



vermont affordable housing coalition

September 27, 2013

By electronic transmission

Heidi Moreau, Esq.
Policy Analyst
Department for Children & Families
Economic Services Division
103 South Main Street
Waterbury, VT

RE: Proposed General & Emergency Assistance Rules, Bulletins 13-28P, 13-30P

Dear Attorney Moreau,

The Vermont Affordable Housing Coalition (VAHC) appreciates the opportunity to comment on the above referenced proposed changes to the General and Emergency Assistance Rules.

Founded in 1985, the Coalition is a statewide membership organization dedicated to ensuring that low-income and vulnerable Vermonters have safe, decent, and affordable housing. For 28 years, VAHC has played a central role in state housing policy development. Our 80-plus organizational members, representing nonprofit housing developers, homeless shelters and service providers, public housing authorities, funding agencies, and others, provide housing and services to tens of thousands of Vermonters. As part of their work assisting low-income, vulnerable and homeless Vermonters with their housing needs, our members routinely assist Vermonters in their efforts to access General and Emergency Assistance, including Temporary Housing Assistance.

Comments on Sections 2652.2, 2652.3 & 2620 – Temporary Housing & Catastrophic Eligibility

We **strongly support the creation of categorical eligibility** for Temporary Housing Assistance for the four groups of vulnerable populations defined in Section 2652.3, namely households with a member who is:

- 65 years or older,
- An SSI or SSDI recipient,
- A child under seven years, or
- A woman in her third trimester of pregnancy.

This definition is consistent with the legislative mandate expressed in the FY 2014 Appropriations Act, which specifically mentioned these criteria when it directed the Department for Children and Families (DCF) to define eligibility based on “the physical health of and safety risks to vulnerable populations.” We are thankful that the Shumlin Administration listened to the concerns of organizations that work with homeless Vermonters and changed the initial proposed rule to grant eligibility to these four categories of vulnerable people. The engagement of the Governor, members of his staff, Secretary Racine, Commissioner Yacovone, and AHS staff has been very much appreciated.

As a technical amendment, we suggest replacing “may” with “shall” in the sentence that introduces the four eligibility criteria. So long as all other GA Temporary Housing criteria are met, DCF should not have the discretion to deny an applicant that falls into one of the four categories. We second the suggestion from Vermont Legal Aid that the sentence be re-written as follows:

“Applicants shall ~~may~~ qualify for emergency housing if all other eligibility criteria are met, and if the household has a member who is:...”

We also support creation of a four-point system to determine eligibility for other vulnerable Vermonters. Here too, we appreciate the revision from the originally proposed six-point system, which would have had the effect of excluding most vulnerable families and individuals. We recognize that reducing the “vulnerability” of families and individuals to a point system is inherently dehumanizing and does not do justice to the challenges that these Vermonters face. However, given the restricted funding that the Legislature gave DCF to work with, establishing a point system to determine eligibility is a reasonable solution. That said, there are problems with the point system that prevent clearly vulnerable people from gaining enough points to be eligible for assistance. This could be remedied by granting waiver authority to the Commissioner or designee, as discussed below.

We further support increasing from seven to fourteen the number of days for which Temporary Housing Assistance may be authorized. This increase is warranted given the difficulty of finding permanent affordable housing in most areas of the state, a condition that is underscored by the increase in the average length of shelter stays to over 36 days. Increasing the amount of time assistance is authorized also helps eliminate unnecessary paperwork, duplication and bureaucracy. It also allows assisted Vermonters to concentrate their efforts on pulling themselves out of the downward spiral of homelessness, instead of worrying about getting their emergency housing re-authorized every seven days.

All of that said, **we have a number of concerns about the proposed rule** and recommend the following changes:

1. **Eliminate the requirement that beneficiaries “contribute 50% of their gross income and all available resources toward housing costs.”** The first priority for a homeless individual or family needing emergency housing assistance should be to stop the downward spiral of homelessness and secure permanent affordable housing. Requiring them to use up half their gross income to help pay for emergency housing will seriously hinder that effort. The meager financial resources these folks have should go towards saving up for a security deposit, first month’s rent, utility deposits, and moving expenses, not to mention their basic needs. This proposed policy is penny wise and pound foolish: for the sake of saving the State a few dollars on motels and hotels, this requirement will almost guarantee that the family or individual will simply return to homelessness once they run out of Temporary Housing Assistance. We do not believe this is the outcome that the Legislature or DCF intend. Furthermore, the Legislature did not mandate this revision to the Temporary Housing rules, having only directed DCF to define “vulnerable.”

At a minimum, reduce the percentage to go to housing costs to 30%. This would be consistent with the standard established for federal – and other State – housing assistance, which recognize that if someone is paying more than 30% of income for their shelter expenses, they do not have enough left over for other life necessities. Requiring a 50% contribution is simply unsustainable.

Finally, please note the contradiction between Sections 2652.3 and 2620 B. The latter requires beneficiaries to contribute 50% towards their “emergency need,” while the former requires contribution towards “housing costs.” Whether “housing costs” or “emergency needs,” this

requirement should be removed wherever it appears (Sections 2652.2, 2652.3 and 2620).

2. **Create waiver authority for the Commissioner or designee.** Waiver authority is needed to address the needs of applicants whom any reasonable person would consider vulnerable and whose homelessness poses a clear risk to their physical health or safety, but who neither meet the strict criteria of the four eligible categories, nor become eligible under the four-point system. For instance, someone discharged from a hospital with a serious ongoing medical need cannot be discharged into homelessness or, in most instances, to a shelter, without significant risk to their health and safety. Yet these folks are not considered categorically eligible, nor do they receive a sufficient number of points to make them eligible under the four-point system. Similarly, someone with a disability who neither receives, nor has applied for SSI or SSDI, perhaps because they work, is not eligible. Yet the loss of a job and possible ensuing homelessness would likely pose a risk to their health and safety. If they otherwise qualified for Temporary Housing, the Commissioner or designee should be able to grant them assistance. Another example cited during several meetings with AHS is a household with a child seven or older. In many instances a household with a child seven or older may be just as vulnerable and exposed to risk through homelessness as one with a child six or under.

