

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,773

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for emergency general assistance (EA) to pay for a security deposit, moving expenses, and household furnishings. The issue is whether the petitioner qualified for such assistance according to the pertinent regulations.

FINDINGS OF FACT

Until March, 1994, the petitioner and her three children lived in Minnesota and received AFDC from that state. At the time, the petitioner had a "waiver" from that state regarding the collection of child support from the children's fathers because of threats the fathers had made against her. Sometime in March the petitioner learned that despite the waiver the Minnesota welfare agency had contacted the children's fathers. Believing that this contact placed her and her children in immediate peril, the petitioner fled with the children to Vermont.

On March 29, 1994, the petitioner applied in Vermont for ANFC and emergency assistance (EA). At the time, she was staying with friends, but she had located an apartment she could move into. The Department determined that the petitioner met the income eligibility standards for EA and that the apartment was appropriate. The Department granted the petitioner \$550.00 for one month of rent (including heat) in the new apartment, \$85.00 for the electric utility deposit, and \$28.00 for personal needs. However, the Department denied the petitioner any further EA, including her request for a one month rent deposit on the apartment and for moving expenses, because it determined that the petitioner was not facing a "catastrophic situation" as defined in the regulations (see infra). It also denied the petitioner assistance for household furnishings until the petitioner had explored obtaining these items from community sources without cost.

The petitioner and her children then moved into the new apartment. A few days later the petitioner was found eligible for ANFC and was sent a check for April, 1994, in the amount of \$715.00. Over the

course of the next few days the petitioner spent nearly this entire amount on paying the expenses she had incurred in moving, getting established in her new home, and getting a Vermont drivers license and car registration.

On April 11, 1994, the petitioner's new landlord sent her a letter stating that if the petitioner did not pay the security deposit of \$550.00, he would seek to evict her. On April 13, 1994, the petitioner applied to the Department for GA to pay this deposit. The Department denied this application because it again found that the petitioner was not facing a "catastrophic situation".

An "expedited GA hearing"⁽¹⁾ was held in this matter on April 27, 1994. At that time the petitioner had received no further communication from her landlord. She was scheduled to receive her May, 1994, ANFC check on schedule, and it did not appear that she would be unable to pay her rent for May. Based on the uncontroverted representations of the parties the hearing officer ruled that the petitioner had not sufficiently demonstrated that she would lose her present housing if she did not immediately pay the security deposit. It was also found that the petitioner had not yet explored available options to obtain adequate household furnishings. Therefore, the hearing officer denied the petitioner's request for "expedited relief" that is available under the Department's EA/GA appeal policies for individuals who are found to have an immediate emergency need, and he proceeded with the instant Recommendation to the board, as is the "usual" fair hearing procedure.⁽²⁾

Although, as of the date of the hearing, the Department had not yet ruled on the petitioner's request for a "waiver" (like she had in Minnesota) from the ANFC requirement that she cooperate in the Department's pursuit of child support, the Department indicated that it does not dispute that the petitioner fled Minnesota because of a sincere belief that her and her children's safety was threatened if she remained there.

ORDER

The Department's decision denying the petitioner EA for a security deposit when she applied on March 29, 1994, is reversed. The petitioner is found eligible for EA benefits for her security deposit, plus for an additional months rent offset by the housing portion of her ANFC grant. The matter is remanded to the Department to also further consider the petitioner's application for moving expenses and household furnishings.

REASONS

There is no dispute in this matter that when the petitioner first applied for EA on March 29, 1994, she was qualified income-wise for that program.⁽³⁾ It is also not disputed that the petitioner moved to Vermont because she sincerely feared for her and her children's safety. Finally, it is also undisputed that when the petitioner first applied for EA in Vermont she was living in "temporary housing" (i.e., at that time, she and her children were staying with friends).

W.A.M. § 2813.2, which defines EA benefits for "temporary housing" includes the following provisions:

Temporary housing is intended to provide short term shelter (28 day maximum) for applicants who are involuntarily without housing through circumstances which the applicant could not reasonably have

avoided and for whom permanent housing of alternative arrangements are not immediately available ("could not reasonably have avoided" is subject to the limitation in 2802(b)).

...

