

STATE OF VERMONT

SUPERIOR COURT
WASHINGTON UNIT

CIVIL DIVISION
CASE NO.

REBECCA DUPREY, MICHAEL)
 GROUT, BRITTANY PLUCAS,)
 CASSANDRA FRASER-BROWN,)
 PETER CORLISS)
 and others similarly)
 situated,)
)
 Plaintiffs,)
)
 v.)
)
 VERMONT AGENCY OF)
 HUMAN SERVICES,)
 JENNEY SAMUELSON, Secretary of the)
 Agency of Human Services,)
 CHRIS WINTERS, Commissioner of the)
 Department for Children and Families,)
 Defendants.)

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF – CLASS ACTION**

INTRODUCTION

1. On behalf of themselves and a class of Vermonters experiencing homelessness and living in motels under the State’s General Assistance Emergency Housing Program¹, Plaintiffs Rebecca Duprey, Michael Grout, Brittany Plucas, Cassandra Fraser-Brown, and Peter Corliss (“Plaintiffs”), bring this action pursuant to 3 V.S.A. § 807 of the Vermont Administrative Procedure Act (“APA”), 42 U.S.C. § 1983, alleging violations of the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and Article 4 of the Vermont Constitution.

¹ Also known as the “motel voucher program” or GA emergency housing assistance or benefits.

2. Plaintiffs seek declaratory and injunctive relief to stop the Agency of Human Services, its Secretary Jenney Samuelson, and Chris Winters, Commissioner of the Department for Children and Families (“Defendants”), from denying Plaintiffs the opportunity to remain sheltered through the General Assistance (“GA”) Emergency Housing Program and to afford them with due process.

3. Prior to the pandemic, Defendants ran the GA Emergency Housing Program pursuant to the GA Rules 2600-2683 (for households without dependents) and the Emergency Assistance Rules 2800-2874 (for households with dependent children up to age 21). Over the course of the COVID-19 state of emergency, however, Defendants issued several “rule waivers” and “policies” governing the GA Emergency Housing Program. These program changes were never adopted through rulemaking nor adequately communicated to program participants.

4. On June 1, 2023, Defendants plan to oust hundreds of homeless Vermonters from the only shelter they have: motel rooms provided through the Adverse Weather Conditions Policy (“AWC Policy”) of the GA Emergency Housing Program. Later, on July 1, 2023 Defendants plan to terminate GA emergency housing assistance for all remaining households who do not fall under the different eligibility criteria of the pre-pandemic GA program rules². However, Defendants did not properly reinstate the pre-pandemic rules or provide adequate notice to either group of Plaintiffs. It should be noted that Governor Scott recently announced a plan to extend the program for 28 additional

² Governor Scott recently announced an intent to extend the July 1, 2023 date by 28 days for some participants, but there has been no rule promulgated and there is nothing about this on the Department’s website as of the writing of this Complaint.

days for some of the July 1 group. However, there has been no rulemaking and no clear process for how this further change in the program will be administered.

5. Defendants plan to terminate GA emergency housing benefits to Plaintiffs unlawfully, pursuant to policies not implemented in accordance with the APA. In addition to this fundamental violation of Plaintiffs' due process rights under the APA, many Plaintiffs suffered additional violations of their due process rights when Defendants failed to provide them with individualized written notice of the basis for their terminations, and failed to deliver written notices in a manner that was reasonably calculated to reach individual participants. Defendants failed to take reasonable steps to ensure that program participants understood what program they were being housed under, how long they would be housed, and how that was determined.

6. Plaintiffs, as people who are currently experiencing homelessness, file this action to vindicate their rights and the rights of similarly situated GA emergency housing recipients and homeless motel residents: the right to have their eligibility for GA evaluated under rules that are promulgated through the appropriate process, and to be afforded with the fundamentals of due process. Plaintiffs assert their right to these basic protections to stop them from being put out on the streets unlawfully.

7. Plaintiffs are particularly vulnerable should they be forced to live without shelter. Their physical and/or mental health conditions are likely to worsen. Plaintiffs are extremely low-income, and many have no income whatsoever,³ so they cannot afford

³ Data from January 27, 2021, showed that 22% of people experiencing homelessness in Vermont reported having no cash income whatsoever during the previous twelve month period. See Department for Children and Families, *Information about General Assistance Emergency Housing Clients based on Coordinated Entry HMIS Data*, p. 3 Available at <http://web.archive.org/web/20220119194357/https://def.vermont.gov/sites/def/files/OEO/GA-EH-Data.pdf>

alternative, safe shelter or housing in the absence of GA. Their health and safety will be at immediate risk of harm if they are cut off from GA emergency housing assistance as planned.

