



left the apartment.<sup>2</sup> No eviction proceedings were ever filed.

After leaving the apartment the petitioner and her husband stayed with relatives for a few weeks, then moved into a tent they pitched in the front yard of another relative. They lived in the tent throughout the summer and into the early fall of 1988. They ate most of their meals in their relative's house. The petitioner testified she and her husband paid the relatives \$35.00 a week for tent space and meals.

During most of this period (April to October, 1988) both the petitioner and her husband were employed full-time and had combined gross earnings of over \$1,500.00 a month. The petitioner testified that they looked for permanent housing but could not afford the security deposits and the two-months of rent payments that were required before they could move in. The petitioner stated that the most she and her husband were able to put aside during these months was \$140. There was no evidence, however, that they incurred any unforeseen, unusual, or atypical expenses during this time. In fact, their expenses during this time appear to have been minimal.

Both the petitioner and her husband state that in October, 1988, they were fired from their jobs. Because of the onset of cold weather at that time, they also had to move out of their tent. They moved into a room in the back

of another relative's auto body business, where they continue to "reside".<sup>3</sup> Although they testified that they have looked for work, both admit that they have not used published want-ads to seek employment, nor have they availed themselves of the services of the Vermont Job Service or any other agency to find work.

The petitioner's present situation is an enigma. The petitioner and her husband simply have not, in anything approaching a credible and reasonable manner, accounted either for their inability to secure permanent housing during the five or six months that they were working or for their inability to find employment since they were "fired" over three months ago. Based on the limited and unconvincing evidence presented, it cannot be found that the petitioner's present lack of housing is anything but the result of extreme, and inexcusable, indolence. Thus, it cannot reasonably be concluded that the petitioner and her husband "could not reasonably have avoided" their present situation (see infra).

ORDER

The department's decision is affirmed.

REASONS

Inasmuch as the petitioner and her husband are without income and resources, and have not within the last 30 days had income in excess of the ANFC payment level (see W.A.M. 2245), and because the petitioner's husband has two

"barriers to employment" (see W.A.M. § 2607(c)),<sup>4</sup> the petitioner (or at least her husband) is "categorically" eligible for general assistance. Thus, this case is different than most recent G.A. cases (see e.g., Fair Hearings No. 8680, 8643, 8799, 8797, 8794, 8850 and [this month] 8883) in that the petitioner need not establish a "catastrophic situation" under W.A.M. § 2602 as a condition of categorical eligibility for G.A. W.A.M. § 2600.

The department maintains, however, that the provisions of the "catastrophic situation" regulations (§ 2602) are nonetheless controlling because of the type of assistance sought by the petitioner--"temporary housing". The regulation defining G.A. eligibility for this benefit, § 2613.2, includes the following provisions:

Temporary housing is intended to provide short term shelter for applicants who are involuntarily without housing through circumstances in which the applicant could not reasonably have avoided the situation and for whom permanent housing or alternative arrangements are not immediately available ("could not reasonably have avoided" is subject to the limitations in 2602(b)).

Section 2602(b), referred to above, is the definition of "court ordered or constructive eviction" that appears under "catastrophic situations". The department interprets § 2613.2, above, as limiting G.A. for "temporary housing" to only those situations that are "court-ordered" or "constructive" evictions. Thus, the department's primary position in this matter is that since the petitioner was not

"evicted" from her last permanent housing (in April, 1988), she is presently ineligible for GA for temporary housing.

It is concluded, however, that the department's "interpretation" of § 2613.2 (supra) is contrary to the plain meaning of that regulation. Under the department's reading, even individuals facing a loss of housing due to the death of a spouse or child, a natural disaster, or an emergency medical condition (the other "catastrophes" defined in sections (a), (c), and (d) of § 2602) would be ineligible for temporary housing. The hearing officer doubts the department would urge such an irrational result.

Thus, the only reasonable reading of § 2613.2 (supra) is that when the lack of permanent housing is caused by an eviction, the eviction must be either "court-ordered" or "constructive" within the meaning of § 2602(b).<sup>5</sup>

In this case, the department was correct in concluding that the petitioners were not evicted from their last permanent housing. Under 2613.2, however, it must nonetheless be determined whether their present lack of housing could otherwise have been "reasonably avoided".

As found above, the fact that the petitioners inexplicably and without reasonable justification failed to secure permanent housing during the six-month period in which they were working,<sup>6</sup> coupled with their inexcusable lack of diligence in seeking employment in the nearly-three months since they were "fired", compels the conclusion that,

with a minimum of effort, they could reasonably have avoided their present predicament. Thus, even under the more expansive reading of § 2613.2 (supra) than the one conceded by the department, it cannot be concluded that the petitioners are eligible for G.A. for temporary housing.<sup>7</sup> The department's decision is, therefore, affirmed.

FOOTNOTES

<sup>1</sup>See "Expedited Hearing Procedures", Department of Social Welfare Procedures Manual § P2610D.

<sup>2</sup>Thus, it cannot be concluded that the petitioner was "constructively evicted" by her landlord. At no time was the petitioner without access to either the apartment or her furniture. On one occasion the landlord, with the petitioner's knowledge and consent, moved some of the petitioner's furniture to the basement while he was painting the petitioner's apartment. Another time he moved the furniture when the petitioner was moving out.

<sup>3</sup>The room at the body shop is heated but it has no toilet facilities (the petitioner and her husband use their relative's house nearby for this purpose). The department does not maintain that the petitioner's present situation constitutes a suitable alternative housing arrangement.

<sup>4</sup>The petitioner's husband has only an "eighth-grade education" and "has not for six consecutive months or more in the last five years been either employed by one employer or a full-time student." Id. §§ 2607.1(c)(2) and (5).

<sup>5</sup>The department's interpretation would also render irrelevant the amount of time that had passed since the loss of permanent housing. Although the department argued that this was indeed the case, it strikes the hearing officer as unreasonable that the passage of time, coupled with sincere efforts on the part of the applicant to have secured alternative housing, could not "purge" a disqualification for G.A. based on the lack of an eviction.

<sup>6</sup>Using the "rule" set forth in Fair Hearing No. 7728, and used by the board in subsequent cases, the petitioners' take-home income during the period in question was roughly

twice the ANFC "need standard". See W.A.M. § 2245. As noted above, the petitioners submitted no credible evidence that their reasonable expenses during this time approached, much less exceeded, the ANFC standard of need. Assuming, however, that the petitioners expenses were roughly equal to the ANFC need standard, they still should have had over \$500 a month to apply toward securing suitable housing.

<sup>7</sup>The petitioners may be eligible for other forms of G.A., including permanent housing, if they successfully locate a place to live.

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