

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST January 11, 2000
CASE #
CENTER # Suffolk
FH # 3260614M

In the Matter of the Appeal of :

DECISION
: AFTER
FAIR
HEARING

from a determination by the Suffolk 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 Title 18 NYCRR, (hereinafter Regulations), a telephone fair hearing was held on April 13, 2000, in Suffolk County, before Dennis D'Andrea, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Appellant
Cheryl Keshner, Antonia Ezechi, Esq.; Nassau-Suffolk Law Services

For the Social Services Agency

Eileen Alheidt, Fair Hearing Representative

ISSUE

Was the Agency's determination to deny the Appellant's application for an allowance for a refrigerator 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 or determined eligible for Supplemental Security Income (SSI).
2. The Appellant's household consists of one person.

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3. On December 15, 1999, the Agency denied the Appellant's application for an allowance for a special need of a refrigerator.

4. On January 11, 2000, the Appellant requested this fair hearing.

APPLICABLE LAW

Section 370.3 of 18 NYCRR provides that Agencies must authorize emergency and short term assistance to provide for the effective and prompt relief of identified needs which cannot be met under Emergency Assistance to Needy Families with Children (EAF), Family Assistance, the Home Energy Assistance Program (HEAP) or Safety Net Assistance. In cases where the need is determined to be temporary, the grant may be limited to those items for which there is immediate need. Emergency Safety Net Assistance can only be provided where there is an identified emergency need and where the applicant is without income or resources immediately available to meet the emergency need. The household's gross income at the time of application cannot exceed 125 percent of the federal income official poverty line unless the emergency is the result of a fire, flood or other like catastrophe or the emergency assistance is granted in accordance with Section 352.5(c), (d) and (e) of 18 NYCRR. An emergency is defined as a serious occurrence or situation needing prompt attention. Emergency Safety Net Assistance is not available if the emergency arose because the applicant failed to comply with the requirements of Part 385 of the regulations relating to employment and training and was therefore disqualified from receiving assistance.

Aged, blind or disabled persons who are eligible for or receiving Supplemental Security Income may receive Emergency Assistance to Aged, Blind or Disabled persons (EAA) to meet emergency needs which, if not met, would endanger their health, safety or welfare. Social Services Law Section 300; 18 NYCRR Section 397.1

A grant under EAA may be provided for the replacement of furniture or clothing which was lost or rendered useless as a result of a burglary, theft, vandalism, fire, flood or other like catastrophe which could not have been foreseen by the applicant and was not under his/her control. All losses resulting from a burglary, theft or vandalism must be reported to local law enforcement officials and must be appropriately verified by such officials. Social Services Law Section 303(1)(a); 18 NYCRR 397.5(a).

A grant may be made under EAA for furniture or clothing which is necessary to establish a home if the person moves to a private residence from a nursing home, hospital or other institution. Social Services Law Section 303(1)(f); 18 NYCRR 397.5(f).

The amount of a grant under EAA for furniture or clothing is limited to the amount authorized under Section 352.7 of the Regulations. 18 NYCRR 397.5(a)

Section 352.7(a)(1) of 18 NYCRR provides that if provision cannot otherwise be made, an Agency shall authorize a furniture allowance to establish a home for persons in need of Public Assistance if (one of) the following conditions exists:

- (i) An individual or family temporarily housed in a hotel, motel, homeless shelter, residential program for victims of domestic violence or other temporary accommodation to which the individual or family has been referred by the social services district is being permanently rehoused in unfurnished housing accommodations, and suitable furnished accommodations are not available.
- (ii) An unattached individual, whose needs cannot otherwise be met under Emergency Assistance for Aged, Blind or Disabled Persons (EAA) is discharged from an institution and determined to be capable of maintaining an apartment in the community, and suitable furnished accommodations are not available.
- (iii) An adult, whose needs cannot otherwise be met under Emergency Assistance for Aged, Blind or Disabled Persons (EAA) is discharged from an institution and wishes to rejoin his/her family, which is in need of additional furniture to provide adequate shelter for him/her.
- (iv) A child is returned to his/her parents, who are in need of additional furniture to provide adequate shelter for him/her.
- (v) An individual's or family's living situation adversely affects the physical and mental health of that individual or family and it is essential that the individual or family be rehoused in unfurnished housing accommodations in order to safeguard his/her or their health, safety and well-being.

Section 352.7(a)(2) of the Regulations provides that amounts which may be provided as a furniture allowance may not exceed the following:

SCHEDULE SA-4a

INITIAL OR REPLACEMENT COST OF ESSENTIAL HOUSEHOLD
FURNITURE, FURNISHINGS, EQUIPMENT AND SUPPLIES

Living Room	\$182
Bedroom	
with a single bed	\$145
with two single beds	\$205
with double bed	\$184
Kitchen (excluding appliances)	\$142 (plus \$12 for each additional person)
Range	\$182
<u>Refrigerator</u>	<u>\$182</u> (or \$258 for four or more persons)
Bathroom	\$ 6 (plus \$4 for each additional person)
Other Equipment	
Cabinet for linens	\$ 22
Stove for heating	\$ 72 (or \$82 for five or more persons)

Section 352.7(d) of the Regulations require agencies to provide for partial or total replacement of clothing or furniture which has been lost in a fire, flood or like catastrophe, where such needs cannot be met through assistance from relatives, friends or other agencies or resources.

DISCUSSION

The 69-year-old Appellant contended that although a friend bought her a refrigerator, the friend has to be repaid and consequently there remains an emergency need for assistance.

The Appellant's refrigerator stopped working in mid-October 1999. The Appellant applied on November 3, 1999, for assistance in buying or repairing a refrigerator. A friend bought the Appellant a refrigerator on November 22, 1999. The Agency scheduled an eligibility interview for December 9, 1999, which was attended by the home-bound Appellant's home attendant. The attendant reported at the eligibility interview that the Appellant already had a refrigerator. The Agency's determination of December 15, 1999, denied assistance because "Your friend purchased a refrigerator for you. We do not reimburse such payment."

The Agency responded that the emergency no longer existed. However, the Agency was aware of the Appellant's emergency need on November 3, 1999, and

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should have acted promptly to schedule the interview to review the Appellant's need for immediate assistance. Instead, the interview was delayed for more than a month after the application for a grant to purchase the refrigerator. The Appellant, meanwhile, waited nearly three weeks without access to a refrigerator before her friend made the purchase on her behalf.

The expense of the refrigerator should have been borne by the Agency, not the Appellant. Because of the Agency's failure to act in a timely fashion to meet the Appellant's immediate need for assistance, the Appellant resorted to making her own arrangements to refrigerate her food. The Agency's position cannot be sustained.

DECISION AND ORDER

The Agency's determination to deny the Appellant's application for an allowance for a refrigerator is not correct and is reversed.

1. The Agency is directed to provide the Appellant with an allowance for a refrigerator in accordance with the schedule set forth in the cited legal authority.

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

DATED: Albany, New York
April 28, 2000

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By


Commissioner's Designee