

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 17,823
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) denying his application for General Assistance (GA) benefits for temporary housing in a motel room. The issue is whether there is suitable alternative housing available to the petitioner.

FINDINGS OF FACT

1. The petitioner is a forty-seven-year-old single man with no dependents. He has been receiving GA for several months for his personal needs and incidentals based on statements furnished by his doctors that he is temporarily unable to work because of a hernia operation.

2. On April 15, 2002 the petitioner applied for GA for temporary housing in the form of a hotel room. At the time the petitioner stated he was living in his car. The Department denied the application because it determined that space was available for the petitioner in a homeless shelter

in a neighboring community. (There is no such shelter in the petitioner's community. The Department was willing to grant the petitioner GA to cover his transportation costs to the shelters in neighboring communities.)

3. At that time the petitioner refused to go to a shelter because he has two dogs that cannot stay in the shelters. The petitioner raised no medical issue relating to his ability to stay in a shelter at that time.

4. The petitioner did not immediately appeal this decision and did not reapply for temporary housing for several weeks. On June 14, 2002 the Board received a letter from the petitioner stating that he had spoken with an attorney and wished to file an appeal "in regards to my situation regarding housing".

5. A hearing was held by phone on July 19, 2002 at which time the petitioner alleged that he was requesting temporary housing in a local motel. The petitioner alleged that he had edema (swelling) in his legs and that his doctor had advised him to keep his legs elevated at night and during the day. The Department conceded that the closest homeless shelters that are available provide only overnight lodging, and that during the day the petitioner would have to leave the shelter. The petitioner was advised to submit statements from his

doctors that it would be detrimental to his health to stay in a homeless shelter under these conditions.

6. The hearing was reconvened by phone on July 22, 2002. At that time the Department had been furnished with three medical statements. One was from a psychologist who had done an evaluation of the petitioner on May 22, 2002 that indicated that the petitioner had several situational problems (being "down and out"), and that although he knew how to "work the system" he was frustrated with his inability to be provided with housing. The primary diagnoses were "adjustment disorder" and "somatics".

7. In a note dated July 22, 2002 the same psychologist stated:

(Petitioner) has a combination of psychological and medical impairments which render him disabled. He is currently homeless and living in his car. He is in need of housing. Moving to another community to live in a homeless shelter would constitute a significant hardship for him and would exacerbate his condition. I would recommend that he be provided with housing in (this) area.

8. At the hearing the petitioner did not allege, and there is no other indication in the records, that he has a psychological condition other than the diagnoses referred to above. The petitioner did not dispute that the psychologist's knowledge of his physical problems was limited to what the

petitioner reported and "showed" to him (i.e., his swollen legs, which the petitioner had told the psychologist required him to keep his legs elevated). Therefore, it cannot be found that the psychologist's opinion as to the petitioner's physical limitation is based on an accurate understanding of the petitioner's current actual medical condition.

9. The record also includes the following statement from the physician who is treating the petitioner's edema, which was faxed to the Department on July 19, 2002, after the petitioner had requested him to provide information relative to his ability to stay in a homeless shelter.

It is my professional opinion that (petitioner) must have a place to sleep with his legs flat or elevated. Sleeping sitting up in his car is not appropriate and caused or aggravates his edema. During the daytime outside sleeping hours, he should be up and about, actively working or being restrained to work, and wearing compression stockings.

10. Based on the above statement the Department determined that there was no medical reason that would preclude the petitioner from staying in a homeless shelter. The Department is willing to grant the petitioner GA for transportation to drive his car or take a bus to an available shelter. (At the hearing the Department represented that it had already provided GA to the petitioner to purchase compression stockings.)

11. At the hearing, following a discussion of the above medical evidence, the petitioner again raised the issue of his dogs and said that he knew of a local motel that would allow his dogs to stay with him. However, the petitioner presented no argument or evidence that his dogs could not safely stay in his car during the nighttime hours he is inside a shelter.

12. It is not alleged, and there is no indication in the record, that the petitioner requires any ongoing medical treatment or community service that he could not readily obtain if he had to temporarily relocate his residence.

13. The petitioner was advised he could reapply for GA for a motel if he could obtain medical evidence that revised or contradicted the above statement of his treating physician as to his physical impairments or if he could demonstrate that living in a shelter is contraindicated solely for psychological reasons.

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. . .

In several past fair hearings the Board has affirmed the Department's policy or "protocol" that, especially for single individuals, homeless shelters, which in Vermont usually offer supervision and counseling or referral services to their residents, and which usually include access to free meals, constitute a suitable, if not preferable, "alternative arrangement" for a homeless person within the meaning of the above regulation and as a matter of sound social policy. See Fair Hearing Nos. 15,383, 13,380, 13,315, and 13,048. The Board has specifically held that to require the Department to fund stays in a motel room an applicant must demonstrate that an available homeless shelter is unsuitable either for medical reasons (see e.g., Fair Hearing No. 13,380) or in that it would be unreasonable to expect the applicant to temporarily relocate his place of residence (see e.g., Fair Hearing No. 15,383).

The issue in this case is whether the petitioner has presented sufficient evidence that alternative housing in the form of a homeless shelter in another community is not

suitable for him because of health or other reasons. Based on the above statement from his treating physician, and the lack of any credible evidence to the contrary, it is concluded that the petitioner has not made such a showing. Even if he has to leave the shelter during daytime hours, the above physician's statement indicates that physical activity during the day would be beneficial to the petitioner. And, as noted above, the medical evidence does not establish that staying in a shelter is contraindicated solely for psychological reasons.

Therefore, 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 not inconsistent with the regulations, it must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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