

MEMORANDUM



STATE OF VERMONT

HUMAN SERVICES BOARD

TEL: (802) 828-2536

FAX: (802) 828-3068

MAILING ADDRESS

6 Baldwin Street, Suite 305

Montpelier, VT 05633-4302

Email: contact.hsb@vermont.gov

TO: Deanna Hartog, Esq., o/b/o Petitioner and Caroline Badinelli, Assistant Attorney General, for the Department for Children and Families, Economic Services Division ("Department")

FROM: Joseph Reinert, Hearing Officer

DATE: September 24, 2025

RE: [REDACTED]

Preliminary Expedited Emergency Housing Recommendation

This follows the August 20, 2025, telephone hearing and August 27, 2025, telephone status conference. Petitioner's appeal concerns a denial of General Assistance ("GA") emergency housing. The hearing officer issued a verbal order for the Department to house petitioner through September 25, 2025, while a decision is pending. Petitioner has moved for summary judgment and both parties have submitted factual assertions and legal briefs in connection with petitioner's motion.

As further outlined below, I am reversing the Department's decision with respect to its application of the 80-night maximum to deny petitioner additional emergency housing.

The Department shall implement this expedited recommendation of the hearing officer in the same manner as an order of the Human Services Board. Petitioner's household may need to be rescreened for eligibility as part of this process.

UNDISPUTED MATERIAL FACTS

1. Petitioner's household received GA emergency housing under the "families with children" eligibility category from August 30, 2024, through November 27, 2024, for a total of 80 nights of assistance, not including nights that the household was expected to house themselves based on received income.

2. Petitioner's household received housing under the Governor's Executive Order 03-25, from April 1, 2025, to July 1, 2025, amounting to a total of 68 nights of assistance.
3. By notice of eligibility dated June 16, 2025, the Department denied additional emergency housing to petitioner's household as of July 1, 2025, "due to exhausting the 80-night benefit."
4. In determining whether a household has exhausted their 80-night benefit, the Department counts all nights received during the previous 12 months, looking back from the household's application date, not including housing received during the cold weather period of December 1—March 31.
5. Petitioner applied for GA emergency housing on August 14, 2025, and was again denied for having received at least 80 nights of assistance during the 12 months prior to the date of the application. Petitioner's appeal followed this denial.
6. Petitioner's household had not received 80 nights of emergency housing assistance between July 1, 2025 and August 14, 2025, when petitioner's request for emergency housing was denied by the Department.

APPLICABLE LAW AND CONCLUSIONS

The basic legal issue in this case is whether the Fiscal Year 2026 appropriations act ("Act 27") precludes the Department from counting nights received in Fiscal Year 2025 against the 80-night cap on assistance. This issue has been addressed by the Board in Fair Hearing No. T-06/25-549, and the analysis below represents a summary of the Board's reasoning in that case.¹

The main objective of statutory construction "is to effectuate the Legislature's intent." *Wesco, Inc. v. Sorrell*, 2004 VT 102, ¶ 14, 177 Vt. 287, 865 A.2d 350 (citation omitted). In this respect, "[t]he Legislature is presumed to have intended the plain, ordinary meaning of the adopted statutory language." *Id.* Only "[w]here the plain meaning of the words of the statute is insufficient guidance to ascertain legislative intent, [do] we look beyond the language of a particular section standing alone to the whole statute, the subject matter, its effects and consequences, and the reason and spirit of the law." See *State v. Thompson*, 174 Vt. 172, 174-75, 807 A.2d 454, 458 (2002). Additionally, it is presumed "that the Legislature does not intend an interpretation that would lead to absurd or irrational consequences." *Wesco*, 2004 VT 102, ¶ 14.

Act 27 contains two provisions related to application of a maximum of 80-days of emergency housing assistance:

To the extent emergency housing is available and within the funds appropriated, the Commissioner for Children and Families shall ensure that General Assistance Emergency Housing is provided *in fiscal year 2026* to households that attest to lack of a fixed, regular, and adequate

¹ The Department has appealed the Board's order in Fair Hearing No. T-06/25-549 to the Vermont Supreme Court. The Department's appeal has yet to be decided.

nighttime residence and [have a member who meets one of several categories].

* * * *

The maximum number of days that an eligible household receives emergency housing in a hotel or motel *under this section*, per 12-month period, shall not exceed 80 days.

2025 Vermont Laws No. 27, § E.321(a), (b)(2) (emphasis added).

Act 27 also provides as follows:

Sec. A.101 PURPOSE; LEGISLATIVE INTENT

(a) The purpose of this act is to provide appropriations for the operations of State government and for capital appropriations not funded with bond proceeds *during fiscal year 2026*.

* * * *

Sec. A.102 APPROPRIATIONS

(a) It is the intent of the General Assembly that this act serves as the primary source and reference for appropriations for the operations of State government and for capital appropriations not funded with bond proceeds *in fiscal year 2026*.

* * * *

(c) Unless codified or otherwise specified, *all narrative portions of this act apply only to the fiscal year ending on June 30, 2026*.

