

# P A T H

## Department of Prevention, Assistance, Transition, and Health Access

**BULLETIN NO. 02-30F**

**FROM** Eileen I. Elliott, Commissioner  
for the Secretary

**DATE** October 31, 2002

**SUBJECT** Emergency Assistance Rental or Mortgage Arrearage Program

**CHANGES ADOPTED EFFECTIVE** 12/1/02

### INSTRUCTIONS

**Maintain Manual - See instructions below.**

**Proposed Regulation - Retain bulletin and attachments until you receive Manual Maintenance Bulletin: \_\_\_\_\_**

**Information or Instructions - Retain until \_\_\_\_\_**

### MANUAL REFERENCE (S) BY PAGE

2813.3  
2813.3 P. 2

This rule change has been adopted pursuant to the authority set forth in the appropriations bill for state fiscal year 2003. P.A. No. 142 § 149(b) (2002 Vt.). In section 149 of Act 142, the legislature directed the Department of Prevention, Assistance, Transition, and Health Access, after consultation with organizations representing affected general assistance recipients, to file a proposed rule amending the standards and procedures for awarding assistance in connection with nonpayment of rent or mortgage arrearage. The goal of the rule change is to create a more rational, efficient and effective program.

The changes made in this rule include:

- Elimination of “good cause” term and distinction of types of assistance;
- Addition of Category I and II distinction of types of assistance;
- Addition of “emergency and extraordinary event” definition;
- Addition of vehicle liability insurance as an essential expense;
- Incorporation of PP&D and modification to make rule consistent with current landlord tenant law;
- Elimination of obsolete references to ANFC; and
- Reorganization of rule to give it a more logical sequence.

## Section Changes

After filing the proposed rule the department made several revisions to the rule. These changes are indicated below as occurring “since the filing of the proposed rule.”

### Table of Contents

#### [2800-2809](#)

Updates Table of Contents to reflect changes in the rule’s organization.

#### [2813.3](#)

Moves last five paragraphs of section on page 2813.3 P.2 to beginning of the section on page 2813.3 to make the rule more logically reflect the steps followed in determining eligibility for rental or mortgage arrearage assistance. Changes reference from “ANFC” to “Reach Up” in moved passage.

#### [2813.31](#)

Creates new subsection designation for general eligibility for rental or mortgage arrearage assistance.

Incorporates PP&D into criterion 1 allowing that the family may have received a notarized statement of the amount of rent owed as an alternative to the notice of termination.

Modifies language in second paragraph of first criterion updating it to be consistent with current landlord tenant law. Since the filing of the proposed rule, the reference to 9 V.S.A. § 4467(a) in the first paragraph of criterion 1 has been replaced with “for nonpayment of rent,” and the in hand and 14-day service requirements have been eliminated.

Removes third paragraph of first criterion to eliminate the requirement that families must wait until they are two months in arrearage.

Adds paragraph introducing the two categories of rental or mortgage arrearage assistance that replace the good cause and no good cause distinction.

#### [2813.32](#)

Creates new subsection for the two categories of assistance.

Eliminates the use of the term “good cause” used to distinguish two categories of assistance.

Adds definition of “emergency or extraordinary event” as clarification in the first Category I criterion. Since the filing of the proposed rule, the word “unexpectedly” in the definition has been corrected to “unexpectedly.”

Changes the word “exceeds” to “exceeded” for greater clarity in the second criterion for Category I.

Adds minimum liability insurance required by law for a vehicle necessary for family transportation as an essential expense in the second Category I criterion.

Eliminates obsolete references to “ANFC” and the “child support passalong” and replaces them with current terms to “Reach Up” and “family bonus.”

Creates a Category II designation for the type of assistance available to families not qualifying for Category I assistance.

The following PP&D is eliminated because the rule it contains has been incorporated into this rule:

- PP&D facing 2813.3, 7/1/99.

## Summary of Written Comments

Written comments were received from two commenters, Vermont Legal Aid and the Vermont Affordable Housing Coalition. The submitted comments and the department's responses are summarized below.

### *Specific Comments and Responses by Proposed Rule Sections*

#### 2813.3 Rental or Mortgage Arrearage

**Comment:** Both commenters recommend the rule clarify that the requirement for documentation of families' day-to-day living expenses is not to be interpreted to require applicants to provide receipts for expenses such as grocery bills in the assessment of eligibility under 2813.32(a)(2). One of the commenters suggested that examples of day-to-day expenses be listed in the rule, administrative procedures, or training materials.

**Response:** The rule sets the parameters of general application for all applicant families and their unique circumstances. The department has explained to both commenters that grocery receipts are not required and that guidance and specific examples of day-to-day expenses will be provided to district staff in training and procedures to ensure consistent application throughout the state.

