
In the Matter of the Appeal of : DECISION
M C : AFTER
: FAIR
: HEARING
New York City Department
from a determination by the of Social Services (hereinafter called the agency) :

A fair hearing was held at 80 Centre Street, New York, New York, on February 5, 1981, before Gerard J. Marra, Administrative Law Judge, at which the appellant's representative and a representative of the agency appeared. The appeal is from a determination by the agency relating to the agency's failure to act upon an application for Emergency Assistance for Families (EAF). An opportunity to be heard having been accorded all interested parties and the evidence having been taken and due deliberation having been had, it is hereby found:

1. Appellant is currently in receipt of a grant of Aid to Dependent Children (ADC) for herself, as the caretaker relative of her two self-maintaining minor children who are in receipt of income from Social Security.
2. On January 23, 1981, the appellant, in person and by written memorandum to the agency, requested that all future heating bills be directly paid by the agency to her fuel vendor pursuant to the EAF category of aid.
3. On January 23, 1981, the appellant requested a fair hearing to review the agency's oral denial of and failure to act upon that request for EAF.
4. The appellant leases a one family house for a rental of \$200.00 monthly. Under the terms of the lease, the appellant is required to furnish heat and hot water.
5. The agency has been providing the appellant with a fuel allowance of \$24.00 monthly, the standard allowance for a household of one person heating a household by coal.
6. The appellant exhausted her fuel supply in November 1980, and was without funds to purchase a new supply.
7. The appellant has requested a separate fair hearing on the issue of the agency's refusal to provide the appellant with an application for Heat Energy Assistance Program (HEAP) benefits.
8. The agency has failed to follow up on and act upon the appellant's request for an application for EAF.

Section 372.1 of the Regulations of the State Department of Social Services provides that EAF is available to families with children who otherwise qualify under that section, to deal with crisis situations threatening the family and to meet urgent needs resulting from a sudden occurrence or set of circumstances demanding immediate

attention. Section 372.4 further provides that EAF grants and allowances shall be only for such items of need, in such amounts as provided for in Part 352 of the Regulations. Section 352.5 (b) of the Regulations provides that an additional allowance for fuel shall be granted when made necessary by exceptionally severe weather, overly exposed location or unusually poor construction of a dwelling, by reasons of poor health, or when the department deems that additional fuel allowances are necessary as a result or reduced energy supplies coupled with rising costs. Pursuant to Administrative Directive 80 ADM-95, dated December 15, 1980, the Department has deemed that additional fuel allowances will be necessary during the 1980/1981 heating season, and that additional fuel allowances of up to 165% of the current schedule may be authorized for fuel other than natural gas. The agency is advised therein to continue to provide for the fuel needs of its clients during the 1980/1981 heating season by maximizing the use of the HEAP program and any other Federal and State fuel assistance programs.

The credible evidence in this case establishes that the appellant requested EAF on January 23, 1981, and that the agency failed to act on that request and improperly denied appellant the opportunity to apply for the requested assistance. The credible evidence further establishes appellant's need for the requested assistance was caused by the current exceptionally severe weather, the rising cost of fuel, and the overly exposed location and poor construction of her home which is partially built on stilts over a canal.

Appellant did not establish that her situation came about as the result of sudden, unforeseen circumstance. Accordingly, the agency did not act improperly in denying her request for EAF. However, it appears that the agency did not evaluate appellant's eligibility for an excess fuel allowance pursuant to the above-cited Section 352.5 (b) of the Regulations. It further appears, from the evidence presented at the hearing, that appellant is entitled to such an excess allowance. The agency is directed to make immediate provisions therefore, taking into account any HEAP funds which appellant may obtain. It is noted that the pastor of appellant's church advanced \$118.80 for the purchase of coal, which should be met under the excess fuel allowance so that appellant may reimburse her pastor.

DECISION: The agency's determination as to EAF is correct. The determination as to excess fuel allowance is not correct and is reversed. The agency must immediately comply with the directives set forth above as required by Section 358.22 of the Department's regulations.

DATED: Albany, New York

MAR 4 1981

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