

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

REQUEST December 7, 1993
CASE NO.
CENTER Madison
FH No. 2062384M

In the Matter of the Appeal of :
D J : DECISION
from a determination by the Madison County : AFTER
Department of Social Services : FAIR
: HEARING
:

JURISDICTION

Pursuant to Section 22 of the New York State Social Services Law and Part 358 of the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter referred to as "the Regulations"), a Fair Hearing was held on January 20, 1994, in Wampsville, New York, before Administrative Law Judge Snitzer. The following persons appeared:

For the Appellant

D J , the Appellant; G J , the Appellant's wife;
Warren Shiel, the Appellant's attorney (Legal Aid Society of Mid-NY);
Terry Galavotti, Director, Madison Business Development Agency

For the Madison County Department of Social Services (herein referred to as "the Agency")

Patty Middleton, Examiner

ISSUE

Was a determination to deny the Appellant's application for assistance to meet his Immediate Needs, including provision of a Tenant Security Deposit and Moving Expenses, correct?

FACT FINDINGS

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 has been in receipt of Public Assistance for himself, his wife and four children. Residing in the household are two other children not currently receiving such assistance.

2. In November 1993, the Appellant informed the Agency of his need to find other housing, as the housing where they had been residing had been sold, and the new owners required that the Appellant's family vacate; he submitted a copy of a Notice of Petition and Petition for the Recovery of

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the property. The Appellant was referred to other Agency personnel for housing services, and was provided with a list of available housing.

3. On December 1, 1993, the Appellant submitted a landlord statement pertaining to housing at a _____ Avenue, _____, NY address that was pre-approved for participation in the HUD Section 8 (Voucher) Rental Assistance Program, wherein the Appellant's net Tenant Share of the rent would be \$27 per month, not including heat or utilities. The Appellant explained that the owner required a Security Deposit and the December rent before he could take occupancy. He also stated a need for assistance for assistance to cover his moving expenses.

4. Thereafter, Agency personnel contacted the owner of the premises to propose that the Owner accept a Tenant Security Agreement in lieu of a cash security deposit, and offered to provide such agreement for the full amount of a month's rent, \$580. The landlord declined to accept the offered Tenant Security Agreement, and counter-offered to accept a cash security deposit of \$146, an amount set through the Section 8 Program. He indicated, therefore, that the Appellant could take possession of the premises upon payment of \$173, that being the \$146 Security Deposit plus the first month's rent of \$27. The Agency declined to provide the described payment. It did, however, obtain his agreement to hold the premises available for the Appellant until December 9th, that being the expected effective (end) date of a Warrant of Eviction.

5. On December 1, 1993, the Agency issued a notice denying the Appellant's request for Emergency Assistance ("EAF") for a Security Deposit and the first month's rent, indicating, as its reason, "You have a place to live until December 9th and you will have a place to move into on December 9th; [therefore] No emergency exists." The Agency cited Section 372.2 of the Regulations as authority for its determination.

6. On December 7, 1993, a request for a Fair Hearing was made by or on behalf of the Appellant seeking review of the Agency's determination.

APPLICABLE LAW

Section 372.1 of the Regulations defines "Emergency Assistance" (EAF) to include all aid, care and services granted to families with children 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. Such assistance may be furnished if Federal funds are available, and may be authorized during only one period of 30 consecutive days in any twelve consecutive months.

Section 372.2 of the Regulations provides that Emergency Assistance (EAF) shall be provided immediately by a social services district to or on behalf of a needy child under the age of 21 and any other member of the household in which he is living if the conditions set forth in Section 372.1 of this Part are met, and in addition:

- (1) the child is or has been living with any of the relatives specified in subdivision (a) of Section 369.1 of this Title in a place of residence

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- maintained by one or more of those relatives as his or their own home;
- (2) the child is without resources immediately accessible to meet his needs and those needs cannot be met under Part 352 of this Title by an advance allowance;
 - (3) emergency assistance is necessary to avoid destitution of the child or to provide living arrangements for him in a home;
 - (4) his destitution or need for living arrangements did not arise because he or a relative with whom he lives refused without good cause to accept employment or training for employment; and
 - (5) for a recipient of public assistance, such destitution did not arise from the mismanagement of a public assistance grant, or the emergency grant being applied for will not replace or duplicate a public assistance grant already made under Part 352 of this Title.

Section 372.4 of the Regulations limits the provision of EAF to eligible needy families for such items of need, and in such amounts, as are provided for in Part 352 of this Title.

Section 352.6 of Department Regulations authorizes local districts to provide funds for household moving expenses utilizing the least costly practical method of transportation; for 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.

Said Section further provides that a security deposit may be provided when an applicant or recipient is unable to obtain a suitable vacancy

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without payment of such deposit. The amount is not necessarily limited to the applicable maximum shelter allowance. However, when a landlord requires that he or she be secured against non-payment of rent or damages as a condition to renting a housing unit to a recipient of Public Assistance, the local district may secure the landlord either by means of an appropriate security agreement between the Agency and the landlord or by depositing funds in an escrow account.