8. This action challenges the legal validity and applicability of Defendant's return to the pre-pandemic GA program rules without going through rulemaking. This action also challenges the lack of individualized notice being sent to motel occupants, the unreliable method of delivering notice, the failure to inform program participants of their eligibility for benefits, failure to adequately provide notice of the right to appeal, and failure to administer the GA program with proper rules and standards throughout the State.

9. Before they are forced out of the only shelter they have, Plaintiffs present this class action to seek expedited relief to exercise their right to be governed by rules that are lawfully and timely promulgated, and to be afforded basic due process protections.

JURISDICTION

10. This Court has jurisdiction over this action for declaratory and injunctive relief pursuant to the Vermont Administrative Procedure Act, 3 V.S.A. § 807, and Article 4 of the Vermont Constitution. This Court has jurisdiction over Plaintiffs' claims under the Due Process Clause of the Fourteenth Amendment to the United States Constitution pursuant to 42 U.S.C. § 1983.

PARTIES

11. Plaintiff Rebecca Duprey is a resident of Washington County, Vermont.

12. Plaintiff Michael Grout is a resident of Washington County, Vermont.

13. Plaintiff Brittany Plucas is a resident of Washington County, Vermont.

14. Plaintiff Cassandra Fraser-Brown is a resident of Chittenden County, Vermont.

15. Plaintiff Peter Corliss is a resident of Chittenden County, Vermont.
16. Defendant Vermont Agency of Human Services (“AHS” or “the Agency”) is the agency that administers the GA Emergency Housing Program.
17. Defendant Vermont Department for Children and Families (“DCF” or “the Department”) is one of the six departments within AHS. DCF runs the GA Emergency Housing Program through its Economic Services Division (“ESD”).
18. Defendant Jenney Samuelson is the Secretary of AHS and is charged by law with directing and supervising the Agency. She is being sued in her official capacity.
19. Defendant Chris Winters is the Commissioner of DCF. He is being sued in his official capacity.

INDIVIDUAL PLAINTIFFS

Plaintiff Rebecca Duprey

20. Plaintiff Rebecca Duprey has been participating in the GA emergency housing program since February 2023 and is living in a motel.
21. She lives with her two minor children who are still currently in school.
22. Ms. Duprey has several disabling conditions, including a traumatic brain injury.
23. Ms. Duprey has received no information from the State about her eligibility to remain in a motel after May or June of 2023.
24. She is confused by the program and is terrified by the thought of losing her shelter.
25. If forced to leave the motel, she will have nowhere to go for shelter.
26. Ms. Duprey has suffered harm by not receiving notice of her eligibility for continued benefits.

27. Ms. Duprey has suffered harm from being subjected to a “rule” that was not promulgated in accordance with the law.

Plaintiff Michael Grout

28. Plaintiff Michael Grout has been participating in the GA emergency housing program since April 2023. He has been living in the Hilltop Inn in Barre, Vermont.

29. He was told that he would be housed under the State’s Adverse Weather Conditions Policy. However, he was not told that this policy ends on June 1, 2023.

30. On May 16, 2023, Mr. Grout learned from the motel that he would have to leave on May 31, 2023.

31. Mr. Grout has disabilities which include anxiety and depression. His mental health is suffering at the thought of losing shelter.

32. If forced to leave the motel, he will have nowhere else to go for shelter.

33. Mr. Grout has suffered harm by not receiving written notice of his impending termination from the motel program.

34. Mr. Grout has suffered harm from being subjected to a “rule” that was not promulgated in accordance with the law.

Plaintiff Brittany Plucas

35. Plaintiff Brittany Plucas has been participating in the GA emergency housing program since April 2023. She has been living in the Hilltop Inn in Barre, Vermont.

36. Ms. Plucas initially applied for emergency housing by calling Vermont 2-1-1. She was told that she would be eligible for housing under the Adverse Weather Conditions Policy. However, she was not told that the policy was ending on May 31, 2023.

