

STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN UNIT

CIVIL DIVISION
CASE NO.

GROUNDWORKS COLLABORATIVE, INC.;)
GOOD SAMARITAN HAVEN; END)
HOMELESSNESS VERMONT AND ITS FISCAL)
AGENT, PEACE AND JUSTICE CENTER;)
ANOTHER WAY, INC.;)
Plaintiffs,)
)
v.)
)
VERMONT AGENCY OF HUMAN SERVICES;)
VERMONT DEPARTMENT FOR CHILDREN)
AND FAMILIES;)
JENNEY SAMUELSON, Secretary of the Agency)
of Human Services;)
CHRIS WINTERS, Commissioner of the)
Department for Children and Families;)
Defendants.)
)

COMPLAINT

1. This is a civil action, pursuant to Rule 75 of the Rules of Civil Procedure, asking this Court to Order the Agency of Human Services (AHS) to comply with the requirements of the Budget Adjustment Act (BAA) regarding General Assistance Temporary Emergency Housing¹.
2. On March 15, 2024, AHS through the Department of Children and Families (DCF) is ending its Adverse Weather Conditions Policy (AWC)², that provided shelter in motels during the relevant

¹ The General Assistance program is administered by the Department of Children and Families. 33 V.S.A. §104(b)(1)(E). GA “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).

² The AWC stated that eligibility for temporary housing would be relaxed beginning November 15, 2023 through December 15, 2023 and March 15, 2024 through April 15, 2024. This relaxation of the rules was weather dependent. Eligibility for temporary housing from December 15, 2023 through March 15, 2024 was also relaxed independent of weather conditions. Generally, people who are experiencing homelessness and are without financial resources are eligible for shelter during AWC. All other rules about eligibility and time limits for shelter do not apply during this time.

period for approximately 1600 households that were experiencing homelessness. People housed under this program include families with children, people with disabilities, elderly people, and people who are low-income and unable to find housing in Vermont. Vermont has the second lowest vacancy rate³ in the country and the second highest rate of homelessness⁴ in the country.

3. Once non-weather dependent AWC ends, people experiencing homelessness will only have shelter in motels on a night-by-night basis, depending on weather, unless DCF determines that they are otherwise eligible for temporary housing pursuant to DCF's rules. It is anticipated that that there will not be weather-dependent AWC for the coming week based on the weather forecast.
4. The Department of Children and Families estimated that 458 households, or approximately 497 individuals, could potentially lose their motel vouchers on Friday March 15, 2024⁵.
5. The Legislature sought to avoid this humanitarian crisis when it passed the Budget Adjustment Act (BAA) H. 839 ⁶ on March 1, 2024. Section 89 of the BAA extended the Temporary Emergency Housing Assistance Program until June 30, 2024 for people who qualify as vulnerable or who have experienced a catastrophic life event (categorical eligibility) as defined by the DCF rules⁷. It also expanded eligibility to those who have a disability, even if they are not receiving Social Security or disability benefits, using DCF's Variance Request Form as a means of documenting a qualifying disability or health condition.
6. Although the BAA passed on March 1st, DCF failed to thoroughly assess everyone who is participating in the Temporary Emergency Housing Assistance Program under AWC to determine

³ <https://www.housingdata.org/node/54703>

⁴ <https://www.vhfa.org/news/blog/rate-homelessness-vermont-remains-2nd-highest-us-2023>

⁵ Testimony of Commissioner Chris Winters to House Human Services Committee March 13, 2024.

⁶ <https://legislature.vermont.gov/Documents/2024/Docs/BILLS/H-0839/H-0839%20As%20Passed%20by%20Both%20House%20and%20Senate%20Unofficial.pdf>

⁷ See the following starting at 2600 <https://dcf.vermont.gov/esd/laws-rules/current>

whether they qualify for extended housing before the end of non-weather dependent AWC on March 15, 2024. They also gave no notice to participants of the expanded eligibility for disability or health condition and the opportunity to demonstrate that using the Disability Variance Form cited in the BAA.

7. On Tuesday, March 12, 2024, the Department for Children and Families sent a memo to community partners including most Plaintiffs, telling GA emergency housing participants that the AWC period was ending on Friday, March 15, 2024, and that they should be prepared to leave. It did not say anything about other ways that they might show eligibility. Exhibit 1.
8. On Wednesday March 13, 2024, DCF sent a memo to community partners including most Plaintiffs, asking for assistance with reaching Vermonters in GA emergency housing motels to inform them about the new disability and health condition criteria and provide them with the Disability Variance Form. This was two days before AWC was scheduled to end. Exhibit 2.
9. Since receiving the memos, Plaintiffs have been trying to reach everyone in GA emergency housing in their area, to inform them about the change and ensure that they have the variance form.
10. Even though Plaintiffs have devoted substantial time to reaching out to participants, there is not enough time for everyone to be screened for categorical eligibility, nor time to document disabilities for purposes of a variance.
11. Commissioner Winters acknowledged in his testimony before House Human Services on Wednesday, March 13, 2024 that his staff had not had sufficient time to ensure that everyone in emergency housing had notice and opportunity to show that they were in fact categorically eligible or to submit a Disability Variance Form before the end of AWC on March 15, 2024.

12. DCF's Disability Variance Form requires documentation of a disability from a health care provider. Program participants have not been timely notified⁸ of this requirement and will not have time to obtain documentation. Therefore, it is likely that many participants with disabilities who are not receiving SSI or SSDI will lose their motel vouchers.
13. DCF has indicated that it will open four mass homeless shelters within the next few days that will provide temporary overnight shelter for up to seven days for people who lose their motel vouchers. The shelters will be open overnight only.⁹
14. At a Vermont Disabilities Aging and Independent Living Board meeting on March 13, 2024, DCF indicated that the mass shelters will only be open from 7pm to 7am. There are no plans for warming shelters during the day and no meals will be provided.
15. Program participants who were miscategorized, people who have not yet been evaluated to determine if they are categorically eligible, and people with disabilities who are awaiting documentation of a disability will be unsheltered during the day and may even lose overnight shelter after seven days if they do not get screened for categorical eligibility or receive their variance documentation in time.
16. The BAA requires the Commissioner for Children and Families to "ensure that temporary emergency housing is provided through June 30, 2024" to households that meet the criteria set out in the BAA, subject only to the availability of such housing.
17. DCF has failed to ensure that temporary emergency housing is provided through June 30, 2024 for all those who are eligible. It failed to evaluate program participants to determine whether they met categorical eligibility and failed to notify people that they may need to document their

⁸ Participants may have received a flyer dated March 13, 2024 about the end of AWC and stating that they will have to move if they do not meet eligibility criteria.

⁹ Testimony of Commissioner Chris Winters to House Human Services Committee March 13, 2024.

disability for a variance prior to the end of AWC on March 15, 2024. As a result, hundreds of households face unsheltered homelessness.

18. Rules governing all programs of the Economic Services Division (“ESD”) of DCF, including GA, provide that prompt action must be taken on applications for benefits and applicants must be notified in writing of the Department’s decision on the application. *See All Programs Rules 2000(G)(2)*.
19. DCF failed to promptly evaluate program participants to determine whether they met the BAA criteria for continued temporary housing and failed to provide participants with notice in writing about their decision prior to the end of AWC on March 15, 2024.
20. Program participants are confused and terrified about becoming suddenly unsheltered.
21. Plaintiffs are swamped with calls from program participants who have not been notified by DCF about their eligibility and may be facing sudden unsheltered homelessness.
22. The AWC policy is solely a creation of DCF. It is not mandated by rule or statute. DCF has control over whether and when the non-weather dependent AWC ends. Therefore, DCF could extend the AWC to avoid the looming crisis.
23. Counsel for Plaintiffs have urged DCF to continue the non-weather dependent AWC until April 15 to give DCF staff time to evaluate all program participants to determine whether they meet categorical eligibility and give participants time to document their disabilities.
24. Extension of the AWC would allow DCF time to comply with the BAA mandate to “ensure that temporary emergency housing is provided through June 30, 2024” to households that meet the criteria in the BAA.
25. To date, DCF has failed to extend the non-weather dependent AWC.

