

In the Matter of the Appeal of :

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DECISION
: AFTER
FAIR
HEARING

Nassau County Department
from a determination by the
of Social Services (hereinafter called the agency)

A fair hearing was held at Mineola, New York, on August 16, 1983, before Robert Goldstein, Administrative Law Judge, at which the appellant, the appellant's representative and representatives of the agency appeared. The appeal is from a determination by the agency relating to the denial of a grant of Home Relief. 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, age twenty-four, receives \$211.00 per month in SSI (Supplemental Security Income) benefits. She has appealed this determination to the Social Security Administration, in that she is seeking to be classified as a "living alone" beneficiary. Such a determination would entitle her to receive Supplemental Security Income benefits in the amount of \$365.00 per month.

2. On July 1, 1983, appellant applied for a grant of Home Relief. The agency requested her to execute a repayment of Interim Assistance Authorization. Appellant refused to execute such authorization.

3. On July 20, 1983, the agency determined to "discontinue" (deny) appellant's Home Relief assistance, for failure to execute the Interim Assistance Repayment Authorization.

4. The agency has, in fact, denied appellant's application because no assistance has been provided. Therefore, the issue to be decided is whether or not the agency properly denied assistance.

5. Appellant's appeal of her Supplemental Security Income determination has not been decided. There is no final determination of her Supplemental Security Income benefits application.

6. Appellant also requested that the State Commissioner issue a directive to the agency to review all other cases where Supplemental Security Income recipients are required to sign the Repayment of Interim Assistance form because it violates the definition of interim assistance in the Federal Regulations.

Pursuant to Chapter III, Title XX of the Social Security Act, Sub-part S, the provisions regarding Interim Assistance are enumerated.

Section 416.1901 provides that Supplemental Security Income benefits may be withheld and paid to the State on a political subdivision thereof as repayment for any interim assistance.

Section 416.1902 provides that:

"Interim assistance" means assistance the State gives you (including payments made on your behalf to providers of goods or services) to meet your basic needs, starting with the month you apply for SSI benefits and are eligible for them, and ending with (and including) the month your SSI benefit payments begin.

Section 158 of the Social Services Law prohibits a recipient of Supplemental Security Income benefits from receiving Home Relief. However, the Court of Appeals ruled that provision unconstitutional in the case of Lee v. Smith.

Furthermore, the Appellate Division, Second Department, ruled in the case of Rosenfeld v. Blum that the State and its local agencies cannot automatically assume the availability of inkind income for Home Relief purposes based upon a Social Services determination that inkind income exists. This Department issued Administrative Directives which implemented both Court decisions (77 ADM-138 and 82 ADM-31). An application for supplemental Home Relief benefits pursuant to those Court decisions is not considered an application for interim assistance. It is significant that neither Administrative Directives instructed local agencies to have Supplemental Security Income recipients execute such an agreement or authorized such a procedure.

Therefore, the agency requirement that the appellant execute such an agreement was improper and the agency denial of the appellant's application on that basis is improper. Accordingly, the agency is directed to continue to process the appellant's application in accordance with the aforesaid Administrative Directives.

The agency is further directed, pursuant to the aforesaid Section 358.21 of the Department's Regulations to cease requiring Supplemental Security Income recipients to execute an Interim Assistance agreement as a condition of receiving a Home Relief Supplement.

DECISION: The determination of the agency 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

CESAR A. PERALES,
COMMISSIONER

NCV 4 1993

BY Patricia Tisdell-O'Brien
Commissioner's Designee