37. On May 16, 2023, Ms. Plucas learned from the motel that she would have to leave on May 31, 2023.

38. Ms. Plucas suffers from anxiety, depression, and other mental health challenges. She also has disabling physical conditions resulting in two open heart surgeries.

39. Ms. Plucas is terrified at the thought of losing shelter and having to live on the street. Her mental health is already suffering because of this prospect.

40. Ms. Plucas has suffered harm by not receiving notice of her impending termination from the motel program.

41. Ms. Plucas has suffered harm from being subjected to a “rule” that was not promulgated in accordance with the law.

Plaintiff Cassandra Fraser-Brown

42. Plaintiff Cassandra Fraser-Brown is a Vermont resident experiencing sheltered homelessness.

43. She is 33 years old and resides at the North Star Motel in Chittenden County under the GA emergency housing program, where she has been living since 2021.

44. She has been experiencing homelessness since 2019.

45. She was in the state’s Transitional Housing Program until that ended in March 2023.

46. She was told verbally in April 2023 by an Economic Services Division worker that she was able to stay in the motel until June 1, 2023, under Adverse Weather Conditions Policy.

47. She was not given written notice that she needed to leave by June 1.

48. It was not explained to her why she was not able to stay past June 1.

49. She was not aware that she could request a Fair Hearing as it was never explained to her.
50. She suffers from anxiety, depression, PTSD, and Substance Use Disorder or SUD. She is in the process of applying for Social Security disability benefits.
51. She has nowhere to go after June 1.
52. She is currently on parole and needs to have a physical address or she could potentially go back to jail.
53. She has been sober and staying out of the criminal legal system for seven years.
54. If she becomes homeless, all of her hard work will go to waste.
55. Living in the motel has greatly stabilized and improved her life.
56. Staying in a congregate homeless shelter or in the streets will seriously put her sobriety at risk and exacerbate her mental health issues.
57. She is suffering and will be suffering immediate physical and mental harm as a result of being forced from her motel.

Plaintiff Peter Corliss

58. Plaintiff Peter Corliss is a Vermont resident experiencing sheltered homelessness. He is 40 years old.
59. The state is providing shelter for him and he resides at the North Star Motel in Chittenden County.
60. He has been living at the North Star Motel since 2021. He has been experiencing homelessness since 2019.
61. He was in the state's Transitional Housing Program until that ended in March 2023.

62. He was told verbally in April 2023 by an Economic Services Division worker that he was able to stay in the motel until June 1, 2023, under the Adverse Weather Conditions Policy.

63. He was not given written notice that he needed to leave by June 1, and it was not explained to him why he was not able to stay past June 1.

64. He was not aware that he could request a Fair Hearing as it was never explained to him.

65. He suffers from anxiety, depression, PTSD, SUD, asthma and jaundice of the eyes and skin. He is in the process of applying for Social Security disability benefits.

66. He has nowhere to go after June 1.

67. He became homeless after losing family members and not having had the financial resources or stability at the time to get a place of his own.

68. Living in the motel has greatly stabilized and improved his life.

69. Staying in a congregate homeless shelter or on the streets will seriously put his sobriety at risk and exacerbate his mental health issues.

70. He is suffering and will be suffering immediate physical and mental harm as a result of being forced from his motel.

CLASS ALLEGATIONS

71. This action is brought as a class action pursuant to V.R.C.P. 23(b)(2).

72. The proposed class definition is as follows:

All individuals housed under the General Assistance Emergency Housing Program, or who have applied for, or been terminated from, the General Assistance Emergency Housing Program, on or after April 1, 2023.

73. The proposed class is so numerous that joinder of all members would be impracticable. There are approximately 700 households housed under the Adverse Weather Conditions Policy and approximately 1,000 more households that potentially will no longer be eligible for GA emergency housing assistance starting on July 1, 2023.⁴

74. There are specific questions of law that are common to the class, specifically: (i) whether Defendants violated applicable state law by imposing changes to the GA Emergency Housing Program without properly promulgating those changes pursuant to the APA, and (ii) whether Defendants violated Plaintiffs' rights under Article 4 of the Vermont Constitution, and the Fourteenth Amendment to the U.S. Constitution by failing to provide them with appropriate due process.

75. Plaintiffs' claims are typical of those of the plaintiff class.

76. Plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs' counsel is a statewide nonprofit law firm that specializes in, among other things, housing and public benefits law, with extensive experience in representation of classes.

