

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,213

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare denying her application for General Assistance for housing.

FINDINGS OF FACT

1. The petitioner, her husband and thirteen-year-old son have been living in his mother's home for the past few months. They were forced to leave her home when the mother obtained a restraining order against them, allegedly due to the husband's drinking and smoking.
2. Although a local homeless shelter was willing to assist the family, the petitioner and her husband stayed in a hotel on the evening of February 19 and 20, 1996, with money loaned to her husband by one of his co-workers.
3. On February 21, 1996, the petitioner applied for payment of the hotel room under the General Assistance program. On that same day, the petitioners were denied assistance because their income was in excess of the comparable ANFC amount (\$616) per month and for failure to show an emergency need or a catastrophic situation based on the availability of free shelter to the family. The petitioner made a second application on February 22, 1996, which was denied for the same reason.
4. On February 23, 1996, the petitioner found and rented an apartment for which the local family assistance center paid the deposit. The petitioners amended their request for assistance to payment of the \$550 in rent which will be due on March 1, 1996.
5. During the thirty days preceding the date of their application, the petitioner's income minus allowable work deductions was \$850.23. The petitioners do not dispute the calculation of their available income.

ORDER

The decision of the Department is affirmed.

REASONS

The petitioner's monthly income of \$850.23 is in excess of the maximum \$616 amount for a three person family established for eligibility under the General Assistance program. W.A.M. 2600 C.(1). As such, the petitioners can only get assistance with their housing costs if they meet the "catastrophic" situation criteria:

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 not 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).

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.

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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 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.

W.A.M. 2602

At the time of the hearing, the petitioner had secured an apartment, paid a deposit and was looking for rent for the upcoming month. She presented no evidence that she was about to be actually or

constructively evicted from that apartment. Without such evidence, the petitioner cannot be granted assistance with her housing under the General Assistance regulations. The decision of the Department should be upheld.

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