2025 Vermont Laws No. 27 (emphasis added).

The plain meaning of Act 27's language requires the Department, in Section E. 321, to provide emergency housing to qualifying households "in" or "during" Fiscal Year 2026—or July 1, 2025, through June 30, 2026—and restricts the assistance under "this" section to 80 days "per 12-month period." While the Act is silent as to whether such period is prospective or retroactive, this term ("per 12-month period") cannot reasonably be understood as superseding the plain meaning of the Act's language. Despite the Department's reliance on a "rolling calendar," Act 27 does not expressly authorize—nor contemplate—emergency housing received in Fiscal Year 2025 (including housing received under the Executive Order) to be counted towards the maximum benefit of 80 nights of emergency housing in Fiscal Year 2026 provided for in the Act.²

² Understanding Act 27 by its plain language to apply only to emergency housing days received in Fiscal Year 2026 does not prevent the Department from applying the 80-day maximum over a

Additionally, while the Act states that “[t]he Commissioner for Children and Families shall apply the General Assistance Emergency Housing rules approved by the Legislative Committee on Administrative Rules (“LCAR”) on March 13, 2025 for the administration of this section[.]” 2025 Vermont Laws No. 27, § E.321(f), there is, at best, uncertainty about the legal status of the rules approved by LCAR on March 13, 2025 vis-à-vis the reference to these rules in Act 27. The Department never promulgated these rules and no promulgated rules currently govern the program. Importantly, administrative rules must generally be promulgated through the Vermont Administrative Procedures Act to have the “force of law.” See 3 V.S.A. § 845 (a) (“Rules shall be valid and binding on persons they affect and shall have the force of law unless amended or revised or unless a court of competent jurisdiction determines otherwise.”). Further, although there is a provision in Vermont’s Administrative Procedures Act for the Legislature to give “procedures and guidance documents” the “force of law,” the Legislature must “state that it has the force of law.” 3 V.S.A. § 835(b).³ Act 27 makes no such statement, nor—for that matter—are the GA rules approved by LCAR identified as “procedure and guidance” documents by the Department.

To the extent that the existence of this “12-month rolling lookback” provision is an issue, it cannot supersede the plain language of Act 27.⁴ Nor is there specific, express or unequivocal language in Act 27 which permits such a retroactive application of the 80-day maximum in the manner applied by the Department. See *A.B. v. S.U.*, 2023 VT 32, ¶ 21, 218 Vt. 123, 133-34 (“The Legislature has explicitly adopted a general prohibition against retroactive construction of statutes in 1 V.S.A. § 214. Therefore, any retroactive application must be explicit.”).

In light of the above, while the evidentiary record reflects that petitioner received more than 80 nights of emergency housing within the 12 months preceding August 14, 2025, it is undisputed that petitioner did not receive 80 or more nights of emergency housing between July 1, 2025 and August 14, 2025. Nothing in the plain language of Act 27 permits or requires the Department to count emergency housing nights received in Fiscal Year 2025 towards the 80-night maximum of emergency housing to be provided to eligible households in Fiscal Year 2026. In this respect, petitioner’s household has not reached their 80-night cap on assistance since the beginning of the fiscal year on July 1, 2025.

Summary judgment is appropriate when “...there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” V.R.C.P. 56(a).

12-month period. Even if petitioner began receiving emergency housing now, he will still be subject to the 80-day maximum over a 12-month period in Fiscal Year 2026.

³ Examples of other laws which give procedures and guidance documents “force of law” illustrate that this requires an explicit provision stating such procedures and documents have the force of law. See e.g., 31 V.S.A. § 652(A)(2)(c); 31 V.S.A. § 1303(a)(3).

⁴ Rule 2652.2(l) (2) in the draft of the rules approved by LCAR on March 13, 2025 states that “[t]he 12-month period is calculated from the first day of the authorization period to the same day of the month 12 months prior.”

Therefore, based on the undisputed factual record, in particular that petitioner's household has yet to receive 80 days of emergency housing since July 1, 2025, and the applicable law plainly requiring that the 80-day maximum be applied solely to housing received in Fiscal Year 2026, petitioner's Motion for Summary Judgment is granted.⁵

Accordingly, **the Department's decision to deny emergency housing assistance to petitioner as of August 14, 2025, based on application of the 80-night cap on assistance, is determined to be inconsistent with the applicable law and reversed.** See Fair Hearing No. T-06/25-549; 3 V.S.A. § 3091(d); Fair Hearing Rule No. 1000.4(D) ("The Board will reverse a decision that conforms with office or department policy only if it determines that the policy is in conflict with state or federal law.").

This preliminary recommendation **is subject to modification** based on any future legal decisions which impact the legal issues outlined above. **In addition, petitioner's household remains subject to an 80-night limit on emergency housing assistance during Fiscal Year 2026, i.e., between July 1, 2025—June 30, 2026 (excluding the cold weather period of December 1, 2025 through March 31, 2026, when the 80-night maximum is waived).** Petitioner's household also remains subject to all other eligibility criteria of the GA emergency housing program.

The next opportunity for the full Human Services Board to review this appeal is at the Board's November 4, 2025, meeting. As noted herein, the Vermont Supreme Court has expedited the appeal in Fair Hearing No. T-06/25-549. It appears that neither party would be prejudiced if this preliminary decision remains in place until petitioner reaches the 80-night maximum under Act 27, i.e., counted since July 1, 2025, subject to requests for modification based on any Vermont Supreme Court decision to the contrary. The parties are therefore requested to indicate, no later than October 6, 2025, whether they are requesting further review of this decision by the full Board at this time. Absent any such request, this matter will remain pending with this preliminary decision in place, unless otherwise modified by the hearing officer.

⁵ Petitioner has also asserted, as an alternative basis for summary judgment, that the Department is estopped from disputing the issue decided in Fair Hearing No. T-06/25-549. Given that petitioner is clearly entitled to a favorable judgment based on the undisputed facts and applicable law, it is not necessary to reach the issue of collateral estoppel.