77. Defendants have acted on grounds that apply to the class as a whole, making injunctive and declaratory relief appropriate with respect to the class.

⁴ See Paragraph 4, n.2, *supra*.

PROCEDURAL BACKGROUND

78. The GA program is established by Vermont law and administered by DCF. 33 V.S.A. § 104(b)(1)(E). The GA program “provide[s] the necessities of life,” including shelter, for those in need and found eligible. 33 V.S.A. § 2101(4). The Commissioner of DCF is authorized to establish eligibility standards and regulations for the provision of assistance. 33 V.S.A. § 2103(b), § 2104(b).

79. Program rules prior to the COVID-19 pandemic are GA Rules 2600-2683 (for households without dependents) and the Emergency Assistance (“EA”) Rules 2800-2874 (for households with dependent children up to age 21).⁵ Under those rules, to be eligible for GA emergency housing, in addition to demonstrating that the applicant household was homeless due to no fault of their own, applicants had to satisfy income and resource restrictions, and fall into one or more “categorical eligibility” definitions of “vulnerable” household (such as a family with a child under the age of 7) or “catastrophic” circumstances (such as loss of housing due to a fire or flood).

80. The COVID-19 pandemic started in Vermont in March 2020. Vermont received a disaster declaration from FEMA as a result of the pandemic that has an official incident period spanning January 20, 2020 to May 11, 2023.

81. In response to the pandemic, the Vermont legislature enacted several laws including Act 91 on March 30, 2020. Section 1 of Act 91 stated:

During a declared state of emergency in Vermont as a result of COVID-19, the Agency of Human Services shall consider waiving or modifying existing rules, or adopting emergency rules, to protect access to . . . human services under the Agency’s jurisdiction.”

⁵ Pre-pandemic rules for General Assistance and Emergency Assistance are available at <https://dcf.vermont.gov/esd/laws-rules/current>.

82. In or around March or April 2020, provision of shelter services for Vermonters experiencing homelessness was dramatically transformed in response to the pandemic. To prevent the spread of disease in congregate shelters and among people experiencing homelessness, the AHS responded by waiving the GA program rules 2600, *et seq.*, and 2800, *et seq.*, in their entirety, including “categorical eligibility” (catastrophic circumstances or vulnerable populations).

83. Upon information and belief, when the Department waived the GA rules, it implemented an unpublished COVID GA Policy, referenced in several Human Services Board hearing decisions at that time. *See* VT HSB FH-B-08/20-485,⁶ at p. 4; VT HSB FH-A-07/20-453,⁷ at p. 2 (indicating that “it would be advisable for the Department to also post this policy on the website”).

84. The Department instituted several “policies” for the GA program in June and July 2020, some restricting program eligibility for new applicants, and others related to termination for those already participating in the GA program. These notices were posted to the Department’s website and, upon information and belief, delivered to program participants via motel staff where GA program participants were housed. Upon information and belief, these policy documents are no longer available on the Department’s website.

85. On August 11, 2020, the Department posted the first set of GA program “waiver and variance of rules” on its website. In the preamble for the rules, the Department stated as follows: “Due to COVID-19 the General Assistance temporary housing program has been modified to move away from categorical eligibility to better assist with housing

⁶ Available at <https://outside.vermont.gov/agency/AHSHSB/Orders/Documents/2020/FH-B-08-20-485.pdf>.

⁷ Available at <https://outside.vermont.gov/agency/AHSHSB/Orders/Documents/2020/FH-A-07-20-453.pdf>.

Vermonters who are homeless.” The Department did not promulgate the August 11 program waiver and variance of rules pursuant to the APA.

86. The Department posted three modified versions of the waiver and variance of rules during October and November 2020. The waiver and variance of rules were set to remain in effect until March 31, 2021. The Department did not promulgate the October and November 2020 waiver and variance of rules pursuant to the APA.

87. On March 31, 2021, and then again on April 29, 2021, the Department posted another set of waiver and variance of rules to its website.

88. On June 1, 2021, the Department then implemented new “waiver and variance of rules” for GA. These rules stated they were in effect until June 30, 2022.

89. To be eligible for a motel voucher under the June 2021 rules⁸, a household must meet one of the following criteria: (1) lost housing due to natural disaster; (2) fleeing domestic violence, sexual assault, stalking, etc.; (3) a family with a child under the age of 18 (or children 18 or 19 attending full-time secondary education or equivalent); (4) a household that includes a person receiving SSI or SSDI or other similar benefits; (5) a household that includes a person age 60 or older; (6) a household that includes a pregnant person; or (7) are evicted or prohibited from entering their rental unit or left because of a health code violation.

