



Elder Law Project

264 North Winooski Ave., Burlington, VT 05401

802-863-5620 ■ 800-747-5022

www.vtlawhelp.org ■ Fax: 802-863-7152

TO: Legislative Committee on Administrative Rules

FROM: Michael Benvenuto, Project Director, Elder Law Project

SUBJECT: VLA Comments on the Pandemic-Era General Assistance
Emergency Housing Transition Rule 23-E05

DATE: July 21, 2023

Vermont Legal Aid has a long history of advocacy throughout Vermont on behalf of low-income individuals, individuals with disabilities, and individuals aged 60 and older, including on the issue of emergency housing assistance as part of the General Assistance (GA) motel program. We greatly appreciate the extension of GA benefits through Act 81 and support that Act's stated intent to provide an "intentional transition process that provides dignity, oversight, collaborative efforts, and coordinated service delivery" as part of ending the pandemic-era motel program. However, Vermont Legal Aid opposes portions of Emergency Rule 23-E05 as promulgated because the language of the rule is contrary to the intent of the Vermont Legislature in Act 81 in two key aspects.

I. The emergency rule does not include the proper standard for termination of benefits: "misconduct."

Act 81 provides that a person may be terminated from continued participation in the Transition Program if they are asked to leave the motel due to "misconduct." See Section 6, a.(2)(D). This standard for termination was not included in the Emergency rule. Instead, Emergency Rule 23-E05 allows for termination from the Transition Program if "the hotel or motel provider housing the household under the Transition Program asks the household to leave for *violating the rules* of the hotel or motel provider."

First, violating the "rules" of the motel is not the same standard as engaging in "misconduct." Misconduct contemplates some level of wrongful behavior more than a mere rule violation. Furthermore, the "rules" at any given motel may vary and individuals across Vermont will be subject to varying rules

and interpretations of those rules. As part of implementing this program, it is the Department's responsibility to determine what constitutes "misconduct" and that standard should be specified in the rules. As an example, "misconduct" was part of the rule governing the GA motel program during the COVID-19 pandemic.

Second, the Rule shifts the decision as to whether misconduct has occurred from the Department to motel/hotel owners. This shift abdicates the Department's responsibility to determine whether a participant's behavior rises to the level of misconduct that disqualifies them entirely from the Transition Program. As such, leaving the interpretation of what constitutes misconduct to motel owners is contrary to the express intent of the Act—to keep vulnerable people housed until they can find an appropriate placement. The opinion of the motel owner that a person violated the rules cannot control whether a person is entirely disqualified from the Transition Program. Vulnerable participants may lose their only stable housing because their children were a little too loud in the hallway of the motel.

II. An "offer" of an alternative placement must be appropriate to the person and their circumstances.

Participants may lose their eligibility in the Transition Program if they are offered an alternative housing placement and do not accept that offer within 48 hours. Both Act 81 and 23-E05 define alternative housing placements as including institutional settings: "residential treatment beds for physical health, long-term care, substance use, or mental health; nursing home beds; and recovery homes."

Admission to an institutional placement such as a nursing home should be appropriate for the individual and during that process the individual still retains the right to elect whether or not they agreed to institutional care. The Department has not provided clear, meaningful standards in 23-E05 for what constitutes a written offer of an alternative housing placement in the context of an institutional setting. An institutional placement must be appropriate to treat a person's specific diagnoses and treatment plan, as managed by their health care provider. A participant should be afforded the opportunity to visit the treatment facility, speak with their provider, and determine whether the level of care provided is appropriate for their needs. This evaluation usually cannot be arranged within 48 hours of the offer. The Rule should be revised to incorporate "appropriate" as part of the standard for an alternative placement in an institutional setting.