26. At a House Human Services Committee Hearing on March 13, 2024, Chair Theresa Wood stated that DCF's failures were "unacceptable". She ordered that DCF provide an update on its progress later that day and by noon and close of business on March 14, 2024.
27. Groundworks Collaborative, Inc. is a non-profit corporation with its principal place of business in Brattleboro, Vermont
28. Groundworks works with people and systems creating solutions to end hunger and homelessness for all people in the region. Groundworks operates a drop-in center and two shelters to provide a safe place where neighbors experiencing homelessness can come in out of the weather and access services such as email, telephones, laundry, showers, a mailing address, coffee and snacks, and a kitchen to prepare a meal. Groundworks also operates the region's largest and busiest food shelf program and actively engage agencies and officials to help achieve systemic change.
29. Since passage of the BAA, Groundworks has had to divert resources away from its current activities due to the Commissioner's position that the Department will not ensure that, to the extent emergency housing is available, temporary emergency housing is provided through June 30, 2024 to households eligible for the General Assistance Emergency Housing Program.
30. The Commissioner's position that the Department will not ensure that, to the extent emergency housing is available, temporary emergency housing is provided through June 30, 2024 to households eligible for the General Assistance Emergency Housing Program has had a material impact on the core activities of Groundworks.
31. Another Way, Inc is a non-profit corporation with its principal place of business in Montpelier, Vermont.

32. The primary mission of Another Way is to provide voluntary peer-run alternatives for people who avoid conventional mental health services. Another Way operates a center offering peer support, community, information, resources and advocacy for psychiatric survivors and people currently or formerly at serious risk of psychiatric intervention.
33. Since passage of the BAA, Another Way has had to divert resources away from its current activities due to the Commissioner's taking the position that the Department will not ensure that, to the extent emergency housing is available, temporary emergency housing is provided through June 30, 2024 to households eligible for the General Assistance Emergency Housing Program.
34. The Commissioner's position that the Department will not ensure that, to the extent emergency housing is available, temporary emergency housing is provided through June 30, 2024 to households eligible for the General Assistance Emergency Housing Program has had a material impact on the core activities of Another Way.
35. End Homelessness Vermont is an organization that operates under the Peace and Justice Center's 501 (c)(3) status. The Peace and Justice Center is the fiscal agent for End Homelessness Vermont. The Peace and Justice Center, Inc. has a principal place of business in Burlington, Vermont.
36. End Homelessness Vermont works to assist people who are experiencing unsheltered and sheltered homelessness in Vermont with resources, direct aid and more, with a specialty in working with people with complex medical needs and disabilities. End Homelessness Vermont also provides support through the initial voucher and renewal process when people are having a problem getting renewed or are wrongfully denied.
37. Since passage of the BAA, End Homelessness Vermont has had to divert resources away from its current activities due to the Commissioner's taking the position that the Department will not

ensure that, to the extent emergency housing is available, temporary emergency housing is provided through June 30, 2024 to households eligible for the General Assistance Emergency Housing Program.

38. The Commissioner's position that the Department will not ensure that, to the extent emergency housing is available, temporary emergency housing is provided through June 30, 2024 to households eligible for the General Assistance Emergency Housing Program has had a material impact on the core activities of End Homelessness Vermont.

39. The Good Samaritan Haven is a non-profit corporation with its principal place of business in Barre, Vermont.

40. The primary mission of Good Samaritan Haven is to provide emergency shelter and support services, and offer stability, safety, and hope for people experiencing homelessness.

41. Since passage of the BAA, Good Samaritan Haven has had to divert resources away from its current activities due to the Commissioner's taking the position that the Department will not ensure that, to the extent emergency housing is available, temporary emergency housing is provided through June 30, 2024 to households eligible for the General Assistance Emergency Housing Program.

42. The Commissioner's position that the Department will not ensure that, to the extent emergency housing is available, temporary emergency housing is provided through June 30, 2024 to households eligible for the General Assistance Emergency Housing Program has had a material impact on the core activities of Good Samaritan Haven.

CLAIM FOR RELIEF

Count 1

REQUEST FOR RELIEF PURSUANT TO VERMONT RULE OF CIVIL PROCEDURE 75

43. The BAA, H. 839, states that Defendants must “ensure that temporary emergency housing is provided through June 30, 2024” to households that meet the criteria set out in the BAA, subject only to the availability of such housing.
44. Nonetheless, Defendants failed to ensure that households that meet the criteria will continue to receive temporary emergency housing through June 30, 2024. Instead, many face unsheltered homelessness on March 15, 2024, Defendant’s manufactured deadline for the non-weather dependent AWC.
45. Defendants’ failure to ensure that households that meet the criteria will continue to receive temporary emergency housing through June 30, 2024, is an arbitrary abuse of power that amounts to failure to comply with the BAA.
46. Defendants’ failure to ensure that households that meet the criteria continue to receive temporary emergency housing through June 30, 2024, has had a material impact on the core activities of Plaintiffs because they serve people experiencing homelessness.
47. Defendants failed to provide participants notice of their decision about whether they met the criteria of the BAA or could qualify for a disability variance prior to losing their temporary housing.

48. Failure to provide individualized notice about admission or denial of continued temporary housing violated the rules of the program and is an arbitrary abuse of power.
49. Failure to provide individualized notice about admission or denial of temporary housing materially impacted the core activities of Plaintiffs because they serve people experiencing homelessness.
50. There is no legal mechanism available for Plaintiffs to seek review of Defendants' failure to evaluate program participants for continued participation in the program prior to the loss of their motel vouchers on March 15, 2024.
51. There is no legal mechanism for Plaintiffs to seek review of Defendants' failure to provide individualized notice about continued eligibility for the program.
52. Plaintiffs seek relief in the nature of mandamus, requiring Defendants to comply with the BAA by extending temporary emergency housing for all participants until Defendants can ensure that eligible households will remain housed and providing individualized written notice to participants about eligibility.

WHEREFORE, Plaintiffs respectfully ask this Court to:

- a. Issue a declaratory judgment that Defendants' failure to ensure that eligible households remain housed violated plaintiffs' rights under the laws of Vermont;
- b. Issue a declaratory judgment that Defendants' failure to provide participants with individualized notice about eligibility violated plaintiffs' rights under the laws of Vermont;

- c. Issue injunctive relief ordering defendants to continue to give people the benefit of the Emergency Housing program, until Defendants are able to ensure that eligible households will remain housed;
- d. Grant such other relief as this Court deems just.

Dated in Montpelier, Vermont this 15th day of March 2024.

By: Sandra Paritz
Sandra Paritz, Esq.
Vermont Legal Aid, Inc.
56 College Street
Montpelier, VT 05602
802-495-0449
SParitz@vtlegalaid.org

Leah Burdick
Leah Burdick, Esq.
Vermont Legal Aid, Inc.
56 Main Street, Suite 301
Springfield, VT 05156
802-885-5181
lburdick@vtlegalaid.org

Rebecca T. Plummer
Rebecca T. Plummer, Esq.
Vermont Legal Aid, Inc.
56 College Street
Montpelier, VT 05602
802-495-0459
RPlummer@vtlegalaid.org

Maryellen Griffin
Maryellen Griffin
Vermont Legal Aid, Inc.
177 Western Avenue, Suite 1
Saint Johnsbury, VT 05819
802-748-8721
mgriffin@vtlegalaid.org

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VERMONT AGENCY OF HUMAN SERVICES;)
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JENNEY SAMUELSON, Secretary of the Agency)
of Human Services;)
CHRIS WINTERS, Commissioner of the)
Department for Children and Families;)
Defendants.)

MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

Pursuant to Rule 65 of the Vermont Rules of Civil Procedure, Plaintiffs move this Court to enter a Temporary Restraining Order to Defendants (“DCF”) to allow households in General Assistance emergency housing to stay where they are sheltered, in motel housing, until they have been assessed for continued eligibility under the Budget Adjustment Act, and given sufficient opportunity to complete and submit the *Emergency Housing Disability Variance Request Form* (“Variance Form”) substantiating eligibility for continued emergency housing. Plaintiffs urge the Court to issue an *ex parte* temporary restraining order to protect them and their clients from imminent harm, and a preliminary injunction enjoining Defendants from ending the all-weather emergency housing program on March 15th, 2024, before all participants have been screened for additional eligibility.

Plaintiffs submit this Memorandum now in support of their motion for a Temporary Restraining Order, and respectfully ask the Court for leave to file additional written briefing later in support of their motion for preliminary injunction.

MEMORANDUM OF LAW

Factual Background

On March 15, 2024, the Agency of Human Services (AHS) through the Department of Children and Families (DCF) is ending its non-weather dependent Adverse Weather Conditions Policy (AWC).¹ This policy provided shelter in motels for hundreds of people experiencing homelessness, regardless of weather. The people in motels include families with children, people with disabilities, elderly people, and people who are low-income and unable to find safe and affordable housing in Vermont.