90. In October 2021, with pressure mounting to keep people sheltered until the Adverse Weather Condition Policy took effect, Governor Phil Scott “paused” all exits

⁸ In June 2021, Vermont Legal Aid, Inc. filed an action against DCF and AHS, et al, to challenge the implementation of the June 2021 rules. In August, 2021, the parties reached a settlement that expanded the eligibility criteria for people with disabilities.

from GA emergency housing until December 31, 2021.⁹ After that, from December 31, 2021 to March 1, 2022, people remained sheltered under the Adverse Weather Conditions Policy.

91. On March 13, 2022, the Vermont Legislature passed Act 83, which authorized the continuation of GA emergency housing through June 30, 2022. Act 83 also authorized DCF to promulgate emergency rules for the creation of a Transitional Housing Program.

92. On March 31, 2022, DCF promulgated Transitional Housing Program Emergency Rule (22-E07) and began transitioning people over to this new program.

93. Upon information and belief, the GA Emergency Housing Program then reverted to the pre-pandemic GA rules. The Department neither promulgated rules nor notified motel occupants about the return to the old rules or how this change might affect their eligibility for continued GA emergency housing assistance.

94. On September 28, 2022, the Department promulgated a new Transitional Housing Program Emergency Rule (22-E15), which included an October 1, 2022 cutoff date for new applications to the Transitional Housing Program.

95. On November 15, 2022, the Adverse Weather Conditions Policy for the 2022-2023 season took effect. The AWC Policy employed a hybrid approach, housing people under specific weather conditions until December 15, 2022 and then housing everyone regardless of the weather through March 15, 2023.

96. On March 20, 2023, the Legislature passed “An act relating to fiscal year 2023 budget adjustments,” (“Act 3”) which provided funding for GA emergency housing

⁹ See Press Release, Office of Governor Phil Scott, available at <https://governor.vermont.gov/press-release/scott-administration-announces-path-forward-vermonters-experiencing-homelessness> (Oct. 18, 2021).

through June 30, 2023. Act 3 also provided funding to keep households otherwise ineligible for GA (including those who had been housed pursuant to the Transitional Housing Program), housed under the Adverse Weather Conditions Policy until May 31, 2023.

ALLEGATIONS

97. The Department waived the rules governing GA and EA programs (GA Rules 2600-2683 and the EA Rules 2800-2874) in or around March or April 2020.

98. The waiver of the rules was pursuant to authority granted by the Vermont Legislature at that time.

99. Upon information and belief, the initial waiver of the GA and EA rules was not in writing, and was not published or otherwise issued publicly by the Department.

100. None of the waivers or variances of the rules, or any of the other policies governing GA Emergency Housing Program, were promulgated pursuant to the APA, other than two consecutive emergency rules governing the Transitional Housing Program which spanned April 1, 2022 to March 31, 2023

101. None of the Legislative authority granting waivers or variances of rules included the authority to reinstate or restore rules that had been waived, including the pre-pandemic GA rules Defendants incorrectly believe govern emergency housing at this time.

102. As of the date of this Complaint, the Defendants have not initiated rulemaking pursuant to the APA to reinstate the old GA and EA program rules.

103. Consequently, applicants for, and recipients of, GA emergency housing have no reasonable basis for knowing what “rules” or policies or procedures govern their eligibility for assistance as of the date of this Complaint.

104. Recipients of GA emergency housing have no reasonable basis for knowing what “rules” or policies or procedures form the basis of their termination of eligibility for assistance.

105. Individuals housed under the Defendants’ Adverse Weather Conditions Policy may or may not be eligible for GA emergency housing as of the time of their application or now when they face summary termination of benefits and removal from their housing.

106. Upon information and belief, Defendants may claim that the pre-pandemic or “old” GA Rules 2600-2683 and the EA Rules 2800-2874 were reinstated automatically, and that they did not have to undergo rulemaking pursuant to the APA to begin using the pre-pandemic rules once again.

107. With the purported reinstatement of the old GA and EA rules, Plaintiffs who were previously eligible for GA emergency housing assistance under this program when it operated via pandemic-era waivers may have suddenly become ineligible for GA emergency housing.

