 2024, at 2 p.m. and has been separately noticed.

¹ While testimony was elicited as to the availability of rooms at the Quality Inn in within Rutland, findings as to that issue are reserved pending further hearing.