Once non-weather dependent AWC ends, people experiencing homelessness will only have shelter in motels on a night-by-night basis, or temporary transitional shelters, depending on the weather, unless and until DCF determines that they are otherwise eligible. DCF's plan is to force already-sheltered people to relocate to a mass congregate shelter that is expected to last for no more than seven days, even if they may be eligible for the motel in which they are already located.² Vermonters will then be forced to vacate these shelters, from 7 am to 7 pm on each of those seven days, in mid-March, with

¹ The AWC stated that eligibility for temporary housing would be relaxed beginning November 15, 2023 through December 15, 2023 and March 15, 2024 through April 15, 2024. This relaxation of the rules was weather dependent. Eligibility for temporary housing from December 15, 2023 through March 15, 2024 was also relaxed independent of weather conditions. See *General Assistance Housing Adverse Weather Conditions (AWC) for the 2023-2024 Season*, attached as Exhibit 4. See also *Memo from Miranda Gray, Deputy Commissioner of Economic Services Division, AWC Date to Date Ending March 12, 2024*, attached as Exhibit 2

² Testimony of Commissioner Winters, House Committee on Human Services, March 13, 2024, available https://www.youtube.com/watch?v=fdVgy_th98U&ab_channel=VermontHouseCommitteeonHumanServices

temperatures predicted to range from the 20s to the 40s. Many people will become unsheltered because these mass congregate shelters are not accessible to them, lacking in appropriate facilities.³ DCF estimates that 458 households could potentially lose their only safe, sanitary housing on Friday, March 15, 2024.⁴

The Legislature specifically sought to avoid this humanitarian crisis when it passed the Budget Adjustment Act (BAA), H. 839, on March 1, 2024. The BAA *explicitly* directs DCF to ensure that temporary housing is provided to all eligible households. Section 89 states:

(a) To the extent emergency housing is available, the Commissioner for Children and Families *shall ensure that temporary emergency housing is provided* through June 30, 2024 to households eligible for the General Assistance Emergency Housing Program, including beneficiaries of the emergency housing transition benefit that is set to conclude on April 1, 2024 and including those individuals who qualify for temporary emergency housing pursuant to both the Department’s adverse weather condition policy and either catastrophic or vulnerable population eligibility.... (*emphasis added*)

(b) A household that is otherwise eligible for temporary emergency housing pursuant to subsection (a) of this section, but for the inability to qualify for or document receipt of SSI or SSDI, may use the Department’s Emergency Housing Disability Variance Request Form as a means of documenting a qualifying disability or health condition.

This law extended the GA Temporary Emergency Housing Program until June 30, 2024 for people who qualify as either vulnerable, or who have experienced a catastrophic life event (for example, constructive eviction, emergency medical need, natural disaster, etc.).

The BAA also expanded temporary housing eligibility to those who have a disability,

³ Testimony of Deputy Commissioner of Public Safety, Dan Batsie, House Committee on Human Services, March 13, 2024, confirming that at least one mass shelter will need portable outdoor bathrooms due to lack of available sanitary facilities. Available at https://www.youtube.com/watch?v=fdVgy_th98U&ab_channel=VermontHouseCommitteeonHumanServices

⁴ Letter to Plaintiffs from Miranda Gray, Economic Services Deputy Commissioner, attached as Exhibit 2

even if they are not receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI), with the use of DCF's Variance Form as a means of documenting a qualifying disability or health condition.⁵

The BAA passed on March 1st, 2024. DCF ended the non-weather dependent AWC on March 15th, 2024. The dates of AWC are a policy created by DCF, and the dates can be changed by DCF.⁶ By asserting that March 15th is a hard and fast deadline for all-weather eligibility, despite the BAA's mandate to ensure eligible households are provided temporary housing, DCF is manufacturing a crisis and causing an inhumane, traumatic displacement that does not need to occur. DCF has authority to extend all-weather eligibility through the end of AWC, on April 15th. Doing so would allow time to implement the requirements of the BAA.

However, as of the date of this filing, DCF refuses to extend all-weather AWC. DCF has failed to adequately assess all eligible households currently in the GA Temporary Emergency Housing Program under AWC, to determine whether they qualify for extended housing under the BAA. DCF has failed to provide adequate notice to Plaintiffs and GA participants of the expanded eligibility for disability or health conditions. DCF has failed to provide adequate opportunity to demonstrate such eligibility using the Disability Variance Form cited in the BAA. In fact, on March 13, 2024, just two days before all-weather AWC ended, DCF distributed an email that went to providers including Plaintiffs, requesting their help to somehow reach over 450

⁵ Attached as Exhibit 5.

⁶ See *General Assistance Housing Adverse Weather Conditions (AWC) for the 2023-2024 Season*, attached as Exhibit 4.

households to screen for potentially eligible participants with the Disability Variance form, with less than 48 hours before people would be asked to leave their motel.

The Variance Form requires a “Qualified Health Care provider” to document a disability or health condition that makes being unsheltered particularly dangerous to the applicant’s or participant’s health and welfare. The Variance Request Form itself does not define what makes a health care provider qualified to fill out the form. Plaintiffs and their clients do not know who exactly they should be asking to fill out the form, or even if they can access such qualified medical providers in less than 48 hours. Plaintiffs are expending considerable amounts of their limited resources trying to reach as many of their clients as possible and identify qualified health care providers to substantiate eligibility, but it is unlikely they will be able to reach everyone before Friday, March 15th, and even more unlikely they will be able to reach all of their clients’ health care providers (if clients even have qualified health care providers in the community). Due to DCF’s failure to act and comply with the BAA, as well as their own program rules, hundreds of Vermonters—who could still be eligible for temporary housing benefits under program rules and the BAA—are at high risk of unsheltered homelessness.

Through counsel, Plaintiffs have communicated their concerns to Defendants via email multiple times over the past week. Through counsel, Plaintiffs sent a letter to Defendants on March 14, 2024, specifying their intent to seek this immediate injunction if DCF does not extend the non-weather AWC, to allow its staff time to ensure that temporary emergency housing is provided to eligible households as required by the Budget Adjustment Act. To date, these efforts were unavailing, leaving judicial relief as Plaintiffs’ only recourse.

Legal Argument

A court may grant a temporary restraining order if it clearly appears from specific facts shown by affidavit that immediate or irreparable injury, loss, or damage will result to the plaintiff before the defendant may be heard. V.R.C.P. 65(a). Temporary restraining orders, like preliminary injunctions, are an extraordinary remedy, which are never awarded as of right. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008). In each instance, courts “must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.” *Id.* (quotation omitted).

The main factors guiding review under Vermont law for temporary restraining orders and preliminary injunctions are as follows: (1) the likelihood of success on the merits; (2) the threat of irreparable harm to the movant; (3) the potential harm to the other parties; and (4) the public interest. *Taylor v. Town of Cabot*, 2017 VT 92, ¶ 19, citing *In re J.G.*, 160 Vt. 250, 255, n.2 (1993). There is no adequate alternative remedy available to Plaintiffs in the form of monetary damages or other relief, making injunctive relief wholly warranted. *Taylor*, at ¶ 40, quoting C. Wright & A. Miller, FEDERAL PRACTICE & PROCEDURE § 2948.1 (3d ed. 2017).

1. Plaintiffs are likely to succeed on the merits of their complaint.

Plaintiffs are likely to succeed on the merits because, quite simply, Defendants have openly refused to follow the law. Plaintiffs seek enforcement of duties imposed on the Defendants by law; specifically, determining eligibility for temporary housing. Vermont Rule of Civil Procedure 75 allows this Court to review “[a]ny action or failure or refusal to act by an agency of the state or a political subdivision thereof, including any

department, board, commission, or officer . . . if such review is otherwise available by law.” V.R.C.P. 75. Proceedings “in the nature of . . . mandamus” are sufficient to meet the “otherwise available by law” prong. *See* Reporter’s Note to V.R.C.P. 75.

The Court has the authority to grant injunctive relief pursuant to Rule 65 in an action under Rule 75, when, as in this case, the standard for injunctive relief has been met. *See Bourke v. Olcott Water Co.*, 84 Vt. 121 (1911) (equity can “proceed by injunction” if “mandamus would not be sufficiently prompt.”); *see also* V.R.C.P. 75(b) (“Proceedings under this rule shall, except as otherwise provided by statute, be governed by the Rules of Civil Procedure as modified by this rule.”)