**Comment:** One commenter is opposed to vendor payments on the basis that a family should have the ability to manage their finances without government interference. The commenter suggests that if a family prefers vendor payments, then the department could make this available to that family.

**Response:** The substance of this part of the rule requiring district staff to make a determination of whether money mismanagement exists is not a change to the rule, only its location has been changed to give the rule a more logical sequence. The money mismanagement determination is a Reach Up Program requirement, hence the reference to Reach Up rules. The department could not modify this part of the rule without changing Reach Up rules and underlying policy. Such a change goes beyond the legislative authority for the changes to the Rental or Mortgage Arrearage Program rules.

**Comment:** One commenter recommended that property tax arrearages be considered as an eligible expense. The commenter acknowledges that applicants may obtain assistance for property taxes (GA 2613 and EA 2813), but finds the requirements to be so restrictive as to virtually preclude all assistance. The commenter suggests that property tax arrearages be included in the Rental or Mortgage Arrearage Program, as the program is designed to deal with arrearages that may lead to a loss of housing. According to this commenter, owing property taxes precipitates default in the mortgage and could initiate foreclosure proceedings by the mortgage holder. The commenter suggests that a town's notice of back taxes owed should make an applicant eligible for assistance.

**Response:** The purpose of the Rental or Mortgage Arrearage Program is to prevent homelessness; it is a program of last resort. In cases where homelessness is imminent, as demonstrated by scheduling of foreclosure proceedings, an otherwise eligible family would be eligible for help with their taxes. Similarly, an otherwise eligible family whose mortgage payment includes property taxes would be eligible for assistance for

the entire mortgage payment, including the taxes portion. Currently, the department is not in a position to expand the program by opening it to families who qualify because they have received notice of back taxes owed. A family's receipt of such a notice does not necessarily mean that loss of housing is imminent. The requirement that a family must apply for tax abatement is a step in exhausting all other possible remedies.

2813.31 Eligibility for Payment of Rental or Mortgage Arrearage

- Comment: One commenter appreciates the changes the department made in response to their recommendations that the rule be changed to follow landlord tenant law; however, both commenters are concerned that including language that the termination notice be properly served or be consistent with 9 V.S.A. §4467 could result in families being ineligible for the program and still evicted by the court. According to one commenter, not all judges agree that a problem with the notice service requires dismissal of the eviction action. The commenter feels that in circumstances when a judge will not dismiss the action due to notice problems, the family will be caught in a catch-22 between the department's rules and the judge's decision. In addition, the commenter suggests that this may put PATH staff in the position of making a legal determination regarding the validity of service.
- Response: The department has modified the rule to address the commenters' concern by changing the reference "under 9 V.S.A. § 4467(a)" to "for nonpayment of rent" and removing the language "in hand at least 14 days."
- Comment: Both commenters note that there are no current criteria in the rule to guide district staff in how to determine whether there is a "realistic probability that the payment will actually prevent homelessness."
- Response: The "realistic probability that the payment will actually prevent homelessness" is a general standard applied to ensure that assistance provided in this program furthers the program's goal of preventing homelessness. District staff must use common sense and consider the particular circumstances of each individual situation to make this determination. Workers are provided with guidance through training and supervision in making this determination, and the department intends to provide more guidance to ensure consistency of application throughout the state. The worker first determines whether there are other non-financial reasons for eviction or termination of lease. If none exist, the worker assesses the affordability of the housing giving consideration to the family's budget, their plan for meeting expenses, and their actual continuing ability to meet these costs on a regular basis in the future.
- Comment: Both commenters recommend that the department, in its forthcoming additional rule changes, distinguish ANFC-EA eligibility from EA rental or mortgage arrearage assistance eligibility and that time limitations on receipt of EA and EA rental or mortgage arrearage assistance be explicitly stated in the EA rental or mortgage arrearage assistance section.
- Response: The department is in the process of drafting rule changes that distinguish eligibility for EA from EA rental or mortgage arrearage assistance. The current draft reflects the changes in a manner consistent with the commenters' recommendations.

2813.32 Types of Assistance

Comment: One commenter recommends that “emergency” should be more broadly defined to include necessary, irregular expenditures, such as car repair for a vehicle needed to participate in work, education or training. The commenter believes the definition could especially pose a problem for a Reach Up participant with a work requirement who needs a car to meet the requirements and has an old and unreliable vehicle. The commenter is concerned that the department could deny the family rental or mortgage arrearage assistance if their need arose from having used income to repair the car because an old vehicle’s need for repairs might not be viewed as unexpected. One commenter approved of the addition and recommended the department add examples of emergencies in procedures and training materials.