108. Since Defendants did not promulgate the “old” GA rules pursuant to the APA, motel participants who were housed under the pandemic waivers, may now be unlawfully screened out of the GA Emergency Housing Program.

109. Upon information and belief, some Plaintiffs were informed of the end of the Adverse Weather Conditions Policy and the right to request a Fair Hearing through a handout issued by the Department dated May 2, 2023. See Exhibit 1. However, on

information and belief, this handout was emailed to motel owners, who were asked to print and distribute the handout to Plaintiffs by sliding the handout under their doors. On information and belief, not all occupants received a copy of the handout. *See, e.g.,* Aff. of Michael Grout.

110. Upon information and belief, no Plaintiff has received a notice stating whether they are eligible for continued GA emergency housing assistance as of July 1, 2023 or as of the new date stated by the Governor recently of 28 days after July 1.

111. Defendants did not adequately explain to Plaintiffs what program they were housed under, how long they would be housed, and how that was determined. Many are confused about their status.

112. As stated above, the GA emergency housing criteria changed throughout the COVID-19 Pandemic pursuant to several different legislatively-authorized rule waivers and variances. These waivers were never adopted through rulemaking, and motel occupants were never properly notified of changes to the program and how those changes affected their eligibility for continued benefits.

113. Upon information and belief, Defendants initially waived annual limitations on the receipt of GA housing benefits, normally 28 or 84 days depending upon the basis of a participant's eligibility.

114. The June 2021 waiver and variance of the rules included reference to an 84 day annual limit on receipt of benefits, but that annual limit was "paused" by the Governor in September 2021 and not enforced for that year.

115. Upon information and belief, the Defendants purport to have reinstated those limits for the current year based on the purported return to the “old” GA rules as of July 1, 2022.

116. Defendants have not promulgated rules pursuant to the APA reimposing annual limitations on GA benefits.

117. Defendants have neither published nor disclosed the methodology for determining the counting of days retrospectively over the past year, or how participation in different programs or eligibility for different versions of the GA housing program may impact any imposed annual limit.

118. A fundamental principle of Due Process requires that important governmental benefits are not terminated unjustly and without basic protections for the individual recipient.

119. GA emergency housing is an important governmental benefit.

120. Given the important, life-saving implications of GA emergency housing assistance, and the rapidly changing and confusing eligibility criteria for the program incident to the pandemic-era waivers and variance, Plaintiffs are entitled to an individualized determination of their eligibility for continued benefits.

121. Prior to terminating a motel occupant’s housing assistance, Defendants must describe the reason for the termination, in writing, and it must be sent directly to the occupant. The Department’s May 2 handout falls far short of these necessary Due Process notice requirements.

122. Defendants’ method of delivering notice -- by providing a copy of a generic handout to motel owners who were then supposed to deliver the handout to certain

program participants -- was not reasonably calculated to ensure that program participants were informed of the impending loss of their life-sustaining shelter. On information and belief, some participants never received the handout at all.

123. By evaluating Plaintiffs' eligibility for GA emergency housing using rules not promulgated in accordance with the APA, Defendants violated the principles of due process as provided in Article 4 of the Vermont Constitution, and under the 14th Amendment to the U.S. Constitution.

124. Plaintiffs have suffered harm by being deprived of adequate notice either because they did not receive any notice at all, or because they received notice that was not individualized, and did not describe the basis for Defendant's determination that they were ineligible for continued benefits.

125. Plaintiffs have suffered harm by being subjected to rules that were not lawfully promulgated in accordance with the APA.

126. The harm of being subjected to rules not lawfully promulgated is ongoing.

127. Plaintiffs have suffered or will suffer the harm of being unsheltered as a result of the Department's unlawful reinstatement of the old GA rules.

128. If unsheltered, Plaintiffs will face immediate and irreparable harm to their health, and the health of their children. Their personal safety will be at risk, and their personal possessions will not be secure. Plaintiffs will be in danger of running afoul of local ordinances and state law if they are unable to find a legal resting place. Plaintiffs' lives will rapidly destabilize and be placed in jeopardy.

129. Plaintiffs are and will continue to suffer grave harm by reason of Defendants' actions complained of herein.

130. As this action challenges the legal validity of an agency rule, Plaintiffs have no other remedy at law. Only the declaratory and injunctive relief that this Court can provide will fully redress the wrongs done to Plaintiffs.