A writ of mandamus is proper when plaintiffs (1) have a “clear and certain right to the action sought by the request for a writ;” (2) seek enforcement of ministerial duties, and (3) have “no other adequate remedy at law.” *Petition of Fairchild*, 159 Vt. 125, 130 (1992). Alternatively, mandamus may be available to enforce discretionary duties where there is an “an arbitrary abuse of the power vested by law . . . which amounts to a virtual refusal to act or to perform a duty imposed by law.” *Ahern v. Mackey*, 2007 Vt. 27, ¶ 8 (2007). Under the second standard, Plaintiffs are likely to succeed on the merits of their mandamus claim—that under the BAA, Defendants must ensure all eligible applicants are housed through June 30, 2024 (where temporary housing is available) and their failure to do so is an arbitrary abuse of power and virtual refusal to perform a duty imposed by law.

Mandamus will ordinarily lie “to compel a public officer to perform an official act which is merely ministerial,” and only where “the right sought to be enforced is certain and clear.” *Alger v. Dep’t of Lab. & Indus.*, 2006 VT 115, ¶ 15, 181 Vt. 309, 318, 917

A.2d 508, 515, *citing Roy v. Farr*, 128 Vt. 30, 34, 258 A.2d 799, 801–02 (1969). A duty is ministerial if the legislature has provided no discretion or room for judgment by the public official in its performance. *E. Advert., Inc. v. Cooley*, 126 Vt. 221, 222 (1967). This rule is subject to the exception, however, that where there is “an arbitrary abuse of the power vested by law in an administrative officer or board which amounts to a virtual refusal to act or to perform a duty imposed by law, *mandamus* may be resorted to in the absence of other adequate legal remedy.” *Id.* at ¶ 15. There has been such refusal to act in this case because Defendants refuse to follow the BAA and their own enabling statute. Here, the BAA is unequivocal—Defendants must ensure that temporary emergency housing is provided where available through June 30, 2024 to households eligible for the General Assistance Emergency Housing Program.

Plaintiffs are likely to obtain a writ of mandamus because the Defendants’ ongoing failure to assess individual applicants’ eligibility for temporary housing is “an arbitrary abuse of the power vested by law” which amounts to “a virtual refusal to act or to perform a duty imposed by law.” *Alger v. Dep’t of Labor & Industry*, 181 Vt. 309, ¶ 15 (2006) (internal quotation marks and citation omitted) (defendants’ failure to enforce housing code was an arbitrary abuse of discretion). The GA statute clearly directs that DCF “shall furnish General Assistance under this chapter” to those who are eligible under the program rules and “[c]onsistent with available appropriations.” 33 V.S.A. § 2103(a). DCF must determine the eligibility of all applicants. 33 V.S.A. § 2105. DCF must deny or approve applications pursuant to the program rules, and the benefit “shall” be provided if the eligibility criteria are met and funding remains.

Further, the BAA requires the Commissioner for Children and Families to “ensure that temporary emergency housing is provided through June 30, 2024” to households that meet the criteria set out in the BAA, subject only to the availability of such housing. For those who may not meet the standard vulnerable or catastrophic eligibility criteria, the BAA also requires the Commissioner to accept the Department’s Emergency Housing Disability Variance Request Form as a means of documenting a qualifying disability or health condition.

Defendants do not deny that they are unable to evaluate all potentially eligible applicants in time before all-weather AWC ends on Friday, March 15th. In fact, they are placing their own burden to determine eligibility on the Plaintiffs by sending them last-minute letters stating, “We are seeking your help in reaching Vermonters currently living in hotels or motels who are housed under Adverse Weather Conditions (AWC) As of yesterday, we believe 458 households do not meet categorical eligibility and could potentially use [the Disability Variance] form to qualify.” *Letter to Plaintiffs from Miranda Gray, Economic Services Deputy Commissioner*, attached as Exhibit 2.

Defendants also cannot deny that they violated their own program rules by failing to provide individualized notice to all program participants of their status, as indicated by their issuance of a general “Letter to Program Participants” posted on their website on March 13th, 2024, with the salutation “Dear Vermonter.” *General Assistance Program Letter to Clients*, 3.13.24., attached as Exhibit 3.

Defendants are aware that potentially eligible participants are going to be thrown out of their motel rooms and on the street or forced into inappropriate mass night shelters. Commissioner Winters admitted the Department’s failure to make timely, individualized

determinations for every person now in temporary emergency housing before the end of all-weather AWC. Potentially eligible participants will not have time to obtain the necessary verification, in direct violation of the BAA. Commissioner Winters acknowledged in his testimony before House Human Services Committee on Wednesday, March 13th, 2024 that he lacked staff in the Rutland and Bennington areas of Vermont, and he would not be able to ensure that everyone in emergency housing had notice and opportunity to show that they are, in fact categorically eligible for temporary housing, or to submit a Disability Variance Form, before the end of AWC on March 15th, 2024. He stated the Department's intent to remove people from their motel rooms, even if the Department does not know whether they are eligible under the Variance Form.

Both the GA statute and the BAA clearly provide that GA benefits are not simply to be issued at Defendants' discretion – the Department “shall” provide benefits to those who are eligible so long as funding exists, pursuant to the program rules, until June 30, 2024. The rules create clear, non-discretionary eligibility standards, and funding has not been exhausted. For these reasons, it is extremely likely that Plaintiffs will be able to prevail on the claim that the Commissioner has failed to comply with the BAA to ensure that eligible households continue to receive temporary emergency housing.

2. Plaintiffs face the threat of immediate, irreparable harm.

Plaintiffs' Affidavits (attached as Exhibits 6-9) make plain the harm they have already suffered and will continue to suffer if Defendants are not enjoined from ending their clients' emergency housing before they have been properly screened for additional eligibility. Plaintiffs are organizations across the state assisting unsheltered Vermonters with a wide variety of barriers to safe, accessible, affordable housing. These barriers

include disabilities, lack of employment opportunities, high rents, and one of the lowest tenancy vacancy rates in the country. Due to Defendants' failure to comply with the law, Plaintiffs are burdened with filling the gap. They are diverting their already-limited resources and scrambling to assist people now in crisis, many of whom may actually be eligible to stay where they are currently housed.

Plaintiff *Groundworks Collaborative, Inc.* is a non-profit corporation with its principal place of business in Brattleboro, Vermont. Groundworks works with people and systems creating solutions to end hunger and homelessness for all people in the region. *Groundworks Collaborative* operates a drop-in center and two shelters to provide a safe place where neighbors experiencing homelessness can come in out of the weather and access services such as email, telephones, laundry, showers, a mailing address, coffee and snacks, and a kitchen to prepare a meal. *Groundworks* also operates the region's largest and busiest food shelf program, and actively engage agencies and officials to help achieve systemic change for their clients. Since passage of the BAA, *Groundworks* has had to divert considerable resources away from its current activities, due to DCF's failure to adequately screen eligible applicants for temporary emergency housing. DCF's failure to follow the law has had a material impact on the core activities of *Groundworks*.

Plaintiff *Another Way, Inc.* is a non-profit corporation with its principal place of business in Montpelier, Vermont. The primary mission of *Another Way* is to provide voluntary peer-run alternatives for people who avoid conventional mental health services. *Another Way* operates a center offering peer support, community, information, resources and advocacy for psychiatric survivors and people currently or formerly at serious risk of psychiatric intervention. Since passage of the BAA, *Another Way* has had to divert

considerable resources away from its current activities, due to DCF's failure to adequately screen eligible applicants for temporary emergency housing.

DCF's failure to follow the law has had a material impact on the core activities of *of Another Way*.

End Homelessness Vermont is an organization that operates under the Peace and Justice Center's 501 (c)(3) status. The Peace and Justice Center is the fiscal agent for *End Homelessness Vermont*. The Peace and Justice Center, Inc. has a principal place of business in Burlington, Vermont. *End Homelessness Vermont* works to assist people who are experiencing unsheltered and sheltered homelessness in Vermont with resources, direct aid and more, with a specialty in working with people with complex medical needs and disabilities. *End Homelessness Vermont* also provides support through the initial voucher and renewal process when people are having a problem getting renewed or are wrongfully denied. Since passage of the BAA, *End Homelessness Vermont* has had to divert resources away from its current activities due to DCF's failure to adequately screen eligible applicants for temporary emergency housing. DCF's failure to follow the law has had a material impact on the core activities of *End Homelessness Vermont*.

