

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,380

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for general assistance (GA) for temporary housing. The issue is whether the petitioner meets the criteria for coverage under the pertinent regulations.

FINDINGS OF FACT

The petitioner is a single man with a history of substance abuse problems. He is a recipient of SSI payable through a representative payee. In December, 1994, the petitioner was renting a room in Burlington, Vermont from a woman who was acting as his representative payee. Sometime in December, there was a disagreement between the petitioner and the woman over the petitioner's SSI, and the petitioner requested the Social Security Administration to require her to make an accounting of how she had spent his SSI.

From December 11, 1994, through January 4, 1995, the petitioner was in a residential treatment program in New York. When he returned, he found that the woman had resigned as his payee and had evicted him from his apartment.

On January 6, 1995, the petitioner began staying at a homeless shelter in Vergennes. The "maximum stay" there is 21 days. According to a note from the manager of the shelter dated February 6, 1995, the petitioner "was granted an extension to February 7, 1995, which is longer than the average extension and is due to leave on that day".

The petitioner applied for GA on January 20, 1995. At that time, the Middlebury district office (which serves Vergennes) denied the petitioner's request for temporary housing (i.e., a motel room) because he had shelter at least through February 1, 1995, when he was due to receive his next SSI check. The petitioner requested an "expedited hearing"⁽¹⁾ to appeal this decision.

Based on the representations of the district director in a phone call on January 23, 1995, that the petitioner would not be without housing until he received his SSI check on February 1, 1995, the hearing officer declined to consider the matter on an expedited basis, and set it for hearing on February 6, 1995, which was his next scheduled day for fair hearings in Middlebury.

On February 6, 1995, the petitioner appeared at his hearing and represented that he had only one more night to stay at the shelter (see supra) and that he could not get his February SSI check because he did not yet have a new payee. The petitioner stated that he was going to Burlington the next day to meet with a prospective representative payee.

The hearing officer advised the petitioner to reapply for GA at the Burlington district office the next day, and that if he was denied, the case could be heard on an expedited basis by phone that same day.

On February 7, 1995, a supervisor at the Burlington district office called the hearing officer to inform him that the petitioner had requested an expedited appeal of its decision to deny him GA for a motel room. Based on the supervisor's representation that the local homeless shelter had beds available that night and for the foreseeable future, the hearing officer declined to grant expedited relief and referred the petitioner to Vermont Legal Aid.

Over the course of the next several days the hearing officer received phone calls and documents from the petitioner and his legal representative purporting to show that the Burlington homeless shelter is inappropriate for the petitioner because of his arthritis condition. The shelter provides an evening meal and sleeping facilities for individuals at night, but during the day, it requires occupants to leave the building. However, a "day shelter" is maintained by the same agency, but it is located approximately a half mile from the night-time shelter.

On February 9, 1995, the petitioner faxed the hearing officer the following note he had obtained from a chiropractor:

It is my recommendation that [petitioner] be able to do bed rest for periods of time during the day due to his spinal problem.

On February 14, 1995, the petitioner's attorney faxed the hearing officer the following note from the same chiropractor:

Due to [petitioner's] back pain and discomfort, it is my opinion that bedrest is necessary. Without bedrest [petitioner's] condition could lead to further pain and discomfort.

Following a conference call with the petitioner, the petitioner's attorney, and the AAG, the hearing officer, on February 16, 1995, followed up his telephone denial of the petitioner's appeal with the following memorandum:

My "expedited" decision in this matter is that the petitioner has not shown that he does not have suitable alternative temporary housing to a GA motel. See W.A.M. § 2613.2. The evidence does not establish: that the petitioner is at medical risk if he does not get "bedrest" during daytime hours; that, even if he is, he could not lie down at the COTS shelter during the day; or that, even if he couldn't, he cannot return to the Graham shelter in Vergennes.

I intend to issue a written Recommendation reflecting the above in time for the Board's March meeting. The Board is scheduled to meet on February 22, 1995; and while my Recommendation will not be issued in time for that meeting, the petitioner is free to orally petition the Board to reverse this "expedited" ruling.

ORDER

The Department's decision is affirmed.

REASONS

W.A.M. § 2613.2 includes the following provision:

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. . . .

The issue in this case is whether the petitioner has presented sufficient evidence that alternative housing in the form of a homeless shelter is not suitable for him because of health reasons. The hearing officer concludes he has not.

The petitioner's chiropractor has opined only that bedrest "for periods of time during the day" is necessary for the petitioner. However, the chiropractor has not indicated that the petitioner's health is threatened by walking twice a day to and from the day shelter. Moreover, the petitioner does not maintain that he cannot satisfy his need for bedrest by lying down at the day shelter. Finally, the evidence does not establish that in an emergency situation the petitioner could not return, at least temporarily, to the Vergennes shelter, where he can stay on a 24-hour basis.

For the above reasons, it cannot be found that suitable "alternative arrangements" are not available to the petitioner at this time instead of a GA motel room. Because the Department's denial of the petitioner's application for GA for temporary housing is consistent with the regulations, it is affirmed. 3 V.S.A. § 309(d) and Fair Hearing Rule No. 19.

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1. See Procedures Manual § P2610D.