To reduce the time families with children will have to spend in temporary housing, aid in procurement of permanent housing is allowed for EA eligible households who are in, or eligible for, temporary housing as of the date of application, or subject to a signed court order of eviction, due to circumstances over which the applicant had no control, with an evacuation date fewer than 30 days in the future. Such aid is as follows:

- a. Payment maximums may be actual cost during the period indicated in (c.) below. Any grant toward housing whose cost exceeds 60 percent of the applicant's EA household income eligibility standard must be reviewed by a supervisor for feasibility and have supervisory approval documented. The basis of approval will be an evaluation of whether the applicant will be able to maintain rental payments at this level based on such factors as, availability of other resources like Food Stamps, Fuel Assistance, child support, income in excess of eligibility standards (eligibility based on fire, flood, etc.), family history, or potential for heavy utilization of subsistence techniques such as gardening, canning, cutting own wood, donated clothing, etc. It is not the intent of this regulation to assist a family to move into unaffordable housing, but to help as much as possible with any permanent housing plan that is realistically possible.
- b. Housing deposits or security payments, not to exceed one months' rent, which may be necessary to obtain permanent housing, may be pre-authorized. Actual payment, when permanent housing is located, must occur during the 30-day EA eligibility period or within 60 days thereafter.
- c. Payment may be pre-authorized for a period which includes payment of two months in permanent housing following departure from temporary housing or three months of permanent housing if temporary housing can be avoided altogether. Although authorization must occur within the 30-day period of EA eligibility, actual payment will not be issued until the normal due date. Payment in permanent housing will assume that the applicant has or will apply the housing portion of an ANFC grant or a comparable amount from other income toward the housing cost. A comparable amount from other income shall be computed by establishing the ANFC housing payment standard which would be applicable and reducing that amount by whatever amount the household income falls short of the total ANFC payment standard which would be applicable to the household, or increasing it by the amount by which income exceeds that standard.
- d. Moving expenses, per section 2813.5, may be pre-authorized during the 30-day eligibility period for payment as needed when permanent housing is located during the EA eligibility period or the 60 days thereafter.
- e. Seasonal clothing lost as a result of a natural disaster such as fire or flood can result in an emergency need which does not become a crisis until the change of season, and frequently cannot be accommodated, even though anticipated, until the stores start stocking such clothing in anticipation of

the season. When the potential for such crisis is anticipated following a natural disaster, pre-authorization to meet such needs may be made during the 30-day EA eligibility period, and actual payment decisions shall be deferred until the crisis occurs. Pre-authorization does not assure that any payment will be issued or that the crisis will actually occur since conditions applicable to the purchase of clothing under Section 2812 apply and the household will have had the advantage of extra time to make arrangements whereby the crisis may be avoided. Such pre-authorization may be used to extend the actual purchase date up to 8 months following the disaster date.

f. Pre-authorization of household furnishings and equipment under terms and conditions defined in Section 2815 may be made to allow actual purchase when permanent housing is located, providing payment is within the same period for which housing costs have been pre-authorized.

g. Pre-authorization of initial fuel and utility payments (i.e., deposits, connection charges, etc., in the case of metered delivery, or a minimum delivery, etc., in the case of bulk delivery, as defined in Sections 2817.1 and 2817.2 respectively) may be made during the 30-day EA eligibility period to be paid when permanent housing is located, providing payment is within the same period for which housing costs have been pre-authorized and is necessary to enable the family to move into the housing.

h. Pre-authorization of any of the above items does not commit the Department to make payment unless, at the time of application for payment, the applicant meets the test of financial eligibility and has an emergency need. Financial eligibility shall be limited to households with income in the

past 30 days which does not exceed 150 percent of the ANFC payment standard.

The Department's maintains (in its written response to a query by the hearing officer made after the hearing) that the above provisions pertain only to individuals who are applying for "temporary housing" and whose loss of housing was caused by a "catastrophic situation" as defined by section 2802⁽⁴⁾ of the regulations. A "plain reading" of the above provisions, however, shows that both these positions are contrary to the regulation.