Plaintiff *Good Samaritan Haven* is a non-profit corporation with its principal place of business in Barre, Vermont. The primary mission of *Good Samaritan Haven* is to provide emergency shelter and support services, and offer stability, safety, and hope for people experiencing homelessness. Since passage of the BAA, *Good Samaritan Haven* has had to divert resources away from its current activities due to DCF's failure to adequately screen eligible applicants for temporary emergency housing. DCF's failure to follow the law has had a material impact on the core activities of *Good Samaritan Haven*.

“[R]emoving persons from their rightful homes and subjecting them to homelessness is an irreparable harm.” *Duprey v. Samuelson*, No. 23-CV-02299, 2023 WL 5338904, at *6 (June 1, 2023). “As a general matter, courts have held that the threat of eviction and the realistic prospect of homelessness constitute a threat of irreparable harm and satisfy the first prong of the test for preliminary injunctive relief.” *Sinisgallo v. Town of Islip Housing Auth.*, 865 F. Supp. 2d 307, 328 (E.D.N.Y. 2012) (citations omitted). Moreover, the threat of losing one’s shelter, particularly without notice or a individualized determination of eligibility, has both an emotional and physiological toll. “Those harms are plainly imminent, palpable, and cannot be repaired through later relief.” *Duprey v. Samuelson*, No. 23-CV-02299, 2023 WL 5338904, at *6 (Vt.Super. June 1, 2023).

The harm to Plaintiffs’ clients is sufficient irreparable harm for a TRO. Due to Defendants’ dereliction of their duties, Plaintiffs are now tasked with contacting hundreds of people in less than 48 hours to determine if their clients have a qualifying medical condition or disability that can be verified in less than two days by a “qualified medical provider.” It is unclear how DCF expects Plaintiffs to achieve this massive amount of outreach to clients and providers in two days. Failure to certify medical eligibility before March 15th means clients are forced out of their shelter and on the street. As Plaintiffs provide support and assistance to both unsheltered and those at risk of homelessness, this will tax Plaintiffs’ already-stretched resources to the breaking point. Federal courts have held that such a diversion of resources and the injury to clients of organizational plaintiffs can both be sufficient injury to justify injunctive relief.

In essence, the discrimination against SBS yielded two separate and cognizable injuries. The first injury, the monetary loss concerning operational expenses, was only suffered by SBS itself, and dictates a remedy of monetary damages. The second injury, the discrimination against SBS's mentally ill clients who are unable to obtain supportive housing and services from the unopened facility, are suffered in part by SBS's clients, and in part by SBS itself. This injury dictates an equitable remedy.

Step By Step, Inc. v. City of Ogdensburg, 176 F. Supp. 3d 112, 134 (N.D.N.Y. 2016).

3. Defendants face no significant harm.

Defendants will not be unduly burdened or face any significant harm by providing Plaintiffs' clients with adequate time to determine program eligibility before being unsheltered, as Defendants are already required per the BAA to ensure all eligible households receive available temporary housing. Ensuring all eligible households receive temporary housing necessarily requires the Defendant to timely process applications for assistance.

Defendants' own enabling statute requires that they must take action on all applications. Pursuant to 33 V.S.A. § 2104, when Defendants receive an application for, or are informed of, a person's need for GA, they "shall investigate and make a determination as to the applicant's eligibility for General Assistance and provide under rules of the Department emergency assistance as may be required." Furthermore, Defendants "shall cause an investigation and record to be made of the circumstances of the person alleged to need General Assistance to determine whether the person is eligible." 33 V.S.A. § 2105.

Defendants will not be significantly harmed as they will only be required to comply with their clear and unambiguous statutory obligation. *See, e.g., Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) ("[T]he government . . . cannot suffer harm

from an injunction that merely ends an unlawful practice.”); *LaForest v. Former Clean Air Holding Co., Inc.*, 376 F.3d 48, 60-61 (2d Cir. 2004) (“Complying with [an undisputed legal obligation] cannot constitute harm.”); *L.V.M. v. Lloyd*, 318 F. Supp. 3d 601, 320 (S.D.N.Y. 2018) (“Obviously, [the government] cannot suffer any harm from an injunction that terminates an unlawful practice.”). Any alleged administrative or technological issues cannot overcome the Defendants’ duty to comply with their statutory mandate.

4. The public interest supports the Plaintiffs.

The general public will see a benefit from allowing eligible Vermonters experiencing homelessness to remain safely housed in the GA housing program, rather than for seven nights only in inadequate temporary night shelters. For the second year running, Vermont has had the second highest per capita rate of homelessness of any state in the country.⁷ Upon ouster from motels, people experiencing homelessness will not simply disappear. Instead of having a safe space to rest, people experiencing homelessness will be wholly out in public spaces, especially when they are forced to leave the night shelters. Plaintiffs’ clients may have no choice but to set up camp on public or private lands, in spaces their neighbors may find inconvenient. Lack of toileting facilities may lead to environmental degradations that create negative conditions for everyone attempting to use the land.

While it is not possible to predict or calculate the precise costs of the increased need these households would surely have for emergency services, it is virtually certain

⁷ See Carly Berlin, *Vermont’s rates of homelessness are still among the worst in the nation*, VT DIGGER, Dec. 29, 2023, available at <https://vtdigger.org/2023/12/29/vermonts-rates-of-homelessness-are-still-among-the-worst-in-the-nation/>

that their sudden loss of shelter would nonetheless be a financial burden borne by the public and Plaintiffs. The question is whether the public should bear the burden of keeping these households sheltered while Plaintiffs pursue their rights, or if the public should bear the burden of providing increased emergency services while suffering the harms sure to flow from an additional 500 households suddenly turned into the streets of their communities without shelter. Plaintiffs argue that the public interest is best served by continuing to shelter these people. The public interest favors providing shelter through the GA program.

There “is a substantial public interest in having governmental agencies abide by the . . . laws that govern their existence and operations.” *Islam v. Cuomo*, 475 F. Supp. 3d 144, 160 (E.D.N.Y. 2020) (internal citation omitted). Conversely, there can be no “public interest in the perpetuation of unlawful agency action.” *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016); *see also Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) (“[T]here can be no doubt that the public interest favors requiring the government to comply with the law.”). The public interest supports entering a preliminary injunction requiring the Defendants to comply with their clear statutory obligation to ensure that available temporary emergency housing is provided through June 30, 2024 to households eligible for the General Assistance Emergency Housing Program.

Conclusion

For these reasons, Plaintiffs ask this Court to temporarily restrain Defendants (“DCF”) from denying emergency housing benefits to people now sheltered under Adverse Weather Conditions to allow those households to stay where they are sheltered,

in motel housing, until they have been assessed for continued eligibility under the Budget Adjustment Act, and given sufficient opportunity to complete and submit the *Emergency Housing Disability Variance Request Form* (“Variance Form”) substantiating eligibility for continued emergency housing.

Dated in Montpelier, Vermont, this 15th day of March 2024.

Respectfully submitted,

By:

/s/ Sandra Paritz

Sandra Paritz, Esq.
Vermont Legal Aid, Inc.
56 College Street
Montpelier, VT 05602
sparitz@vtlegalaid.org
ERN: 3200

Leah Burdick

Leah Burdick, Esq.
Vermont Legal Aid, Inc.
56 Main Street, Suite 301
Springfield, VT 05156
802-885-5181
lburdick@vtlegalaid.org

Rebecca Plummer

Rebecca T. Plummer, Esq.
Vermont Legal Aid, Inc.
56 College Street
Montpelier, VT 05602
802-495-0459
RPlummer@vtlegalaid.org

Maryellen Griffin

Maryellen Griffin
Vermont Legal Aid, Inc.
177 Western Avenue, Suite 1
Saint Johnsbury, VT 05819
802-748-8721
mgriffin@vtlegalaid.org

EXHIBIT LIST FOR PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER
AND FOR PRELIMINARY INJUNCTION

1. Memo-AWC Date to Date Ending
2. Letter to Partner and Advocates 3.13.2024
3. General Assistance Program Letter to Clients 3.13.2024
4. AWC-Memo 2023-2024
5. 201G-VR
6. Affidavit of *Another Way, Inc.*
7. Affidavit of *EHV*
8. Affidavit of *Groundworks Collaborative, Inc.*
9. Affidavit of Richard DeAngelis, *Good Samaritan Haven*

Department for Children and Families
Economic Services Division
280 State Drive
Waterbury, VT 05671-1020

Agency of Human Services

[fax] 802-241-0460
[toll free] 800-479-6151

Memo: Adverse Weather Conditions Changes

Date: March 12, 2024

From: Miranda Gray, Economic Services Division, Deputy Commissioner



Please note date-to-date emergency housing under the Adverse Weather Conditions (AWC) policy ends the morning of Friday, March 15, 2024. People should plan to check out of their room unless AWC is called for the night of March 15. Please speak with staff at the motel/hotel for information about the motel/hotel's check out process.

AWC will go back to being determined night to night due to weather conditions until April 15, 2024.

The legislature has proposed some other changes, but these have not been signed into law. More information about possible changes to eligibility for emergency housing will be shared later this week. Please keep checking [Addressing and Preventing Unsheltered Homelessness | Department for Children and Families \(vermont.gov\)](#) for future updates.



Good afternoon, Partners, and Advocates,

The General Assistance Emergency Housing program has been the subject of considerable discussion and debate in the legislature. As part of the Budget Adjustment Act process, changes to the existing program and eligibility have been adopted.

Although the Budget Adjustment Act has not been signed into law, we now have clarity on changes to the program contained in the legislation. We have worked to adjust our forms and update our training to support staff in successfully implementing these changes.

We are seeking your help in reaching Vermonters currently living in hotels or motels who are housed under Adverse Weather Conditions (AWC) and do not meet a catastrophic or vulnerable category (these categories are listed on the attached letter for your reference). If the Vermonter has a disability or health condition but is not receiving SSI or SSDI the attached form must be completed by a qualified health care professional, and all questions must be answered in order for ESD to process and determine eligibility. As a reminder, this form should only be completed for those Vermonters with a significant health condition or disability. Capacity is limited, and not every Vermonter will have access to a motel or hotel room.

As of yesterday, we believe 458 households do not meet categorical eligibility and could potentially use this form to qualify.

Please note that Vermonters who meet a catastrophic or vulnerable category and are housed through AWC are currently being mass reauthorized by ESD. They do not need to complete this form or call ESD at this time.

If the Vermonter **does** meet any of the eligibility categories in the letter, please have them contact Economic Services at 1-800-775-0506 immediately.

We greatly appreciate your partnership and assistance. We will make ourselves available through an online Q&A session for partners and advocates in the near future.

Sincerely,
Miranda Gray
Economic Services Deputy Commissioner



Important Please Read

If you need interpretation services...

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

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

ကျေးဇူးပြု၍ ဝန်ဆောင်မှုလိုအပ်ပါက 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 गर्नुहोस्। (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)

Dear Vermonter,

The Vermont legislature has passed this year's Budget Adjustment Act. The Budget Adjustment Act extends eligibility for the Emergency Housing Program through June 30th, 2024, for households that meet one of the below categories, are a member of the "June Cohort", or have a qualifying disability or health condition.

According to our records, you are housed under Adverse Weather Conditions but do not meet any of the categories listed below:

- Households experiencing homelessness due to the death of a spouse or minor dependent child;
- Households who lost their housing due to domestic violence, dating violence, sexual assault, stalking, human trafficking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member;
- Households who lost their housing due to a court-ordered eviction or constructive eviction, over which they had no control;
- Households experiencing homelessness due to a natural disaster such as a flood, fire, or hurricane;
- Households including a person age 65 or older;
- Households with children 18 years of age or younger (19 if attending school);
- Households including a person receiving SSI or SSDI;



- Households including a member with a disability or health condition documented on the Emergency Housing Disability Variance Request Form;
- Households including a person pregnant in their third trimester; or
- Households with four points from the list below:

Vulnerable Population Category	Points
Disabled Veteran (as defined in 38 U.S.C. § 4211)	1
Individual with an open case receiving services from the Family Services Division	1
SSI or SSDI applicant with medical documentation of disability	1
Individual discharged from a 48-hours or more inpatient hospital stay, within the past 30 days, who has an ongoing medical need related to the hospitalization	2
Individual over 18 years of age discharged from the custody of the department for children and families within the past 3 years	1
Reach Up recipient	1
Individual on probation or parole with the department of corrections who has been incarcerated for 12 consecutive months and released within the past 6 months	1

If you **do** meet any of these categories, please contact Economic Services at 1-800-775-0506 immediately.

If you **do not** meet any of these categories, but believe you have a qualifying disability or health condition you must have a qualified health professional (physician, nurse, midwife, counselor, clinician, etc.) complete the Emergency Housing Disability Variance Request Form to be eligible for housing from March 15th through June 30th, 2024.

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.

General Assistance Housing Adverse Weather Conditions (AWC) for the 2023-2024 Season

In harsh winter weather commencing November 15, eligibility for temporary shelter through Vermont's General Assistance (GA) and Emergency Assistance (EA) programs will be relaxed to encourage persons who are homeless and without adequate financial resources to seek safe shelter.

- A. Eligibility for temporary housing will be relaxed beginning November 15, 2023 through December 15, 2023 and March 15, 2024 through April 15, 2024, **weather dependent**. Eligibility for temporary housing will be relaxed December 15, 2023 through March 15, 2024, **independent of weather forecasts**.
- B. Eligibility for temporary housing will be relaxed (11/15/23-12/15/23 and 3/15/24-4/15/24) when any of the following conditions exist - or are anticipated to exist – for at least three (3) hours within the hours of 6:00pm-6:00am based on the town in which the district office is located.
 - 1. Temperatures or Wind Chill are less than 20 degrees (F); or
 - 2. Temperatures are less than 32 degrees (F) with a higher than 50% chance of precipitation projected.
- C. To ensure AWC is consistently applied throughout the state, the following practice will be used:
 - 1. The General Assistance (GA) program team will review the forecast, using National Oceanic and Atmospheric Administration (NOAA) - Weather Service, for the entire state to determine where and when AWC will be in effect. The ESD public website will have updated determinations and statuses regarding AWC conditions.
 - 2. To ensure consistency, ESD will use the forecast for the town in which the District Office is located. All towns served by that District Office will have their AWC based on the determination made for that District Office.
- D. Temporary housing may be authorized in increments up to 30 days.
- E. The GA income contribution requirement outlined in Rule 2652.4 applies to AWC.
- F. If a household applying for or granted temporary housing under AWC loses their temporary housing at a shelter, hotel, or similar establishment for not following the rules of the establishment, the household will be ineligible for further temporary housing for 30 days beginning with the date of ejection from the shelter, motel, or similar establishment.

If a household applying for temporary housing under AWC refused available shelter space or did not show up at the shelter in time to accept available shelter space, the household will be ineligible for further temporary housing for a period of 30 days beginning with the date the applicant refused available shelter space or did not show up at the shelter in time to accept available shelter space.

If a household applying for temporary housing has refused available housing, the household will be deemed ineligible for a motel voucher per requirements to exhaust other housing options in Rule 2652.2

If a household does not check in at an ESD District Office or call ESD at 1-800-775-0506 the following business day after being housed by 211, the household will be ineligible for further temporary housing until they apply at an ESD District Office.

- G. Although there is no cap on the number of nights temporary housing can be authorized under AWC, nights received under AWC will count toward the maximum number of nights that can be received under catastrophic criteria (84 nights in a 12-month period) or vulnerable populations (28 nights in a 12-month period).
- H. Consistent with ESD's participation in Coordinated Entry, District Offices and the GA Housing Unit should complete a Housing Crisis Referral form for each applicant requesting housing under AWC and forward those referrals to the local continuum of care's Lead Agency.



Department for Children and Families
Economic Services Division
280 State Drive
Waterbury, VT 05671-1020

Agency of Human Services
[fax] 802-241-0460
[phone] 800-775-0506

Emergency Housing Disability Variance Request Form

This form may be used if the only reason you are ineligible for housing under General Assistance rule 2652.3, *Temporary Housing for Vulnerable Populations*, is because you are not an SSI or SSDI recipient. Qualified Health Care providers may use this form to document a disability or health condition that makes being unsheltered particularly dangerous to the applicant's or participant's health and welfare.

Applicant Name: _____ DOB: _____ Last 4 SSN: _____

1. Please provide a description of the need:

2. Please explain the unusual risk posed to the individual's health, safety, or welfare if GA emergency housing is not authorized:

- To request a variance, you may call the Benefits Service Center at 1-800-775-0506 or visit a local district office.
- Supporting documentation may be submitted via the uploader (<https://dcf.vermont.gov/esd/applicants/uploader>) or delivered in person to a local District Office.
- District Office locations can be found at <https://dcf.vermont.gov/esd/contact/districts>.
- For free legal help contact Vermont Legal Aid, Inc. at 1-800-889-2047.

Provider Name (Please print): _____

Provider Credential: _____ Credential Number: _____

Address: _____ Phone number: _____

Provider Signature: _____ Date: _____

STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN UNIT

CIVIL DIVISION
CASE NO.

GROUNDWORKS COLLABORATIVE, INC.;)
GOOD SAMARITAN HAVEN; END)
HOMELESSNESS VERMONT AND ITS FISCAL)
AGENT, PEACE AND JUSTICE CENTER;)
ANOTHER WAY, INC.; CHAMPLAIN)
HOUSING TRUST; LAMOILLE COMMUNITY)
HOUSE,)
Plaintiffs,)
v.)
VERMONT AGENCY OF HUMAN SERVICES;)
VERMONT DEPARTMENT FOR CHILDREN)
AND FAMILIES;)
JENNEY SAMUELSON, Secretary of the Agency)
of Human Services;)
CHRIS WINTERS, Commissioner of the)
Department for Children and Families;)
Defendants.)

AFFIDAVIT OF KEN RUSSELL

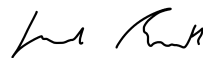
1. I am the Executive Director of Another Way, Inc.
2. Another Way, Inc is a non-profit corporation with its principal place of business in Montpelier, Vermont.
3. The primary mission of Another Way is to provide voluntary peer-run alternatives for people who avoid conventional mental health services. Another Way operates a center offering peer support, community, information, resources and advocacy for psychiatric survivors and people currently or formerly at serious risk of psychiatric intervention.
4. Another Way staff have been working with many people in the GA emergency housing program in our area to help them try to understand whether they will have to leave the motels on Friday, March 15, due to the end of the Adverse Weather Conditions period.
5. On Tuesday, March 12, 2024, the Department for Children and Families sent out a memo that went to community partners like Another Way, telling GA emergency housing participants that the Adverse Weather Conditions period was ending on Friday, March 15,

and that they should be prepared to leave. It did not say anything about other ways they might show eligibility.

6. On Wednesday, March 13, DCF sent out a memo to community partners like Another Way, asking for us to help reach Vermonters in GA emergency housing motels to inform them about the new disability and health condition criteria and provide them with the Disability Variance Form.
7. Another Way staff has been trying to connect with participants in GA emergency housing in our area to see if they know about this change and make sure they have the form.
8. Another Way has had to divert resources away from our core activities to try to help as many people as possible through this process because DCF is not assessing everyone to see if they are eligible under the BAA to stay in GA emergency housing.
9. If DCF had provided more notice, allowed more time for participants in GA emergency housing to prove their eligibility, and done outreach to assess participants' eligibility themselves, Another Way would have been able to utilize our limited resources to provide other important services to people in our area who are psychiatric survivors or who are at serious risk of experiencing psychiatric intervention.
10. The fact that the Department for Children and Families has not given people enough time to show their eligibility to stay in the General Assistance Emergency Housing Program and is relying on community organizations like ours to reach everyone in an extremely short time period has had a material impact on the core activities of Another Way.
11. Even with all of the staff time that we have committed to this, we believe that there will not be enough time for everyone who may be eligible for emergency housing to show their eligibility by March 15.

I declare that the above statement is true and accurate to the best of my knowledge and belief. I understand that if the above statement is false, I will be subject to the penalty of perjury or other sanctions at the discretion of the Court.

Dated in Montpelier, Vermont, this 14th day of March, 2024.



Ken Russell

STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN UNIT

CIVIL DIVISION
CASE NO.

GROUNDWORKS COLLABORATIVE, INC.;)
GOOD SAMARITAN HAVEN; END)
HOMELESSNESS VERMONT AND ITS FISCAL)
AGENT, PEACE AND JUSTICE CENTER;)
ANOTHER WAY, INC.; CHAMPLAIN)
HOUSING TRUST,)
Plaintiffs,)
v.)
VERMONT AGENCY OF HUMAN SERVICES;)
VERMONT DEPARTMENT FOR CHILDREN)
AND FAMILIES;)
JENNEY SAMUELSON, Secretary of the Agency)
of Human Services;)
CHRIS WINTERS, Commissioner of the)
Department for Children and Families;)
Defendants.)

AFFIDAVIT OF BRENDA SIEGEL

1. I am the Executive Director of End Homelessness Vermont.
2. End Homelessness Vermont is a state-wide organization that operates under the Peace and Justice Center's 501(c)(3) status. The Peace and Justice Center is the fiscal agent for End Homelessness Vermont. The Peace and Justice Center, Inc., has a principal place of business in Burlington, Vermont.
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4. End Homelessness Vermont staff have been working with many people in the GA emergency housing program throughout the state to help them try to understand whether they will have to leave the motels on Friday, March 15, due to the end of the Adverse Weather Conditions period.
5. On Tuesday, March 12, 2024, the Department for Children and Families sent out a memo telling GA emergency housing participants that the Adverse Weather Conditions period

was ending on Friday, March 15, and that they should be prepared to leave. It did not say anything about other ways they might show eligibility. A lot of people called us, confused about this memo.

6. On Wednesday, March 13, DCF sent out a memo to community partners, asking for us to help reach Vermonters in GA emergency housing motels to inform them about the new disability and health condition criteria and provide them with the Disability Variance Form.
7. End Homelessness Vermont staff has been reaching out, by phone and in person, to GA emergency housing participants throughout the state to see if they know about this change and make sure they have the form, and if needed, to help them find an appropriate provider to fill out the form on their behalf.
8. End Homelessness Vermont has had to divert resources away from our core activities to try to help as many people as possible through this process because DCF is not assessing everyone to see if they are eligible under the BAA to stay in GA emergency housing.
9. If DCF had provided more notice, allowed more time for participants in GA emergency housing to prove their eligibility, and done outreach to assess participants' eligibility themselves, End Homelessness Vermont would have been able to utilize our limited resources to provide other important services to people in Vermont experiencing homelessness.
10. The fact that the Department for Children and Families has not given people enough time to show their eligibility to stay in the General Assistance Emergency Housing Program and is relying on community organizations like ours to reach everyone in an extremely short time period has had a material impact on the core activities of End Homelessness Vermont.
11. Even with all of the staff time that we have committed to this, we believe that there will not be enough time for everyone who may be eligible for emergency housing to show their eligibility by March 15.

I declare that the above statement is true and accurate to the best of my knowledge and belief. I understand that if the above statement is false, I will be subject to the penalty of perjury or other sanctions at the discretion of the Court.

Dated in Montpelier, Vermont, this 14th day of March, 2024.



Brenda Siegel

STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN UNIT

CIVIL DIVISION
CASE NO.

GROUNDWORKS COLLABORATIVE, INC.;)
GOOD SAMARITAN HAVEN; END)
HOMELESSNESS VERMONT AND ITS FISCAL)
AGENT, PEACE AND JUSTICE CENTER;)
ANOTHER WAY, INC.; CHAMPLAIN)
HOUSING TRUST,)
Plaintiffs,)
v.)
VERMONT AGENCY OF HUMAN SERVICES;)
VERMONT DEPARTMENT FOR CHILDREN)
AND FAMILIES;)
JENNEY SAMUELSON, Secretary of the Agency)
of Human Services;)
CHRIS WINTERS, Commissioner of the)
Department for Children and Families;)
Defendants.)

AFFIDAVIT OF PETER ELWELL

1. I am the Deputy Executive Director of Groundworks Collaborative, Inc.
2. Groundworks Collaborative, Inc. is a non-profit corporation with its principal place of business in Brattleboro, Vermont.
3. Groundworks works with people and systems creating solutions to end hunger and homelessness for all people in the region. Groundworks operates a drop-in center and two shelters to provide a safe place where neighbors experiencing homelessness can come in out of the weather and access services such as email, telephones, laundry, showers, a mailing address, coffee and snacks, and a kitchen to prepare a meal. Groundworks also operates the region's largest and busiest food shelf program and actively engages agencies and officials to help achieve systemic change.
4. Groundworks staff have been working with all of our clients in the GA emergency housing program to help them try to understand whether they will have to leave the motels on Friday, March 15, due to the end of the Adverse Weather Conditions period.

5. On Tuesday, March 12, 2024, the Department for Children and Families sent out a memo that went to community partners like Groundworks, telling GA emergency housing participants that the Adverse Weather Conditions period was ending on Friday, March 15, and that they should be prepared to leave. It did not say anything about other ways they might show eligibility.
6. On Wednesday, March 13, DCF sent out a memo to community partners like Groundworks, asking for us to help reach Vermonters in GA emergency housing motels to inform them about the new disability and health condition criteria and provide them with the Disability Variance Form.
7. Groundworks staff has now connected with all of our clients in GA emergency housing to make sure they know about this change and help them with the variance form when appropriate.
8. Groundworks has had to divert resources away from our core activities to try to help all of our clients through this process because DCF is not assessing everyone to see if they are eligible under the BAA to stay in GA emergency housing.
9. If DCF had provided more notice, allowed more time for participants in GA emergency housing to prove their eligibility, and done outreach to assess participants' eligibility themselves, Groundworks would have been able to utilize our limited resources to provide other important services to people in our area experiencing hunger and homelessness.
10. The fact that the Department for Children and Families has not given people enough time to show their eligibility to stay in the General Assistance Emergency Housing Program and is relying on community organizations like ours to reach everyone in an extremely short time period has had a material impact on the core activities of Groundworks.
11. We believe that there will not be enough time for everyone in our area who may be eligible for emergency housing to show their continued eligibility by March 15.

I declare that the above statement is true and accurate to the best of my knowledge and belief. I understand that if the above statement is false, I will be subject to the penalty of perjury or other sanctions at the discretion of the Court.

Dated in Brattleboro, Vermont, this 14th day of March, 2024.



Peter Elwell

STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN UNIT

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CASE NO.

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JENNEY SAMUELSON, Secretary of the Agency)
of Human Services;)
CHRIS WINTERS, Commissioner of the)
Department for Children and Families;)
Defendants.)
)

AFFIDAVIT OF RICHARD DEANGELIS

1. I am the Co-Executive Director of Good Samaritan Haven.
2. The Good Samaritan Haven is a non-profit corporation with its principal place of business in Barre, Vermont.
3. The primary mission of Good Samaritan Haven is to provide emergency shelter and support services, and offer stability, safety, and hope for people experiencing homelessness.
4. Good Samaritan Haven staff have been working with many people in the GA emergency housing program in our area to help them try to understand whether they will have to leave the motels on Friday, March 15, due to the end of the Adverse Weather Conditions period.
5. On Tuesday, March 12, 2024, the Department for Children and Families sent out a memo that went to community partners like Good Samaritan Haven, telling GA emergency housing participants that the Adverse Weather Conditions period was ending on Friday,

March 15, and that they should be prepared to leave. It did not say anything about other ways they might show eligibility.

6. On Wednesday, March 13, DCF sent out a memo to community partners like Good Samaritan Haven, asking for us to help reach Vermonters in GA emergency housing motels to inform them about the new disability and health condition criteria and provide them with the Disability Variance Form.
7. Good Samaritan Haven staff has been trying to connect with everyone in GA emergency housing in our area to see if they know about this change and make sure they have the form.
8. Good Samaritan Haven has had to divert resources away from our core activities to try to help as many people as possible through this process because DCF is not assessing everyone to see if they are eligible under the BAA to stay in GA emergency housing.
9. If DCF had provided more notice, allowed more time for participants in GA emergency housing to prove their eligibility, and done outreach to assess participants' eligibility themselves, Good Samaritan Haven would have been able to utilize our limited resources to provide other important services to people in our area experiencing homelessness.
10. The fact that the Department for Children and Families has not given people enough time to show their eligibility to stay in the General Assistance Emergency Housing Program and is relying on community organizations like ours to reach everyone in an extremely short time period has had a material impact on the core activities of Good Samaritan Haven.
11. Even with all of the staff time that we have committed to this, we believe that there will not be enough time for everyone who may be eligible for emergency housing to show their eligibility by March 15.

I declare that the above statement is true and accurate to the best of my knowledge and belief. I understand that if the above statement is false, I will be subject to the penalty of perjury or other sanctions at the discretion of the Court.

Dated in Barre, Vermont, this 14th day of March, 2024.

DocuSigned by:
Richard DeAngelis
85DF3F2B86B442B
Richard DeAngelis

STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN UNIT

CIVIL DIVISION
CASE NO.

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Defendants.)
)

MOTION TO WAIVE SECURITY UNDER V.R.C.P. 65(c)

Pursuant to Rule 65(c) of the Rules of Civil Procedure, Plaintiffs move the Court to waive the requirement of giving bond or security. In this action, Plaintiffs are seeking a preliminary injunction. V.R.C.P. 65(c) provides that the Court may waive the giving of security upon good cause shown. This court should make an exception, as federal courts do, for cases involving the enforcement of public interests such as the instant case. *Pharm. Soc. of State of New York, Inc. v. New York State Dep't of Soc. Servs.*, 50 F.3d 1168, 1174 (2d Cir. 1995)

In this case, Plaintiffs are all small Vermont non-profit organizations whose core missions each touch in some way on alleviating homelessness. Their limited funds are already dedicated to, and best used, in carrying out their respective missions. Requiring them to provide security to

safeguard the State of Vermont from the potential injury it might incur if Plaintiffs are unsuccessful in this case is contrary to the public interest. This would deprive the public of the benefit of these funds in alleviating homelessness during the pendency of this action and instead sequester the funds to safeguard against the mere possibility of improper depletion of state coffers.

Plaintiffs do not have the resources to cover the cost of nearly 500 hotel and motel rooms for the duration of this litigation. They would not be able to produce the required security. If an exception is not granted Plaintiffs will be unable to seek the relief requested. This would have the effect of turning the hundreds of households at risk in this matter onto the streets. While it is not possible to predict or calculate the precise costs of the increased need these households would surely have for emergency services, it is virtually certain that their sudden loss of shelter would nonetheless be a financial burden borne by the public. The question is whether the public should bear the burden of keeping these households sheltered while Plaintiffs pursue their rights, or if the public should bear the burden of providing increased emergency services while suffering the harms sure to flow from an additional 500 households suddenly turned into the streets of their communities without shelter. Plaintiffs argue that the public interest is best served by continuing to shelter these people.

For the reasons stated above Plaintiffs respectfully request that this Court exercise its discretion to waive the requirement of posting security pursuant to V.R.C.P. 65(c).

Dated in Montpelier, Vermont this 15th day of March 2024.

By: Sandra Paritz
Sandra Paritz, Esq.
Vermont Legal Aid, Inc.
56 College Street
Montpelier, VT 05602
802-495-0449
SParitz@vtlegalaid.org

Leah Burdick
Leah Burdick, Esq.
Vermont Legal Aid, Inc.
56 Main Street, Suite 301
Springfield, VT 05156
802-885-5181
lburdick@vtlegalaid.org

Rebecca Plummer
Rebecca T. Plummer, Esq.
Vermont Legal Aid, Inc.
56 College Street
Montpelier, VT 05602
802-495-0459
RPlummer@vtlegalaid.org

Maryellen Griffin
Maryellen Griffin
Vermont Legal Aid, Inc.
177 Western Avenue, Suite 1
Saint Johnsbury, VT 05819
802-748-8721
mgriffin@vtlegalaid.org

on the brief: Daniel Schmidt, Esq.

STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN UNIT

CIVIL DIVISION
CASE NO.

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PROPOSED EX PARTE TEMPORARY RESTRAINING ORDER

From the facts shown by Plaintiffs' Complaint and Affirmations, the Court finds that Plaintiffs will suffer immediate and irreparable injury, loss, or damage before Defendants can be heard in opposition. For that reason, issuance of this ex parte temporary restraining order is warranted.

The injuries Plaintiffs face is their clients' loss or denial of shelter in hotels or motels through the General Assistance ("GA") emergency housing program and the diversion of their resources from their core work to try to help as many people as possible to avoid being improperly removed from the emergency housing program. These injuries are irreparable.

This order has been granted without notice because people are losing access to the emergency housing program today, on March 15, 2024.

For the reasons stated above, by ORDER of this Court:

1. Defendants must stay the evictions of all current participants in the GA emergency housing program, including under the Adverse Weather Conditions Policy, residing in motels and hotels until they have been assessed for continued eligibility under the Budget Adjustment Act and given sufficient opportunity to complete and submit the Emergency Housing Disability

Variance Request Form (“Variance Form”) substantiating eligibility for continued emergency housing.

2. Defendants must continue to provide GA benefits to any current participant in the GA program, including under the Adverse Weather Conditions Policy, residing in motels and hotels until they have been individually assessed for continued eligibility under the Budget Adjustment Act and given sufficient opportunity to complete and submit the Emergency Housing Disability Variance Request Form (“Variance Form”) substantiating eligibility for continued emergency housing.

This order shall expire on _____, 2023.

SO ORDERED.

Superior Court Judge