An Administrative Directive (86 ADM 7) issued by this Department March 3, 1986 advised local districts of this Department's policy regarding service to persons and households having Immediate Needs or requests for Emergency Assistance, including situations where it is claimed that the household has no food. Said directive described the requirements for investigation of all such requests, prompt determination of eligibility or need for assistance, and requirements for the issuance of written notice in any case where the request is denied by the local district.

DISCUSSION

The Agency submitted materials that included a written notice issued on December 1st denying the Appellant's request for Emergency Assistance. The notice was evidently issued after telephone conversations were undertaken that day in an attempt to otherwise deal with the Appellant's circumstances. Although the Agency had not yet completed an investigation, it evidently believed that, as of December 1st, there were alternative means for dealing with the Appellant's circumstances, sufficient to obviate the need for EAF. When asked the significance of December 9th, the date referred in the notice, the Agency personnel explained that it learned that an eviction proceeding was scheduled for December 6th, and, assuming that a judgment of eviction would be issued on that date and that a Warrant of Eviction would be issued immediately, it could not be enforced, through the forcible removal of the household, until December 9th or later. In addition, the Appellant would have received his next grant of Public Assistance by that date, in the expected amount of \$304.65, and that he would therefore have sufficient funds in hand to apply toward the \$173 cash payment required by the new landlord.

Through the testimony of both the Agency personnel and a witness for the Appellant (the administrator of the local Section 8 Program), it was learned that the landlord apparently insisted on a cash deposit by the Appellant rather than a Tenant Security Agreement from the Agency, based on his past experience; he expressed specific concern that a prospective tenant may not be as conscientious about his or her responsibilities unless it was his or her own funds that were at risk. Although the Agency has clear regulatory authority to provide a cash security deposit in any instance where that is needed, the Agency apparently considered the landlord's insistence on a material commitment from the Appellant himself to be sufficient reason to back away from its regulatory authority to provide funds for a deposit.

However, the Agency never issued a written notice of denial of the request for Moving Expenses; it was claimed that the Appellant was verbally

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advised of that determination. In its Fair Hearing Summary, the Agency took the position that the Appellant did not meet any of the special eligibility requirements for that form of Special Assistance. However, the Appellant's counsel contended that the household was moving from what had to be considered "temporary" facilities to permanent housing; while the Agency representative was reluctant to concede that point, a copy of the Notice Of Petition and Petition characterized the Appellant (and his household) as "...a squatter on the premises [having] no legal claim thereto, ...no right of possession thereof..." It was also alleged that "the Petitioner gave written demand to Respondents to quit the premises on November 4, 1993...Respondents are unlawfully preventing Petitioners from taking possession of the premises"... That language, coupled with the absence of any showing of alternate rights of tenancy or possession, is sufficient to establish that the move was from what should have been considered "temporary" facilities. As such, the household met at least one of the regulatory conditions; it may have met others.

It was also learned that the Section 8 Program administrator arranged for a short-term loan of funds sufficient for the Appellant to pay the security deposit, after the Agency failed to do so, in order to assure that the housing accommodations would be secured. The witness stated that her organization has never done that before, but the household's circumstances, in which children were considered at risk, merited special consideration. Those funds must be repaid as soon as possible.

In addition, it was learned that the local Community Action organization loaned the Appellant another \$80, to cover his cost of renting a truck to move his household's possessions to their new home. That, too, must be repaid as soon as possible.

Considering the urgent circumstances confronting the Appellant's household at the time of his December 1st request, the Agency's failure to provide a Security Deposit and Moving Expenses cannot be affirmed. While EAF may consist of services sufficient to resolve a crisis in appropriate cases, thereby avoiding the use of limited funds for grants of cash assistance, it was inappropriate for the Agency to respond precipitously, as it did in this case, prior to completing an investigation into the Appellant's alternatives. The Appellant's recurring Public Assistance was sufficient to meet his December shelter expense, but he was dependent upon the Agency to assist in securing new living arrangements, and for relocating his household from its previous situation.

DECISION AND ORDER

The December 1, 1993 determination to deny the Appellant's request for assistance to meet Immediate Needs, specifically to cover a Security Deposit and Moving Expenses, is not correct, and is reversed.

- * The Agency is directed to provide Special Assistance in accordance with the Appellant's degree of special need, consisting of \$146 for a cash security deposit and \$80 for moving expenses. Such assistance shall be provided, after receipt of satisfactory verification, as third-party payments to those organizations that provided short-term loans to the Appellant for said purposes.

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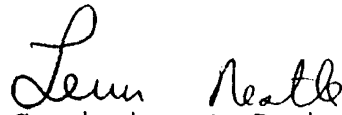
As required by Section 358-6.4 of the Regulations, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York

FEB 14 1994

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

By


Commissioner's Designee