
In the Matter of the Appeal of :

E W

DECISION
: AFTER
FAIR
HEARING

from a determination by the Nassau County
Department of Social Services :

JURISDICTION

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on June 10, 1997, in Nassau County, before Jonathan M. Kastoff, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

E W Appellant
Herb Harris, Representative
J J Witness

For the Social Services Agency

Ellen Raim, Fair Hearing Representative

ISSUE

Was the Agency's determination to deny the Appellant's application for allowances for broker's fees and a security deposit correct?

FACT FINDING

An opportunity to be heard having been afforded to all interested parties and evidence having been taken and due deliberation having been had, it is hereby found that:

1. The Appellant is in receipt of Public Assistance.
2. The Appellant's household consists of three persons.
3. In September, 1995, Appellant made inquiries at the Agency regarding allowances to move from her then current address. On October 16, 1995 Appellant reported to the agency and requested broker's fees and a rent security deposit to move to in .

4. Appellant was advised to return with a signed lease and other items of documentation.

5. Appellant submitted the required documents on November 6, 1995.

6. On November 6, 1995, the Agency denied the Appellant's application for allowances for broker's fees and a security deposit.

7. A Decision After Fair Hearing (Decision Number 2376252R) was issued on January 1, 1996, which affirmed the Agency's determination. Appellant appealed the fair hearing decision in New York State Supreme Court. Pursuant to a Stipulation of Settlement dated December 10, 1996, this new fair hearing was scheduled on May 5, 1997 to review the the Agency's November 6, 1995 determination.

APPLICABLE LAW

Section 352.6 of the Department Regulations provides that an Agency shall provide funds for household moving expenses utilizing the least costly practical method of transportation, rent security deposits and/or broker's or finders' fees when in the Agency's judgment one of the following conditions exist:

- (1) the move is to a less expensive rental property and the amount paid for security deposit and moving expenses is less than the amount of a two-year difference in rentals; or
- (2) the move is necessitated by one of the following:
 - (a) the need to move results from a disaster/catastrophe and/or a vacate order placed against the premises by a health agency or code enforcement agency;
 - (b) the move is necessitated by a serious medical or physical handicap condition. Such need must be verified by specific medical diagnosis;
 - (c) the individual or family is rendered homeless as a result of having been put out by another occupant with whom they were sharing accommodations;
 - (d) the move is from temporary to permanent housing;
 - (e) the move is from permanent housing to temporary housing which is necessary due to the unavailability of permanent housing;
 - (f) the move is from one temporary accommodation to another temporary accommodation which is necessary due to the unavailability of permanent housing;
 - (g) the move is from an approved relocation site or to an approved cooperative apartment; or

- (h) there is a living situation which adversely affects the mental or physical health of the individual or family, the need for alternate housing is urgent, and not issuing a security deposit, moving expenses and/or broker's or finders' fees would prove detrimental to the health, safety and well-being of the individual or family.

A security deposit and/or broker's or finders' fees may be provided only when an applicant or recipient is unable to obtain a suitable vacancy without payment of such deposit and/or fees. 18 NYCRR 352.6(a)(2).

Whenever a landlord requires that he/she be secured against non-payment of rent or damages as a condition to renting a housing accommodation to a recipient of Public Assistance, the Agency may secure the landlord either by means of an appropriate security agreement between the Agency and the landlord or by depositing money in an escrow account. 18 NYCRR 352.6(b). Security deposits cannot be paid nor can money be paid into an escrow account where recipients of public assistance reside in public housing. 18 NYCRR 352.6(b)

The amount of the security deposit or broker's fees is not limited to the Agency's maximum shelter allowance.

DISCUSSION

The Agency determined to deny Appellant's application for the special allowances because Appellant had borrowed the necessary funds from a relative on October 14, 1995, prior to her formal request for allowances to the Agency on October 16, 1995. The Agency determined that Appellant had incurred a personal debt, which rendered Appellant ineligible for any of the requested allowances. Based upon the record before it at the time, the agency's determination was correct when made on November 6, 1995.

However, Appellant testified that in September, 1995, Appellant made inquiries with the agency regarding allowances to enable her to move. Appellant was advised that she would need a signed lease prior to any Agency determination, as well as other documentation. Appellant had a Section 8 participation certificate that was due to expire on October 21, 1995. Appellant testified that she could not provide the Agency with a signed lease until broker's fees and a rent security deposit, the fees Appellant was seeking from the Agency, were paid. Appellant did not notify the Agency of this or any other problem in obtaining the requested documents. Appellant also testified that the checks were given to the landlord and the broker as good faith in order not to lose the available housing. The checks, which were dated October 14, 1995, were not cashed until after Appellant made a formal request to the Agency for the special allowances. Appellant's testimony was documented in part and plausible.

Appellant was aware in September, 1995 that she needed a signed lease in order to obtain a broker's fee and rent security deposit from the Agency. Subsequently Appellant, who did not advise the Agency of her problems, borrowed funds from a relative in order to bring the required documentation to the Agency. Appellant presented sufficient evidence to establish good

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cause for her borrowing funds from a relative before bringing a signed lease to the Agency in order to request a broker's fee and a rent security deposit. Therefore, while the Agency acted correctly based upon Appellant's failure to keep it apprised of the circumstances, the Appellant has established that she was unable to comply with the Agency's request.

DECISION AND ORDER

The Agency's determination to deny the Appellant's application for allowances for broker's fees and a security deposit was correct when made.

1. However, the Agency is directed to make a determination as to the Appellant's eligibility for reimbursement of broker's fees and a security deposit, to notify Appellant in writing of its determination and to provide any allowances and reimbursement to which the Appellant may be entitled.

As required by 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York
August 22, 1997

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

By

Handwritten signature in cursive script, appearing to read "Philip M. ...".
Commissioner's Designee