

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST August 20, 2002
CASE # 0000XXXXXXXX
CENTER # 23
FH # 3792259Q

In the Matter of the Appeal of :
C.M. :

DECISION
: AFTER
FAIR
HEARING

from a determination by the New York City
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 fair hearing was held on October 21, 2002, in New York City, before Oluseye Soetan, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

C.M., Appellant

Jonathan Hafetz, Attorney

For the Social Services Agency

A. Paneque, Fair Hearing Representative

ISSUES

Was the Agency's determination to deny the Appellant's application for assistance to pay storage fees 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 benefits from Supplemental Security Income (SSI).
2. The Appellant's belongings have been in storage.
3. On June 14, 2002, the Appellant requested a hearing to review the Agency's failure to provide him with a storage allowance.
4. On June 18, 2002 the Appellant paid \$919.00 in storage fees.
5. On June 25, 2002 a fair hearing was held on the Agency's failure to provide the Appellant with a storage allowance.

6. By Decision After Fair Hearing at FH #3734970P dated June 27, 2002, the Commissioner directed the Agency to determine whether the Appellant applied for assistance to pay storage fees, and if the Appellant applied for storage fees, to process the Appellant's application, and advise the Appellant as to what additional documentation is necessary, and to provide the Appellant with an opportunity to provide any required documentation and to advise the Agency in writing of its determinations.

7. By notice dated July 25, 2002, the Agency advised the Appellant to report to the Agency on August 1, 2002 with a completed application and his current storage bill.

8. On July 31, 2002 the Appellant submitted a request for a storage reimbursement

9. By notice dated August 2, 2002, the Agency denied the Appellant's request on the grounds that the Appellant had paid his storage bill on June 18, 2002.

10. On August 20, 2002, this fair hearing was requested.

APPLICABLE LAW

At a fair hearing concerning the denial of an application for assistance, the Appellant must establish that the Agency's denial of assistance was not correct. 18 NYCRR 358-5.9(a).

Sections 351.1 and 351.2 of Department Regulations require each applicant for assistance to provide complete, accurate, and current information as to his/her needs and resources and to submit verification of income, and other factors in order to enable the Agency to determine eligibility.

Emergency Assistance for Adults (EAA) means grants of assistance to aged, blind or disabled individuals and couples who have been determined eligible for or are receiving Federal Supplemental Security Income (SSI) benefits or additional State payments and applied for such assistance to meet emergency needs, in the circumstances specified in Part 397 of Department Regulations, that cannot be met by the regular monthly benefits of SSI and additional State payments. Social Services Law, Section 300(2); Social Services Law, Section 300(3); Social Services Law, Section 302; 18 NYCRR 397.1(a); 18 NYCRR 397.4.

EAA may be available for certain needs only. Under EAA, storage of furniture and personal belongings shall be paid when the storage is essential during relocation, eviction or residence in temporary shelter, as long as the circumstances necessitating the storage and eligibility for EAA continues to exist. Social Services Law, Section 303(k); 18 NYCRR 397.5(k).

Sections 605-610 of the General Business Law set forth the requirements for a person engaged in the business of storing goods for hire.

DISCUSSION

The record established that on June 14, 2002, the Appellant requested a hearing to review the Agency's failure to provide him with a storage allowance. The Appellant's belongings have been in storage. The record also

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established that the Appellant paid \$919.00 in storage fees on June 18, 2002. The record further established that on June 25, 2002 a fair hearing was held on the Agency's failure to provide the Appellant with a storage allowance. The record disclosed that by decision at FH #3734970P dated June 27, 2002, the Commissioner remanded the Appellant's case back to the Agency for an investigation of the Appellant's application with directives that the Appellant be notified in writing of the Agency's determinations. The record also disclosed that by notice dated July 25, 2002, the Agency advised the Appellant to report to the Agency on August 1, 2002 with a completed application and with his current storage bill. The record further disclosed that on July 31, 2002 the Appellant submitted an application and requested a storage reimbursement of \$919.00. By notice dated August 2, 2002, the Agency denied the Appellant's request on the grounds that the Appellant had already paid his storage bill on June 18, 2002.

At the hearing, the Appellant's attorney contended that the Appellant's request for a storage allowance which was made to the Agency on June 5, 2002 was not processed because the Agency informed the Appellant that he was ineligible for a storage allowance because he is not in receipt of Public Assistance benefits. The Appellant's attorney also contended that the Agency's action was erroneous in that the Regulation cited above provides that a recipient of Supplemental Security Income (SSI) may be entitled to a storage allowance. The record established that the Appellant is in receipt of SSI benefits. The Appellant's attorney further contended that due to the Agency's error the Appellant resorted to a loan from his friend to pay his storage bill on June 18, 2002, to forestall the auction of his belongings by June 24, 2002. At the hearing, the Appellant verified the loan of \$919.00 with a statement from his friend. The Appellant also provided receipts to verify the payment of his storage expense in said amount.

The Agency did not present any information with respect to the Appellant's contention and thereby failed to rebut the contention as to her June 5, 2002 request for a storage allowance and the Agency's action with respect to said request. It is noted that the Appellant's June 14, 2002 request for a review of the Agency's failure to provide her with a storage allowance reinforced the Appellant's contention that he made a request on June 5, 2002. Based on the hearing record, the Agency's determination cannot be supported.

DECISION AND ORDER

The Agency's determination to deny the Appellant's application for assistance to pay storage fees is not correct and is reversed.

1. The Agency is directed to provide a grant for storage fees to the Appellant in the amount of \$919.00.

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

DATED: Albany, New York
November 12, 2002

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee