

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,673

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare denying her eligibility for Emergency Assistance for temporary housing.

FINDINGS OF FACT

1. The petitioner lives with her two children, who are ages fifteen and twenty-one, in a Section 8 subsidized apartment she has rented for ten years. Her share of the rent is \$266 per month, the rest is paid by the housing authority. She receives income of \$524.91 per month from SSI. Her daughters receive a total of \$396 per month as her dependents. She also receives \$199 in ANFC benefits.
2. During June of 1996, the petitioner stopped paying her rent. Beginning in August of 1996, the Department of Social Welfare, at the landlord's request, vendored \$199 per month directly to the landlord after finding that the petitioner had mismanaged her money. Although the petitioner did not agree with that finding, she neither opposed nor appealed the subsequent vendor action.
3. The landlord commenced an eviction action in Superior Court in September of 1996 which was contested by the petitioner. On November 7, 1996, the Court rendered a judgment in favor of the landlord for \$543 in unpaid rent and granted him an immediate writ of possession.
4. The petitioner has done some looking for another place to live but has been discouraged by the high costs of apartments in the Stowe area and the lack of a telephone. (The petitioner's claims that she lacks transportation to look for alternative housing cannot be credited in light of her testimony that she spent her rent money on car insurance and registration. See below.) However, the petitioner presented no specific information on the nature and extent of her housing search and has not investigated whether she can take her Section 8 housing subsidy with her to another apartment.
5. The petitioner would like to stay in her current apartment and has retained an attorney to attempt to reopen the eviction proceeding based on her inability to effectively represent herself in the prior

proceeding. A hearing on that request is scheduled on January 29, 1997. The sheriff has been notified of this request and hearing date.

6. The petitioner has not talked with the sheriff or the landlord to determine when and if there is a plan to execute on the writ of possession served on her almost two months ago. She has heard nothing from the sheriff and the landlord has continued to accept \$199 per month toward the rent from the Department of Social Welfare.

7. The petitioner has not investigated the availability of a shelter in which she and her daughters could live if the sheriff should suddenly execute on the writ by removing her from the premises.

8. The petitioner applied for temporary housing assistance from the Department of Social Welfare on November 20, 1996 and was denied because she did not show that the eviction was due to circumstances over which she had no control. Specifically, the Department determined that the petitioner was at "fault" in her eviction.

9. On November 22, 1996, the petitioner appealed the Department's decision and requested an expedited hearing which was denied that same day by the hearing officer. She reapplied shortly thereafter and was denied again by the Department for the same reason that she was "at fault". At the hearing scheduled for December 23, 1996, the petitioner requested expedited relief which was again denied in a memo dated December 26, 1996.

10. The petitioner alleges that she withheld her rent in an effort to correct substandard housing, namely sewer smells which occurred in her apartment during the Spring and Summer of 1996. She also alleges that she sent one or more letters to her landlord advising him of that fact and that she contacted the health department which inspected her premises but could detect no odor. She further alleges that her daughter became sick from the smell and was treated by a doctor. Though asked to provide these, the petitioner did not offer copies of the letters she sent to the landlord or health department and medical reports. The petitioner offered a copy of her "Answer" in the eviction action in support of her rent withholding contention which recited the same allegations. The petitioner did not actually hold on to any of the rent she "withheld" but rather used it to pay for the insurance, registration and repair bills on her car and to buy her daughter some clothes for school. Based on the facts in this paragraph, it is not possible to conclude that the petitioner either did or did not withhold rent in an effort to correct substandard housing. In any event, such a finding is deemed to be irrelevant and unnecessary to the decision in this matter.

ORDER

The decision of the Department denying "temporary housing" assistance is affirmed.

REASONS

The petitioner has applied for "temporary housing" under the Emergency Assistance (EA) program which provides as follows:

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 or alternative arrangements are not immediately available

("could not reasonably have avoided" is subject to the limitation in 2802(b)).⁽¹⁾

W.A.M. § 2813.2

An applicant who has been served with a court order of eviction is certainly in an emergency situation when it comes to obtaining permanent housing. W.A.M. § 2813.1. In the event of an application for such assistance, it is appropriate for the Department to consider the criteria listed in the regulation at W.A.M. § 2802(b) (see Footnote One) and to evaluate whether the applicant has other resources to turn to, whether the applicant has attempted to resolve the problem, and finally, in the case of an eviction for non-payment of rent, whether the rent had been withheld pursuant to efforts to correct substandard housing.

However, when an applicant applies for temporary housing it is essential that, as a threshold matter, a showing be made that at the time of the application, the applicant has an "emergency need" for that shelter. W.A.M. § 2802. In the context of a request for "temporary housing" the petitioner must show that she is actually and "involuntarily without housing" before an emergency exists and a further evaluation can be made. See W.A.M. § 2813.2 above. The petitioner in this matter has made no such showing. At the time of both applications and at the time of the hearing, the petitioner was still living in her apartment, the landlord was still accepting rent, and the sheriff had not contacted the petitioner with regard to vacating the premises since the writ was first served back in early November. There was simply no basis upon which it could be concluded that the petitioner was actually without housing at any time throughout this process. Therefore, the petitioner was properly denied temporary housing assistance, but not for the reason ("fault") originally cited by the Department which reflected a premature application of the criteria in W.A.M. § 2802(b). However, as the ultimate decision was correct, it must be upheld. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

If the petitioner should find herself suddenly without housing, she may reapply for benefits immediately. She should be aware that if she does reapply she will have to demonstrate as well that she has made reasonable efforts to avoid sudden homelessness and that she has no alternatives for temporary shelter. The petitioner is encouraged to avoid sudden homelessness by applying for and being evaluated for assistance with permanent housing if she feels she is in need.

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1. The limitation in 2802(b) is as follows:

Any applicant who has an emergency need attributable to one of the following catastrophic situations may have that need which is indeed caused by the catastrophe met within EA benefit standards. Payment maximums as specified in sections 2811 through 2820 apply to these needs.

Eligibility criteria are as follows:

...

All available income and resources must be exhausted. . . .

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 caused 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. . . . 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. . . .

W.A.M. § 2802