Response: The definition of “emergency” was added to provide more guidance to district staff in determining whether the situation the family experienced was an emergency. The definition is the dictionary definition of the term. Whether the items the commenter recommends that the department add to the rule constitute an emergency depends upon other related circumstances; they are not necessarily an emergency per se. Accordingly, the department chooses not to add these items in the rule. Instead the department chooses to leave the rule with a general definition that can be applied to include these items when, under the totality of the circumstances, they constitute an emergency. Each situation has to be evaluated individually. The department does intend to provide workers with more guidance by providing examples of “emergencies” in procedures and training materials.

Comment: Both commenters suggest that the phrase “available gross income” is internally inconsistent, because it encompasses money that is included in gross income but is not available to the household. For the purpose of determining if the essential expenses exceeded the family’s income, the commenter suggests that the department should be looking at available net income. One commenter suggests that the department further define benefits and income to include:

all cash income actually received by the applicant, whether received by the applicant or paid to a third party on behalf of the applicant, and non-cash income received by the applicant, including Food Stamps, WIC, Fuel Assistance, Telephone Lifeline, and child care assistance. It shall not include Earned Income Tax Credit or Renter’s Rebate payments, unless received by the household in the month of application or in the month in which the nonpayment occurred; it shall not include payments on behalf of the applicant under the Medicaid or VHAP programs or the cash value of providing Medicaid or VHAP benefits to the household; income shall not include payments made on behalf of an applicant for housing assistance.

Response: The department understands the commenters’ confusion over the apparent internal inconsistency with the use of the term “available gross income,” but part of the problem may derive from reviewing the term out of context. The rule states, “available gross income, *after deduction of the standard work expense and allowable self-employment business expenses.*” (Emphasis added). The available gross income is the amount after the deduction of the standard work expense - a set amount that allows

for employment expenses such as taxes, insurance, dues, clothing, and transportation (2808). In addition, “available gross income” does not include amounts deducted from the earner’s wages that the earner does not have discretion over, such as court-ordered child and spousal support, or other court-ordered garnishments.

**Comment:** The commenter requests further consideration of the suggestion that a family paying more than 30 percent of their income should be included in this section automatically, and requests further consideration of the issue. According to the commenter, for over twenty years, 30 percent of income has been recognized as a basic measure of affordability for housing and the department should recognize that if a household is paying over this percentage in rent, it is not sustainable and it is predictable that the family will have a financial crisis. One commenter suggests that it is understandable that the department does not want to change the regulations so that essential expenses are automatically considered to exceed available income when a household pays more than 30 percent of its income for shelter. The commenter suggests if current budgetary constraints make the 30 percent standard unworkable, the department consider using 40 percent. According to the commenter, the use of the 40 percent standard would substantially reduce the universe of households who would be automatically eligible.

**Response:** The commenter raised this proposal at the meeting related to the proposed changes to the rule. Most of the participants at the meeting, including the department, felt that the proposal was not appropriate for consideration at this time of budget constraints because the proposal would expand eligibility. The commenter claims that the use of the 40 percent standard would substantially reduce, rather than expand, eligibility, but the department is not convinced this is the case. Even if the commenter could demonstrate that the proposal would in fact “reduce the universe of households who would be automatically eligible,” the department believes that significant time is needed to analyze implementation issues and the effects of the proposal. The department may be willing to meet with interested parties and discuss this proposal and others that may improve the way this program serves those who need it most.

**Comment:** One commenter appreciates the addition of vehicle liability insurance to the definition of essential expenses, but recommends that several other items be added, including reasonable routine clothing expenses and routine vehicle expenses, such as minor repairs, maintenance, oil and gas.

**Response:** The department added vehicle liability insurance to clarify that this is an essential expense because it is an expense that is required by law. This is a rule of general application that is sufficient as written. Specific items and when they may be considered an essential expense are training issues that will be addressed through training and internal guidance.

Additional comments were received that were not directly relevant to the proposed rule, but rather were related to an ongoing dialogue between the commenter and PATH about potential future changes.

Vertical lines in the left margin indicate significant changes. Dotted lines at the left indicate changes to clarify, rearrange, correct references, etc., without changing regulation content.

Three dots at the bottom of a page after the last line of text and three dots at the top of the following page before the first line of text indicate that text has been moved.

**Manual Maintenance**

**Emergency Assistance Rules**

<b><u>Remove</u></b>		<b><u>Insert</u></b>	
TOC P.1 (2800-2830)	(98-21)	TOC P.1 (2800-2830)	(02-30)
PP&D Facing 2813.3	(7/1/99)	Nothing	
2813.3	(00-14)	2813.3	(02-30)
Nothing		2813.31 P.2	(02-30)
Nothing		2813.32 P.2	(02-30)

2800-2809	Eligibility Criteria
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2801	Definitions
2802	Catastrophic Situations
2803	Disqualification
2804	Applicant's Responsibility
2805	District Director's Responsibility
2807	Employment
2807.1	Requirements
2807.2	Exemptions from Employment Requirement
2807.3	Active Effort
2808	Income
2808.1	Standard Work Expense Deduction
2808.2	Self-Employment Business Expense Deductions
2808.3	Child Support Deductions
2808.4	Room and Board Deductions
2808.5	Dependent Care Expense Deduction
2808.6	Excluded Income
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2812	Reserved
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2813.3

2813.3 Rental or Mortgage Arrearage

Prior to determining the eligibility of a Reach Up family for payment of rental or mortgage arrearage, the department shall determine whether money mismanagement exists under the criteria at 2235.1 and initiate rent vendor payments where indicated. Potential eligibility for payment of rental or mortgage arrearage shall neither nullify nor affect in any other way any determination made under 2235.

