

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,599

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare to make vendor payments directly to her landlord for her rental obligation based on its determination that the petitioner has mismanaged her money.

FINDINGS OF FACT

1. On December 2, 1994, the petitioner, who receives \$513 per month in ANFC benefits for herself and her two-year old daughter, entered into an agreement to lease an apartment for \$400 per month, all utilities included. She paid the \$400 on December 2, 1994 (the due date), but did not pay the rent for January of 1995. The amount allowed by the Department for shelter is \$350 per month but the petitioner was willing to make up the excess \$50 out of the rest of her grant.
2. The petitioner's landlord contacted the Department of Social Welfare when he did not receive the January rent and requested, in a letter dated January 13, 1995, that the Department immediately place her on the vendor program.
3. Upon receipt of the letter, the worker handling the petitioner's case at DSW confronted the petitioner with its contents. The petitioner responded that repairs needed to be done in the apartment and that she was not paying the rent until repairs were made. She stated that the kitchen cupboards were broken, a pipe had rotted out under the kitchen sink, there was a gas smell she could not get anyone to look at, that extra hot water was scalding her in the shower and that the apartment was infested with cockroaches. She stated she had asked the landlord to remedy this situation but that nothing had been accomplished other than a one-time insect spraying that did not alleviate the infestation problem. She had asked the landlord to make these repairs but he had done nothing.
4. The worker's response to the information is disputed. The worker said she believes she advised the

petitioner to set up an escrow account for the rent money. The petitioner does not recall being told to take any action with regard to the problems but does recall that she was advised to pay the rent.

5. In a letter written to the landlord following this conversation, the worker made the following statements:

Since she's not a month behind, I can't put her on rent vendors--yet--but I confronted her with your letter. She claims she has the rent but you need to make some repairs?? She should get her 16th check 1/17--hope she pays--I've suggested she do so!!

6. Based upon the letter written to the landlord, the petitioner's memory of the January conversation would appear to be more accurate. There is nothing in the letter which would support the worker's contention that she advised the petitioner to put the money into a rent escrow account. From the letter, it appears only that the petitioner was advised to pay her rent.

7. On January 23, 1995, the Department received a second letter from the landlord asking for rent vendoring based on the petitioner's failure to pay rent from the second January check. The letter was showed to the petitioner who again stated that she was holding the money and had made arrangements to talk to a tenant's rights group about what she should do.

8. Based upon that conversation, the worker again wrote to the landlord as follows:

Regarding your letter dated 1/20/95. I can understand and appreciate your frustrations re non-payment of rent. I have confronted [petitioner] --she claims to be holding the money until you make certain repairs and also states she is being advised by that tenants (sic) rights group. DSW policy prevents me from vendoring her rent until she is two months behind. Sorry for this bad news. Please keep me updated.

9. On February 9, 1995, the landlord notified the Department that the petitioner's rent was 1 1/2 months behind. However, the petitioner did at some point in that month pay the rent for February of 1995, after the landlord made some, but not all, of the requested repairs.

10. In early March, following the advice of the tenant's rights organization, the petitioner put her complaints in writing to the landlord. She asked him to repair the problems by March 20, 1995, or she would contact the town health officer. On March 14, 1995, the landlord contacted the town health officer himself to report garbage in the hall or under the rampway allegedly left there by the petitioner. The town health officer went to the premises in response to the landlord's complaint but did not find any garbage or trash in the hall. While the health inspector was on the premises, the petitioner asked him to look at the problems in her apartment. The health officer inspected the apartment and prepared a written report in which he noted an outlet that may be unsafe with a burn on the wall next to it, a leaking drain in bathroom sink, and water temperature changing by itself in the shower. The landlord was asked to look into these problems. A copy of that report dated the same day as the inspection was sent by the health department to the petitioner's DSW worker.

11. The petitioner did not pay the March rent because the problems continued to exist. The worker claims that she told the petitioner on at least two occasions in March to set up a special account. However, she has no record of that advice in the file and the petitioner denies having received such information. No finding can be made that the worker did give that information to the petitioner.

12. At some point in either March or April, the petitioner had an informal discussion of this matter with her worker's supervisor at DSW. (He could not recall the date for certain as the conversation was not noted in the case file.) The supervisor recalls telling the petitioner in this matter that she should send a certified letter to the landlord with her complaints and notify the health inspector if she was having difficulties with repairs. However, he does not recall talking about an escrow account since it was his belief that the petitioner had already spent the money on other needs of her daughter.

In general, he stated that when DSW gets a letter of non-payment of rent from a landlord, it is the office's practice to give the tenant ten days to respond to see if there is some kind of error or if the tenant can rebut the mismanagement implication. The notice does not have to be in writing because the policy manual does not require it. If the tenant responds, she is generally advised as to the ways to rebut money mismanagement and can be given additional time to present information about rent withholding and escrow accounts. He could not affirm in this matter that the petitioner had been told before the notice that she needed to escrow her rent money to rebut a finding of mismanagement. Information on how to rebut money mismanagement is not given to petitioners in writing.

13. In March of 1995, the DSW worker received information from the landlord indicating that he had made the repairs and that the petitioner was fully two months behind in the rent. The worker sought no confirmation that the repairs had been made from the petitioner or the health inspector. The worker claims that she discussed this matter again with the petitioner in late March but the petitioner does not recall such a conversation and no evidence exists showing that the petitioner was given an opportunity to rebut the allegation of money mismanagement at that time. The worker determined that money mismanagement existed by virtue of the two month non-payment of rent and on April 4, 1995, the worker sent a notice to the petitioner stating as follows:

Because the amount of back rent you owe your landlord is equivalent to at least two months rent, a rent amount of \$400.00 plus \$50 towards your back rent will be deducted from your ANFC grant and mailed directly to your landlord in 2 installments, 60% will be mailed on the first and 40% will be mailed on the sixteenth of the month. The remainder of your ANFC grant in the amount of \$63.00 will be mailed to you in two checks, 60% on the first and 40% on the sixteenth. Once your back rent is paid in full, the Department will no longer pay your landlord directly. You will receive the full amount of your ANFC grant, which includes the amount budgeted for shelter, and will be responsible for paying your landlord directly.

The petitioner was advised that the first vendor payment would be made on May 1, 1995. The worker determined that the \$50 should be paid because it was "like an overpayment" to the petitioner which had to be recouped.

14. After that notice was received by the petitioner, she was told by the tenant's rights organization that she should have held her rent in an escrow account to avoid vendoring by the Department. On April 20, 1995, the petitioner went into the DSW office with a tenant's rights organizer. At that meeting, her worker confirmed that she had to put her money into an escrow account in order to rebut a claim of mismanagement. It appears that this is the first time the Department actually gave that information to the petitioner. She asked the worker to stop the rent vendoring so she could get some money to leave the apartment which she felt would never be properly repaired. The worker refused to stop the vendor process scheduled to begin in another ten days.

15. On April 13, 1995, the apartment was inspected again by the health inspector and several problems

were noted including a gas smell, the too hot water in the shower, cockroaches, a smoke alarm which needed installation and some kind of an electrical problem. This report was again supplied by the health Department to DSW. On April 21, 1995, the health inspector issued a report stating that he was satisfied that all the repairs had been made. However, the petitioner disagrees that everything was completed by that date and maintains that the leaking sink pipe was not repaired until May.

16. No evidence was offered by the Department that the District Director evaluated the evidence in this matter and made a determination that a protective payment plan was warranted.

ORDER

The Department's decision to vendor the petitioner's rent is reversed.

REASONS

Protective payments (vendor payments) are defined in the regulations as "management of assistance by a third party outside of the assistance group to meet the needs of a dependent child and the relatives or caretaker with whom the child is living...when payment of assistance to the caretaker would be contrary to the welfare of the child" such as in a situation where there is money mismanagement which jeopardized the welfare of the child. W.A.M. 2235. Before a protective payee is appointed, the recipient's eligibility specialist "manages the grant by making payments on behalf of the family by vendor authorizations and by issuing checks as appropriate to pay bills and obtain basic needs." W.A.M. § 2235.4.

In July of 1994, the Department revised its regulations on criteria for vendoring rent payments to include a presumption of money mismanagement which threatens the health or welfare of a child under certain circumstances. The pertinent parts of that regulation are set forth as follows:

The District Director will evaluate evidence of money mismanagement, determine whether the recipient demonstrates the capacity to overcome these problems, and decide whether or not, based on these factors, a protective payment plan is warranted.

A. A determination of money mismanagement shall be made if one of the two following criteria is met:

1. A presumption of money mismanagement which threatens the health or safety of the child shall be made when an applicant's or recipient's rent payments are, at any given time, in arrears in an amount equivalent to two months or more of the incurred rent. Any rent which was incurred but not paid to the current landlord over the previous 12 months and which remains unpaid shall be taken into consideration in determining whether the equivalent of two months' rent has been reached. Rent will be considered overdue for any month when it remains unpaid ten days past the due date.

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B. When the department receives information that money mismanagement may exist, no action will be taken until the department offers the recipient the opportunity to rebut the claim of mismanagement. The recipient will have at least 10 days to seek to rebut the claim.

The determination of money mismanagement made under criterion 1 . . . above may be rebutted when a recipient can demonstrate one of the following:

1. Payment was withheld because of a reasonable exercise of consumer rights arising from a legitimate landlord-tenant dispute, and the recipient has arranged to pay rent (a) into an escrow account with their attorney; or (b) into an escrow account with a bank, if the landlord is in agreement; or (c) into a separate bank account, if the landlord is not in agreement; or (d) to the court, if so ordered, until such time as the dispute is resolved.