CAUSES OF ACTION

COUNT I – ADMINISTRATIVE PROCEDURE ACT

131. The validity or applicability of a rule may be challenged in an action for declaratory judgment where it is alleged that the rule, or its threatened application, threatens to interfere with or impair the legal rights of the plaintiff. 3 V.S.A. § 807.

132. The termination of GA emergency housing benefits without proper rules violates the APA.

133. By reinstating the old GA rules without going through rulemaking, Defendants are violating Plaintiffs' right to receive GA emergency housing based on rules that are legally valid.

134. The Defendants attempt to reinstate the old GA rules without rulemaking is invalid pursuant to the APA.

135. Retrospective imposition of annual limits on GA housing benefits under the old GA rules without rulemaking violates the APA.

COUNT II – DUE PROCESS: LACK OF PROPER, INDIVIDUALIZED NOTICE

136. As alleged above, Defendants have failed to provide individualized notice of the factual and legal basis for the termination of GA emergency housing benefits.

137. Failure to provide proper notice violates Art. 4 of the Vermont Constitution and the Due Process clause of the 14th Amendment to the United States Constitution.

COUNT III – DUE PROCESS: INADEQUATE PROVISION OF NOTICE

138. Upon information and belief, Defendants purported to deliver handouts to Plaintiffs and other members of the putative class through third parties, namely the owners or operators of the GA motels.

139. Delivery of a handout by a third party, describing general information about a program, does not satisfy “provision” of actual notice of the benefit termination.

Defendants have therefore failed to deliver notice of the termination of the GA housing benefit to the Plaintiffs.

140. Failure to deliver proper notice violates Art. 4 of the Vermont Constitution and the Due Process clause of the 14th Amendment to the United States Constitution.

COUNT IV – DUE PROCESS: FAILURE TO PROVIDE BENEFIT DETERMINATION

141. Upon information and belief, Defendants have failed to provide individualized determinations granting GA housing benefits, informing Plaintiffs of the benefit that they were found eligible for and advising them of any applicable limits or requirements related to receiving that benefit.

142. Failure to provide proper eligibility determinations violates Art. 4 of the Vermont Constitution and the Due Process clause of the 14th Amendment to the United States Constitution.

COUNT V – DUE PROCESS: APPEAL AND HEARING RIGHTS

143. As alleged above, Defendants unreasonably relied on motel owners to deliver handouts to program participants about the planned termination of emergency housing by slipping letters under participants’ doors. While the handouts included information about how to challenge the termination by requesting a Fair Hearing, this method of

delivering notice is unreliable and some program participants were not advised of the right to request a hearing at all.

144. In addition, because the handouts did not include information about why Defendants concluded that individual program participants were no longer eligible for continued housing, program participants were not provided with enough information to know how to challenge the termination.

145. Failure to provide proper notice violates Art. 4 of the Vermont Constitution and the Due Process clause of the 14th Amendment to the United States Constitution.

COUNT VI – DUE PROCESS: ADMINISTRATION WITHOUT STANDARDS, RULES, OR POLICIES

146. As alleged above, Defendants have administered the GA housing program without clear standards or rules or eligibility criteria.

147. Art. 4 of the Vermont Constitution and the Due Process clause of the 14th Amendment to the United States Constitution require the administration of public benefits in accordance with clear standards and rules that are applied uniformly and fairly to all individuals who apply or receive those benefits.

148. Failure to administer the GA housing program with clear standards or rules or eligibility criteria violates Art. 4 of the Vermont Constitution and the Due Process clause of the 14th Amendment to the United States Constitution.

149. Retrospective imposition of annual limits on benefits and eligibility restrictions without clear rules or standards violates Art. 4 of the Vermont Constitution and the Due Process clause of the United States Constitution.

REQUEST FOR RELIEF

Plaintiffs seek the following relief from this Court:

A) Issuance of a temporary restraining order, a preliminary injunction, and a permanent injunction enjoining Defendants from terminating any GA emergency housing program assistance, including for those Plaintiffs housed under the Adverse Weather Conditions Policy, before going through the rulemaking process and issuing individualized notice to motel occupants;

B) Certification of this action as a class action under V.R.C.P. 23(b)(2);

C) Declaratory relief stating that the Department may not implement “old” GA rules without proper rulemaking under the APA, and that Defendants violated due process, and program participants and applicants must be afforded individualized notice regarding eligibility, delivered in a reliable manner, and providing opportunity to dispute negative decisions at a Fair Hearing;

D) Waive the giving of any security under V.R.C.P. 65(c); and,

E) Grant such other and further relief as is just and equitable.

