

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 18,575
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) denying her application for Emergency Assistance (EA) for a security deposit on an apartment. The issue is whether the petitioner is facing a "catastrophic situation" as defined by the pertinent regulations.

FINDINGS OF FACT

1. The petitioner lives with her young child. In early May 2003 she and her child left their home in Hawaii to move in with the petitioner's sister in Vermont. Their plan was to stay with the sister until they could find a more-permanent place of their own. The petitioner did not pay her sister rent, but she contributed to household expenses.

2. The petitioner's sister had a month-to-month lease on her apartment. Shortly after the petitioner moved in, the sister's landlord terminated the lease and the sister left the apartment, leaving the petitioner to fend for herself. The

petitioner maintains (and the Department does not dispute) that her sister did not tell her that her lease on this apartment had been terminated until after the petitioner had moved in.

3. The petitioner and her child then moved into the local family shelter, where they have been staying ever since. Currently the petitioner receives \$335 a month in RUFA benefits and also receives Food Stamps. It is assumed that when and if the petitioner can obtain permanent housing she will be eligible for an additional monthly housing allowance from RUFA of about \$225.

4. On July 29, 2003 the petitioner applied to the Department for EA for a deposit in order to rent an apartment she had located. The Department denied this application because of its determination that the petitioner voluntarily left her last permanent housing in Hawaii and, thus, is not without housing at this time "due to circumstances beyond her control" as required by the EA regulations (see infra).

5. The petitioner maintains that she left Hawaii with her child because she had a respiratory infection and was concerned about contracting SARS. However, there is no evidence or allegation that the petitioner left Hawaii based on any medical advice.

ORDER

The Department's decision is modified. The petitioner is found eligible for a deposit under EA based on her meeting the requirements of facing a catastrophic situation. The matter is remanded to the Department to evaluate the feasibility of any permanent housing sought by the petitioner.

REASONS

The EA regulations authorize the payment of a housing deposit to otherwise eligible individuals "not to exceed one month's rent, which may be necessary to obtain permanent housing". W.A.M. § 2813.2(b). To be eligible for such assistance § 2813.2 requires that an individual with a minor child be "involuntarily without housing through circumstances which the applicant could not reasonably have avoided . . . ('could not reasonably have avoided' is subject to the limitation in 2802[b])".

Section 2802(b) defines a "catastrophic situation due to a court-ordered or constructive eviction due to circumstances over which the applicant had no control". In this case there is no claim that the petitioner's loss of housing was due to a court-ordered eviction. A constructive eviction is defined by the above regulation as "any disturbance caused by a landlord

or someone acting on his/her behalf, which makes the premises unfit for occupation".

The Board is unaware of any provision in the above regulations requiring that an applicant's court-ordered or constructive eviction be from "permanent", as opposed to "temporary", housing. (See W.A.M. §§ 2813.1 and 2813.2.) The Department's rationale appears to be that if an individual leaves her last permanent housing voluntarily she assumes "control" over any and all subsequent events that might leave her homeless. However, in the absence of any such provision in the regulations themselves, such an interpretation cannot be deemed reasonable when, as here, it conflicts with the facts of the case.

Although one can debate the overall wisdom of her actions, there is no dispute in this matter that when the petitioner left Hawaii she intended and reasonably believed that she could live indefinitely with her sister. The regulations define "permanent housing" as "accommodations intended to provide shelter on a continuing basis". W.A.M. § 2813.1. The Department does not maintain, and the facts indicate otherwise, that the petitioner had any control over her sister's loss of the apartment in question. Under the circumstances, the regulations seem clear that the Department

cannot disqualify the petitioner from EA solely because she may have left her home in Hawaii voluntarily.

The question must be whether the circumstances of the petitioner losing her housing with her sister meet the requirements of the regulations. As a matter of law (as well as basic sensitivity and fairness) it must be concluded that the sister's act of acquiescence in the termination of her lease by vacating her apartment constituted a "constructive eviction" of the petitioner by her sister within the meaning of § 2802(b), supra.

Again, the Department does not maintain that the petitioner had any control over her sister vacating the apartment. When her sister did so, the petitioner and her child were forced to move into a homeless shelter. The petitioner has been looking for permanent housing ever since. It strikes the Board as an unreasonably harsh view of the facts and the regulations to deem the petitioner "at fault" in her current predicament to the extent that she should be disqualified from a form of assistance specifically intended to aid children with an emergency need. See W.A.M. § 2800.

For the above reasons it must be concluded that the petitioner meets the "catastrophic situation" requirements of § 2813.2(b), supra, to qualify for EA payment of a rent

deposit. This does not mean, however, that the Department cannot apply any and all other eligibility criteria in determining whether it will pay a deposit for any particular apartment. After the hearing in this matter (held on August 6, 2003) the Department informed the Board that the rent on the apartment for which the petitioner was seeking payment of a deposit was \$800 a month. As noted above, the petitioner's foreseeable income is less than \$600 a month. The regulations specifically allow the Department to review and approve the "feasibility" of any permanent housing for which assistance under EA is sought.

Therefore, the matter is remanded to the Department to determine the suitability of this or any future apartment for which the petitioner seeks EA for rent and/or a deposit. The petitioner has the right to appeal any adverse decision by the Department in this regard.

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