We understand that the Administration has raised concerns about the precedent setting nature of granting eligibility under a waiver, and that this would lead to “opening the floodgates” and exceeding the budgetary limits set by the Legislature. We agree with Vermont Legal Aid that such waiver authority could be limited by rule and certainly has precedents elsewhere in both State and federal assistance programs. Waiver authority could be based on an applicant meeting the functional equivalent of one of the four eligible categories, or otherwise meeting the requirement that homelessness pose a risk to the health and safety of a vulnerable household member. Vermont Legal Aid has also suggested, as an alternative, including a process for “Commissioner Review” in the final rule, which we would support as well.

We are happy to work with you and other stakeholders to come up with something the Department can support that provides flexibility, but is not overbroad, and that addresses stated concerns about the three key populations you heard testimony about: medically needy, children seven or older, people with disabilities not on SSI/SSDI, as well as potentially others who fit within the spirit, if not the letter of the law, but that would not necessarily require additional categorical eligibility criteria or changes to the modified point system.

3. **Incorporate the “Cold Weather Exemption” into the final rule.** The FY 2014 Appropriations Act rescinded all temporary and emergency GA guidelines except for DCF’s Cold Weather Exemption issued October 25, 2012, and any succeeding amendments to it. While now anchored firmly in law, the Cold Weather Exemption is not referenced anywhere in the GA rules, which DCF’s benefits specialists, advocates, recipients and others must rely on to determine eligibility. For the sake of clarity and ease of reference, we suggest that the exemption, as currently defined, be incorporated into the final rule to guarantee adequate protection for vulnerable, homeless Vermonters from the dangers of our harsh winter weather.
4. **Revise the proposed rule denying assistance to someone who has “caused their own loss of housing within the past 6 months.”** This language, repeated in both Sections 2652.2 and 2652.3, is overly broad, subjective and judgment-laden and should be reworded. Likewise, the wording of the examples of causing one’s own loss of housing that follow are problematic, as is the prohibition against receipt of Temporary Housing Assistance for 30 days after being denied further accommodations at a motel for allegedly not following the rules. The “lookback” period of six months is also too long. We suggest a comprehensive re-write, as follows:

“Applicant households that have been responsible for their eviction within the past three months due to circumstances over which they had control shall not be eligible for temporary housing. Examples of eviction due to circumstances over which the applicant has control include, but are not limited to:

** Court-ordered eviction, as set forth in rule 2621 (D), including but not limited to eviction resulting from:*

- Intentional, serious property damage caused by the applicant, other household members, or their guests;

- Repeated instances of raucous and illegal behavior that seriously infringed on the rights of the landlord or other tenants of the landlord;

- Intentional and serious violation of a tenant agreement; or

- Nonpayment of rent if the tenant had sufficient income to pay the rent and did not use that income to cover other basic necessities or withhold the rent pursuant to efforts to correct substandard housing; or

**Denial of further accommodations at a shelter for not following the rules of the establishment.”*

“Recipient households include households currently receiving temporary housing assistance and households that are paying for their own temporary housing...”

The first paragraph of this proposed language substantially adopts the clearer, less value-laden and less open-ended wording the Legislature used in specifying who should be denied assistance. It makes clear that an applicant should be denied only if evicted due to circumstances beyond their control. If evicted for reasons over which they had NO control, they should be considered for eligibility (assuming they meet the other criteria). For instance, this would clarify that someone should be considered eligible for assistance if they had been evicted for non-payment of rent because they lost their job as a result of a lay-off, or perhaps as a result of simply having insufficient income to pay rent while spending their income only for other basic necessities. Under the proposed language, however, these applicants would likely be considered to have “caused their own loss of housing” and would thus not qualify. In public meetings Department staff has affirmed that loss of a job, for example, would be considered good cause for eligibility. We would ask that this consideration be spelled out in rule.

Our proposed substitute language provides clear, concrete examples of circumstances leading to an eviction that the applicant had control over. For clarity, these are repeated from Section 2621 (D).

Our proposed substitute language removes the very broad language denying assistance to someone for “Voluntarily leaving one’s housing,” which could include someone who has been couch surfing, or doubling up with family or friends, and that situation has become unsustainable, causing them to leave voluntarily (this situation does NOT appear to be covered in Section 2622, Constructive Eviction).

Our proposed substitute language removes denial of further accommodations at motels and similar establishments for not following the rules as a reason for denial of assistance. Motel owners or managers may ask someone to leave for a host of reasons, some of which may be purely arbitrary, discriminatory or even wholly unjustified – and should not necessarily lead to a denial of further assistance. These situations should be reviewed on a case by case basis by DCF before further assistance is denied.

We note also that the current rule has language in the first paragraph of 2652.2, stricken in the proposed rule, which defines the intent of the Temporary Housing Program to assist those “who

are involuntarily without housing through circumstances they could not reasonably have avoided.” This language should be reinstated.

Thank you again for the opportunity to comment on the proposed regulations. We hope that DCF will give due consideration to our comments and include our recommendations in the final rule. We'd be happy to discuss any of the issues addressed in more depth as necessary. Please contact me at 802-660-9484 or erhardm@vtaffordablehousing.org with any questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Erhard Mahnke". The signature is written in a cursive style with a large initial "E".

Erhard Mahnke
Coordinator