



Elder Law Project

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TO: Legislative Committee on Administrative Rules

FROM: Michael Benvenuto, Project Director, Elder Law Project

SUBJECT: 24-E04 - Department for Children and Families/Eligibility Criteria for Temporary Housing Assistance; and
24-E05 - Department for Children and Families/Emergency Housing Transition Benefit

DATE: April 18, 2024

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. We represent individuals experiencing homelessness as part of these programs and have testified about legislative changes to these programs and the applicability of rules on many occasions. We have serious concerns about the Department's administration of the General Assistance Emergency Housing Program as extended by the Budget Adjustment Act and as implemented in part by the extension of these emergency rules.

1. No Public Comment or Authorization for Emergency Rules

The Budget Adjustment Act, H.839, was passed on March 1, 2024 and signed into law on March 13. These emergency rules were posted by the Department on April 3 and made effective retroactively to April 1. The Department made no effort at all to "maximize" the opportunity for public input as required by the Administrative Procedures Act. In the filing for this rule, the Department offers no justification for why the Department did not engage in any public notice or comment period, including for key stakeholders such as Vermont Legal Aid, and why that input was not practicable under these circumstances. The issues identified here in these comments could have been raised with the Department as part of a proper emergency rule-making process.

2. No Basis for Splitting Program into 3 Disparate Groups

In these two rules, the Department extended emergency rules for the third time that were first issued effective July 1, 2023. These rules make changes to the GA program in EA-E04 and extend the emergency housing transition benefit in EA-E05. But the Department has not promulgated any rules that would govern the BAA's expansion of emergency housing benefits for individuals with disabilities. As a result, the Department has created three separate groups who may be eligible for emergency housing from April 1 to June 30: 1) expanded traditional GA eligibility, 2) eligibility based on the "cohort" or emergency housing transitional benefit, and 3) BAA eligible individuals based on the expanded disability definition and the variance form. This split has resulted in confusion and uncertainty and chaos for everyone involved in this program.

3. Lack of Due Process and Notice

Adding to the confusion, neither these rules or anything published or issued by the Department explains how these programs are currently operating, what requirements apply to participants, or sets out the various criteria for eligibility. Our information is that the Department has not provided written "notice" to participants in these programs about their eligibility. Furthermore, the Department does not provide clear written notice to individuals who are terminated or denied benefits, undermining any right to an appeal and in violation of core principles of due process.

4. Violation of Intent of the BAA

The legislative intent of the BAA is clear: the Department "shall ensure" temporary emergency housing is provided *through June 30, 2024* to those who are eligible. The BAA did not extend either the changes to the GA program or the emergency housing transition benefit; instead those programs were cited as the basis for eligibility for emergency housing under the BAA. The BAA also includes an expansion of the process for finding an individual eligible based on disability which is not addressed by these rules. These two emergency rules further exacerbate the confusing patchwork of rules, policies, memos and guidance from the Department over what should be simple and clear: providing emergency housing to those individuals who are eligible through June 30.