

STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST October 5, 2000  
CASE #  
CENTER Suffolk  
FH # 3406776R

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In the Matter of the Appeal of :

**DECISION**  
: **AFTER**  
**FAIR**  
**HEARING**

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

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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 fair hearing was held on November 30, 2000, in Suffolk County, before Richard S. Levchuck, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Appellant; Appellant's Representative

For the Social Services Agency

Randi Delirod, Fair Hearing Representative; Amy Salinero, Esq., Fair Hearing Representative

ISSUE

Was the Agency's determination to deny the Appellant's application for a cash 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 herself and her two minor children.
3. During the month of July, 2000, the Appellant was advised by her former landlord at A, , New York that she would be evicted from her prior residence.
4. During the period from July 27, 2000 through August 31, 2000, the Appellant contacted approximately one hundred thirty realty brokers and landlords in an attempt to secure permanent housing. The Appellant was unable to locate any available housing with the exception of one location

in \_\_\_\_\_, New York.

5. The Appellant had been approved by the Town of \_\_\_\_\_ Housing Agency for participation in the Section 8 housing subsidy program.

6. On August 1, 2000, the Appellant applied for a security deposit in order to secure permanent housing. The Appellant advised the Agency that the landlord at the prospective housing would only accept a cash security deposit and would not accept a security agreement.

7. On August 1, 2000, the Agency denied the Appellant's application for an allowance for a cash security deposit on the ground that it would only provide a security agreement. This determination was not at issue at this hearing.

8. On or about September 5, 2000, the Appellant and her family were evicted from their prior residence. At that time, she moved in with her sister on a temporary basis but could not stay here permanently due to a lack of space.

9. On or about September 27, 2000, the Appellant was advised of the availability of permanent housing at B, \_\_\_\_\_, New York by a neighbor of her sister.

10. The Appellant located the permanent housing and was advised that with the Section 8 rental subsidy, her share of the rent would be \$219.00 per month, excluding heating costs.

11. The landlord of the permanent housing located by the Appellant advised her that he required a cash security deposit in the amount of \$1400.00 and would not accept a security agreement.

12. The Appellant attempted to secure the funds from Catholic Charities and was advised by the charity that it did not have funds to provide cash security deposits.

13. On or about October 2, 2000 and October 4, 2000, the Appellant applied for a cash security deposit from the Agency.

14. On October 4, 2000, the Agency denied the Appellant's application for an allowance for a security deposit on the ground that "there is no provision for providing cash security."

15. On October 5, 2000, the Appellant requested this fair hearing.

16. On October 15, 2000, the Appellant borrowed the sum of \$500.00 from her sister. The Appellant also agreed to pay her landlord an additional amount of \$100.00 per month in order to secure her current

FH# 3406776R

housing.

APPLICABLE LAW

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).

Section 143-c of the Social Services Law provides that 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 not under the control of the landlord or his agent, subject to the terms and conditions of an agreement between the landlord and social services official in such form as the department may require or approve provided, however, that this option shall not be used in instances where recipients reside in public housing. 18 NYCRR 352.6(b).

When, however, in the judgment of a social services official, housing accommodations available in a particular area are insufficient to properly accommodate recipients of public assistance in need of housing, and in order to secure such housing it is essential that he pay money to landlords to be held as security deposits against the non-payment of rent or for damages by public assistance recipients, or to issue grants to recipients of Public Assistance therefor, such social services official may pay or furnish funds for such security deposits until sufficient housing accommodations are available in the particular area to properly accommodate recipients of public assistance in need of housing. Social services officials shall not pay or furnish funds in instances where recipients reside in public housing.

Section 143-c of the Social Services Law.

DISCUSSION

At the hearing, the Appellant testified that she made "between one hundred and one hundred fifty" housing contacts in her effort to secure permanent housing during the time she was initially advised that she would be evicted from her prior residence until she located her current housing. The Appellant cited one housing contact that required a cash security deposit which the Agency previously denied. The Appellant noted that the only other permanent housing that she successfully obtained, which is her current housing, also required a cash security deposit. The Appellant and

her representative argued that the Agency should have provided a cash security deposit since the Appellant was unable to secure permanent housing in the absence of such an allowance.

The Agency contended that there was only one contact made by the Appellant other than her current housing, for which a security deposit was required. The Appellant acknowledged that the other housing contacts were not successful because the housing in question was not available. The Agency for its part, was able to produce examples of at least sixteen addresses in the Appellant's community alone where security agreements had been accepted by area landlords.

Both the Agency and the Appellant's representatives presented prior Decisions After Fair Hearings. The fair hearing decisions presented by the Agency numbers 1560540K and 1560542M in which the denial of a cash security deposit was affirmed by the Commissioner are distinguishable from the instant case in that Section 8 housing is at issue. The Appellant's representative cited a Decision After Fair Hearing number 1567902N in which a determination of the Agency to deny a cash security deposit was reversed by the Commissioner due in fact, to the unavailability of permanent housing without payment of a cash security deposit and in particular, the fact that Section 8 housing was at issue.

In this case, the Appellant testified that she asked the Agency for assistance in securing permanent housing and that the Agency provided her with only one listing which was not available to her. The Agency did not present any evidence that Section 8 housing was available to the Appellant without the payment of a cash security deposit and the Appellant established that she was unable to secure Section 8 housing without payment of a cash security deposit.

It is a matter of public record that the securing of Section 8 housing is extremely difficult, with applicants being placed on lists with a wait of over one year. The Appellant in this case, was able to obtain housing with a rental obligation that is below the applicable shelter allowance of \$387.00 for a three person household. Accordingly, the Agency's determination to deny the Appellant's request for a cash security deposit cannot be sustained.

#### DECISION AND ORDER

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

1. The Agency is directed to provide the Appellant with payment of a cash security deposit, reimbursing the Appellant any funds she has provided to her landlord and paying any outstanding balance to the landlord.

FH# 3406776R

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

DATED: Albany, New York  
December 12, 2000

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee