STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,009

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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/GA) for housing. The issue is whether the petitioner has an emergency need and is facing a catastrophic situation as defined in the regulations. The petitioner requested a hearing on October 30, 1995. An "expedited" hearing[(1)] was held on November 1, 1995.

FINDINGS OF FACT

The petitioner applied for ANFC and EA/GA for herself and her three-year-old daughter on October 2, 1995. At the time, the petitioner alleged that her husband had made her leave her previous home in August, 1995, after a domestic argument. The petitioner stated that she had been staying since then in a girlfriend's apartment but that she now had to move out.

When the Department contacted the petitioner's husband for verification he told the caseworker that the child had been with him most of the time since the petitioner had left, but that the petitioner and the child could live in the apartment and he would move out. The petitioner told the Department she did not want to do this because the apartment's proximity to her parents' home made her fear for her safety. The Department did not credit this story, and denied the petitioner's application for GA because of its determination that the petitioner had suitable alternative housing available to her.

The Department also questioned the petitioner's financial status. The petitioner reported that in August, shortly before she had left her husband, she had received a workman's compensation settlement of $4,300.00. She stated that when she first moved out of her and her husband's apartment, nobody would rent to her and that she was forced to move in with her girlfriend. The petitioner alleged that she had then spent all her money paying off her car loan and paying a total of $900.00 toward the expenses for the girlfriend's apartment. When the Department attempted to verify the latter expense, the girlfriend stated that her rent (through subsidized housing) was $130 a month, and she denied that the petitioner had paid her any money.

On October 30, 1995, the petitioner returned to the Department and applied again for GA for housing. On October 26, 1995, the Department had granted the petitioner's application for ANFC, food stamps and medicaid and had mailed the petitioner an ANFC check for 370.00 for the remainder of October and November.[(2)] The petitioner stated that sometime in October she had moved in with another girlfriend who rented a trailer from her parents. The petitioner alleged that this friend was moving to Florida on November 1, 1995, and that she could no longer stay in the trailer. The petitioner told the Department that she had found an apartment for $600.00 a month, plus utilities, and that another friend had agreed to move in and share the rent with her. The petitioner stated that she had spent her entire ANFC check, but was vague about where.

At this time, the petitioner stated that she and her husband had entered into an informal "joint custody" arrangement whereby as long as the petitioner had a suitable place to live, she could have the child with her most of the time on weekdays. The husband confirmed this arrangement to the Department, but stated that if the petitioner did not find a suitable place he would seek to have the child live with him.

At the hearing on November 1, 1995, the petitioner stated that she and her daughter had moved out of her friend's trailer and had stayed the previous night in the home of the parents of the friend who plans on sharing the new apartment with her. The petitioner is convinced that if she cannot immediately move into a new apartment she will be forced to "give up" her child to her husband. She therefore rejects out of hand any discussion of availing herself of referral services available through community women's and family services organizations. The petitioner does not allege, however, and there is no evidence to indicate, that the child staying with her father, even temporarily, would be detrimental to the child.

Attempts by the Department and the hearing officer to elicit more information from the petitioner and to explore possible alternatives were hampered by the petitioner being distracted by her child's crying and by her own distress and anger over the direction the proceedings were taking. The hearing officer attempted to explain to the petitioner that he had to base his decision solely on the facts of the petitioner's case and that he was required to follow the regulations regarding eligibility.[(3)] Before he could pursue further inquiry into the petitioner's circumstances, however, the petitioner left the hearing.

ORDER

The Department's decision is affirmed.

REASONS

Under the EA/GA regulations (W.A.M. §§ 2800 and 2600),in order to qualify for assistance an individual in the petitioner's circumstances (i.e., one who has received income in the last thirty days equal to or greater than the ANFC payment standard) must be facing a "catastrophic situation", which is defined in the regulations (W.A.M. §§ 2802 and 2602) as follows:

Any applicant who has an emergency need attributable to one of the following catastrophic situations may have that need met within General Assistance benefit standards. Payment maximums as specified in sections 2611 through 2626 apply to these needs. Eligibility criteria are as follows:

- The income test at 2600 C.1 is <u>not</u> applicable.

- All available income and resources must be exhausted. The resource exclusion at 2600 C. 5. B. does not apply if an individual qualifies only under catastrophic rules.

- Alternatives must be explored (for example, private and community resources, family, credit).

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 cause by the catastrophe or is a result of failure on the part of the applicant to explore potential resolution of the problem.

. . .

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, other household members or their guests; repeated instances of raucous and illegal behavior which seriously infringed on the rights of the landlord or other tenants of the landlord; or intentional and serious violation of a tenant agreement is not considered a catastrophic situation. 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.

Constructive eviction is defined as any disturbance caused by a landlord or someone acting on his/her behalf, which makes the premises unfit for occupation. The motive for the disturbance, which may be inferred from the act, must have as its intent the eviction of the occupant. No intent needs to be considered when heat, utilities or water is not provided within a reasonable period of time and there is an agreement to furnish these items, but pursuit by the applicant of a legal resolution to these Vermont Health regulation offenses is expected.

. . .

Based on the limited information he was able to gather at the hearing the hearing officer feels there are serious questions and discrepancies in the petitioner's explanation of how she arrived in her present circumstances. The petitioner did not adequately explain why she was unable to secure housing for more than two months when she had over $4,000.00, and why she could not have moved back into her former apartment when her husband offered to leave.

Even putting these concerns aside, however, it also appears that the petitioner's child could now temporarily return to live with her father while the petitioner, who now has a source of income, continues to look for housing. Although the petitioner maintains that she will "lose" her child if she does this, other than her husband's threats and the petitioner's fears, there is no factual or legal basis to conclude either that this will actually happen, or that it would be contrary to the child's interests if it did.

The above notwithstanding, the hearing officer is concerned that the petitioner's inability to congruously explain her circumstances and her refusal to avail herself of community services might be obscuring a genuine compelling need for assistance. The hearing officer urges the petitioner to consult with Legal Aid, community action, or the women's shelter to better inform herself of her legal options both in this

case and regarding the custody of her daughter.[(4)]

The petitioner is free to reapply for benefits at any time--and to request another hearing on an expedited basis if she is denied. At this time, however, it cannot be concluded that the petitioner is facing a catastrophic situation as defined above. Therefore, the Department's decision must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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1. See Procedures Manual § P-2610D

2. The check did not include a housing allowance because the petitioner had not verified that she was incurring any housing expenses. However, at the hearing the Department indicated it is willing to pay the petitioner an ANFC shelter allowance as soon as she can establish that she is incurring a shelter expense.

3. The petitioner was upset because she feels that other, less "deserving", individuals get assistance.

4. The petitioner stated that she tried to get Legal Aid to represent her in this hearing, but that they had told her that they could not do so on such short notice. The petitioner is advised to return to Legal Aid with this decision to see if she can obtain the legal representation that it appears she desperately needs.