Because families eligible for payment of rental or mortgage arrearage are at risk of losing their housing, the department will make a determination of eligibility for this benefit as expeditiously as possible. If necessary, the department will assist the family in obtaining documentation.

Payment of rental or mortgage arrearage shall cover actual monthly rental or mortgage obligations.

The department's payment of rental or mortgage arrearage shall not discharge the family's responsibility for any additional arrearage that may have accrued. The landlord or mortgage holder must agree, however, not to evict or foreclose or to institute a payment plan leading to eviction or foreclosure due to crediting current payments to the additional arrearage. The department's payment shall not impinge on any other legal means of collection of such debt.

Assistance under this provision is not an entitlement, and no payments will be made when the funds appropriated for this purpose have been exhausted. Denials made after these funds have been exhausted will not require prior warning of funding status or amendment to this policy.

2813.31 Eligibility for Payment of Rental or Mortgage Arrearage

A family with children facing loss of shelter due to rental or mortgage arrearage may be eligible for payment of all or a portion of that arrearage when the family meets all of the following four criteria:

- (1) The family has received a notice of rental termination for nonpayment of rent or notarized statement of the amount of rent owed from the landlord, or a mortgage demand notice from the mortgage holder.

The notice of termination must have been mailed or delivered prior to the termination date specified in the notice.

- (2) There is a realistic probability that the payment will actually prevent homelessness, rather than postpone it.
- (3) The landlord or mortgage holder agrees to terminate any action intended to evict or otherwise cause the family to relocate as a result of the payment. The landlord must also agree not to reinstitute such action on the basis of obligations remaining as of the date of payment.

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2813.3 Rental or Mortgage Arrearage

2813.31 Eligibility for Payment of Rental or Mortgage Arrearage (Continued)

(4) The family meets all other criteria for EA eligibility.

A family that meets the four criteria above qualifies for either Category I or Category II assistance with rental or mortgage arrearage. To qualify for Category I assistance, the family must meet at least one of the two criteria specified below. An otherwise eligible family that does not meet either of the criteria for Category I assistance qualifies for Category II assistance.

2813.32 Types of Assistance

A. Category I Assistance

An otherwise eligible family meeting at least one of the following two criteria for nonpayment of rent or mortgage expenses in each of the months represented by the arrearage may be eligible for payment of up to three months' rental or mortgage arrearage. The criteria are:

- (1) Rent or mortgage payments were not made because the family experienced an emergency or extraordinary event that appropriately required the use of funds. For purposes of this section, "emergency or extraordinary event" is defined as "a serious situation or occurrence that happens unexpectedly and demands immediate attention."
- (2) Rent or mortgage payments were not made because the family's essential expenses exceeded their benefits and available gross income, after deduction of the standard work expense and allowable self-employment business expenses. In addition, the family is making a good-faith effort to pay for essential expenses. Essential expenses include rent; mortgage and insurance that is part of the mortgage; minimum liability insurance required by law for a vehicle necessary for family transportation; taxes; fuel; electricity; water; sewer; basic telephone; medical expenses not reimbursable under an assistance program or insurance plan or by a third party; work-related child care expenses not reimbursable under an assistance program or by a third party; food in an amount equal to the Food Stamp Thrifty Food Plan for the family size; and actual and reasonable school expenses. Reasonable school expenses do not include general purpose wearing apparel but do include wearing apparel that is not general purpose, not provided by the school, and required for a specific school activity in which the family member participates. The department determines whether school expenses are reasonable.

Income and benefits would include all those benefits available to the family to meet needs including, but not limited to, all earned and unearned income, the Reach Up benefit, the family bonus, the Lifeline telephone benefit, the fuel program line-of-credit or crisis benefit, the food stamp benefit, and the WIC benefit.

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2813.3 Rental or Mortgage Arrearage

2813.32 Types of Assistance (Continued)

B. Category II Assistance

An otherwise eligible family whose circumstances do not meet either of the Category I criteria in each of the months represented by the arrearage is eligible for up to two months of Category II rental or mortgage arrearage assistance. A family that receives Category II assistance is not eligible to receive any subsequent Category II assistance until at least 36 months have elapsed since the most recent receipt of such assistance.