A dispute is considered legitimate when:

- the landlord fails to comply with the landlord's obligations of habitability, and
- the tenant gave the landlord actual notice of the noncompliance, and
- the landlord fails to make repairs within a reasonable time and the noncompliance materially affects health and safety, and
- the noncompliance, is not caused by the negligent or deliberate act or omission of the tenant or a person on the premises with the tenant's consent.

Resolution of the dispute is considered achieved when that noncompliance is corrected.

. . .

W.A.M. 2235.1

In this matter, the Department received information in January of 1995, that the petitioner had not paid that month's rent and called the petitioner in to talk to her. At that point, there was not sufficient information to find that she was mismanaging her money and there was no plan to take any action vendoring her rent. The purpose of that meeting should not have been to require the petitioner to rebut a finding of money mismanagement, since no such finding had been made, but rather to inform the petitioner of her rights and obligations with regard to continued benefit payments. The Department's obligation to inform recipients of the requirements for continuing eligibility is well established in law. See Lavigne v. Department of Social Welfare, 139 Vt. 114, 118 (1980). Although claims were made that such information was given orally to the petitioner, no record exists that this was done. Given the numerous and very specific requirements of the regulations with regard to actions which must be taken to rebut money mismanagement, it would be difficult for the Department to argue that it had given any meaningful or thorough explanation to the recipient short of showing that written information had been supplied.⁽¹⁾ In this case, both the existent ⁽²⁾ and non-existent evidence in the record supported the petitioner's claim that she was not even informed orally about escrow and other requirements she would need to show to avoid the possible imposition of vendor payments if her rent remained unpaid.

Equally unfair to the petitioner was the Department's failure to offer her an opportunity to formally rebut the claim of money mismanagement in March when the Department received information that she was two months behind in her rent. The regulations specifically require that she be given an opportunity at that point to rebut the claim and to have ten days in which to do so. The worker, however, declared that

money mismanagement existed based solely on the allegations of the landlord (both with regard to the amount owed and to the condition of the premises) and did not allow the petitioner an opportunity to rebut the claim and ten days in which to do so. The provision of that opportunity and the response should be clearly documented in the case file before a final determination is made that money mismanagement exists. That was not done in this case in violation of the regulations.

Finally, the regulations do not contemplate that vendoring occur automatically upon a finding that money mismanagement exists. The regulations require the District Director to evaluate the situation to determine whether the petitioner can overcome the money mismanagement problem and to determine whether a protective payment plan should take place. This part of the regulations gives the Director some discretion to determine whether vendoring should occur in spite of a finding of money mismanagement. This step in the process was completely ignored in this case even though it is listed as the first requirement in the regulations. This regulation requires that the District Director, not the worker, will look at the situation and make a decision based upon some reasonable factors before vendoring takes place. Again, in order to show that such an evaluation has taken place, it should be noted in the casefile to show that the Director has performed the review and has not acted arbitrarily.

As the Department failed to follow its own regulation on vendor payments and to honor its obligation to inform recipients of their rights and obligations, the Department's action vendoring the petitioner's payment must be reversed. It is, therefore, unnecessary to consider the petitioner's arguments that the regulation providing the presumption conflicts with federal law and that the amounts withheld for escrow payments are not authorized by the regulations. However, by way of a caution to the Department, it must be remarked that the eligibility specialist's decision to take out amounts from the petitioner's current check to repay the back rent (\$50) per month, leaving the petitioner with only \$63 per month with which to meet her other needs is certainly questionable in light of the vendor manager's obligation to meet the needs of the dependent child found at W.A.M. 2235 and the regulations which require only the payment of current shelter expenses found at W.A.M. § 2235.4. Before using current grant payments (which are only intended to cover 56% of current need) to collect on back bills, the eligibility specialist would certainly have to verify that all other necessary current expenses were being met. If this is not done, the specialist herself could very well be in the position of jeopardizing the welfare of the child. If that question had been reached here, there are no facts in the record which would have supported the worker's decision to pay back as well as current rent. The worker's belief that she could take this action because there had been some kind of an "overpayment" in prior months is plain wrong and exhibits a grave degree of misinformation and confusion regarding her serious obligations in her role as temporary manager of the family's money.

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1. The Department is correct that they are not required by their own regulations to put the right to rebut or information needed to rebut in writing to recipients. However, without written notices the difficulty of meeting its burden of proof that such detailed information was given to recipients will be next to impossible, particularly where, as here, the petitioner does not agree that she was orally given notice of any of her rights.
2. The only evidence in the record from this period of time is the worker's letters to the landlord which sympathized with him and advised him that the petitioner had been encouraged to pay the rent. While the worker's desire to placate the landlord and to preserve the petitioner's housing is understandable, it was not appropriate for her to appear to be taking his side in this dispute. The worker is employed to

assist the indigent client and at the very least should have adopted a neutral stance in her letters to the landlord.