First, the above regulation specifies only that the determination of whether an applicant could have "reasonably avoided" his or her lack of housing is "subject to the limitation in 2802(b)"--not that such a determination can only be made under such circumstances. The Department's reading of the regulation eliminates individuals, like the petitioner, who are "involuntarily" without housing because of a sincere concern for their personal safety. In light of the express general purposes of the EA program to assist "needy children" (see W.A.M. § 2800), and the stated intent of this specific regulation to avoid or minimize the time families with children spend being homeless, the reading of the above provisions of § 2813.2 advanced by the Department in this matter appears restrictive to the point of incongruity. It must, therefore, be concluded that the reference in the above regulation to § 2802(b) is intended only to resolve a question of "involuntariness" that might arise in those situations in which an applicant's lack of housing is claimed to be due to an "eviction". Since such a question is not presented by the facts of the instant matter, this provision cannot be used to disqualify the petitioner from eligibility for the benefits available under this regulation.

Second, contrary to the Department's position in this matter, the above provisions are not at all limited to individuals who are seeking EA for temporary housing. All that is required by the regulation is that an applicant be "in, or eligible for, temporary housing" (emphasis added). The petitioner clearly met this criterion when she applied. Individuals, like the petitioner, in temporary housing who take it upon

themselves to try to locate a suitable permanent home cannot be found ineligible for EA under the above provisions simply because they have already located such a place when they apply, but still need EA in order to be able to move in. Again, such a result is so contrary to the stated purposes of the regulations--and to common

sense--as to be totally incongruous.

Therefore, it must be concluded that when the petitioner applied for EA on March 29, 1994, to move to permanent housing under the above provisions of § 2813.2 she was fully eligible for at least two months rent, plus a security deposit, plus moving expenses, plus household furnishings.

Fortunately, based on what the Department did give the petitioner on March 29th, the petitioner was able to pay one months rent and her utility deposits and to move into the apartment.⁽⁵⁾ She then, however, used nearly all of her April, 1994, ANFC check to cover other expenses she had incurred as a result of her moving to Vermont. The petitioner now faces eviction from her apartment if she does not pay her security deposit.

Although, in retrospect, one can question the petitioner's subsequent judgement in using her first ANFC check to pay her "moving expenses" rather than her security deposit,⁽⁶⁾ in light of what she should have been found eligible for under the above regulations when she first applied for EA (see supra), "appropriate relief"⁽⁷⁾ for the petitioner at this time includes the following: 1) her security deposit; 2) an additional months rent--offset (pursuant to paragraph [c] of the regulation, supra) by the "housing portion" of her ANFC grant for that month (May, 1994); 3) any moving expenses she can verify; and 4) any necessary household furnishings that she has been unable to find on her own.

The matter is remanded to the Department for further action in accordance with the above.

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1. See Procedures Manual § P-2610 D.

2. However, the hearing officer orally advised the Department that, in the meantime, if and when the petitioner could show that a loss of housing would be imminent if she did not pay the security deposit, the Department could not deny her "emergency" EA/GA based on a determination that she was "at fault" in using her April ANFC check to pay her moving expenses rather than her security deposit. (See infra.)

3. Minnesota's ANFC payment, which was the petitioner's only income in the previous 30 days, is lower than Vermont's ANFC payment standard--which is the EA/GA income criterion. See W.A.M. §§ 2600 and 2800.

4. W.A.M. § 2802 provides as follows:

Catastrophic Situations

Any applicant who has exhausted all available income and resources and who has an emergency need

caused by one of the following catastrophic situations may have that need which is indeed caused by the catastrophe met within General Assistance standards disregarding other eligibility criteria. 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:

a. Death of a spouse or minor dependent child; or

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; repeated instances of raucous and illegal behavior which seriously infringed on the rights of other tenants of the landlord or the landlord himself; or intentional and 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.

c. A natural disaster such as flood, fire or hurricane; or

d. An emergency medical need.

5. According to the Department the petitioner was eligible for these limited benefits under other sections of the EA regulations. See, e.g., *id.* §§ 2811, 2813.1, and 2817.

6. It certainly cannot be concluded, however, that the petitioner spent her April ANFC check frivolously, or in culpable disregard of her family's immediate needs as she perceived them at the time.

7. See 3 V.S.A. § 3091(d).