Dated in Moretown, Vermont, this 30th day of May 2023.

By: /s/ Laura A. Gans
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INDEX OF EXHIBITS TO COMPLAINT

Exhibit 1. Department for Children and Families, *Adverse Weather Conditions Handout*
(May 2, 2023).



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280 State Drive
Waterbury, VT 05671-1020

Agency of Human Services
[fax] 802-241-0460
[toll free] 800-479-6151

Important Please Read

If you need interpretation services...

(Arabic) إذا أنت ترغب خدمات الترجمة الفورية اتصل برقم 1-855-247-3092

Ako su Vam potrebne usluge tumačenja, pozovite 1-855-247-3092. (Bosnian)

စကားပြန် ဝန်ဆောင်မှုလုပ်ငန်းကိုအလိုရှိပါက 1-855-247-3092 သို့ ဖုန်းဆက်ခေါ်ပါ။ (Burmese)

Si vous avez besoin de services d'interprétation, appelez le 1-855-247-3092. (French)

Mugihe woba ushaka impfashanyo yo gusigurirwa, hamagara uyu murongo 1-855-247-3092. (Kirundi)

यदि तपाईंलाई दोभाषे सेवाको जरुरत परेमा 1-855-247-3092 मा कल गनुहोस्। (Nepali)

Haddii aad u baahan tahay adeegyo turjumaan, wac 1-855-247-3092. (Somali)

Si usted necesita servicios de interpretación, llame al 1-855-247-3092. (Spanish)

Ikiwa unahitaji huduma za ukalimani, piga simu 1-855-247-3092. (Swahili)

Nếu quý vị cần dịch vụ thông ngôn, hãy gọi 1-855-247-3092. (Vietnamese)

May 2, 2023

You are receiving this letter because our records show that you will no longer be eligible for housing after May 31, 2023. You are currently housed under the Adverse Weather Conditions Policy which ends on May 31, 2023.

Your household may be eligible for continued housing through June 30th, 2023, if your household contains:

- An individual aged 60 or older
- An individual receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI)
- A child under the age of 18 (or ages 18 or 19 if attending secondary school full time)
- An individual who is pregnant
- An individual who has been evicted or prohibited from entering their rental unit
- An individual who has left a rental situation due to a health code violation
- A victim of domestic violence
- A victim of a fire, flood, or natural disaster
- A person who has recently suffered the loss of a spouse or minor child

If you have a household member that fits into one of the above categories, please contact ESD at 1-800-775-0506.

Did you know that there is financial help available now to help you get into housing? The first step is to get connected! If you aren't already working with a local agency on your housing plan, reach out to your lead agency. Please see the attached for more information.



YOUR RIGHTS

Right to Request a Fair Hearing

If you disagree with a decision made by ESD, you may ask for an expedited (*speedy*) fair hearing. It will usually be held within 10 days. A fair hearing is your chance to tell your story to the Human Services Board. The board will review the facts of your case in a fair and objective manner and decide whether ESD's decision should be upheld or reversed.

To request a fair hearing, call:

- ESD at 1-800-479-6151, or
- The Human Services Board at 1-802-828-2536.

You must ask for a fair hearing within 90 days of the date you receive notice. You may ask someone you trust to help you make the request.

Rights of People with Disabilities

Do you have a physical or mental or learning condition that makes it hard to do things we ask you to do? We can make changes to help you.

The Americans with Disabilities Act (ADA) and Vermont law say that we must make changes so people with disabilities can get public benefits. These changes are called reasonable accommodations. Here are some examples of changes we can make:

- Someone can write down your answers if you cannot.
- We can give you more time or help you get the documents you need to give us.
- You can have a support person with you when you talk to us.
- We can send documents with a larger print so you can read them.
- We can meet with you in your home or by telephone, so you do not have to come into the District Office.

Call 1-800-479- 6151 to let us know if you need us to make changes so you can get the benefits you need.

Do You Need Free Legal Help?

You may be able to get free legal help from Vermont Legal Aid. Call 1-800-889-2047.

Do You Have Questions?

If you have any questions or would like more information, please call us at 1-800-479- 6151.