

STATE OF NEW YORK  
DEPARTMENT OF SOCIAL SERVICES

REQUZST: July 10, 1990  
CASE No.  
CENTER No.  
FH No. 1563402M

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In the Matter of the Appeal of

E P

from a determination by the New York City  
Department of Social Services

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:  
: **DECISION**  
**WITHOUT**  
**EVIDENTIARY**  
**HEARING**

By letter dated July 9, 1990, the Appellant's representative, Eugene Doyle, requested that a decision without evidentiary hearing be issued pursuant to 18 NYCRR 358-6.2 on behalf of the above-named appellant, as well as five other appellants who sought review of the identical issue, to review the failure of the New York City Human Resources Administration (NYCHRA) to act on referrals made by the appellant's heat-related utility provider in a timely manner. The decisions without evidentiary hearings for such five other appellants are being issued separately. Pursuant to 18 NYCRR 358-6.2, by letter dated July 17, 1990, copies of the Appellant's request and supporting documents were sent to the Agency with a request for answering papers within ten working days. The Agency responded to the Appellant's request by letter dated July 27, 1990. The Appellant's representative submitted an answer to this response dated August 20, 1990.

FACT FINDINGS

An opportunity to be heard having been afforded to all interested parties and evidence having been submitted and due deliberation having been had, it is hereby found that:

1. The Appellant is a customer of record with the Brooklyn Union Gas Company (BUG) for natural gas heating utility service.
2. On or about March 10, 1990, BUG made personal contact with the appellant and determined that termination of her natural gas heating utility service would cause a serious impairment to the health and safety of the one year-old child residing in her home.
3. On or about March 20, 1990, BUG sent the agency a "Notice of Utility Referral to DSS" (DSS-2338) indicating that a serious impairment to health and safety would be caused by the termination of the appellant's natural gas heating utility service.
4. As of approximately April 9, 1990, the Appellant owed arrears for heat-related utility service in the amount of \$833.87.

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5. By letter dated July 6, 1990, BUG informed the appellant's representative that, as of that date, it had not yet received a response from the agency concerning the referral (DSS-2338) submitted to the agency on or about March 20, 1990.

6. By letter dated July 9, 1990, the appellant's representative requested that a decision without evidentiary hearing be issued to review the agency's failure to timely act on the referral made to it by BUG.

7. By letter dated July 27, 1990, the agency, through its Office of Legal Affairs, responded to the appellant's request for a decision without evidentiary hearing, indicating, inter alia, that the appellant is not in danger of termination of her heating utility service and, utilizing a system which grants first priority to cases where heat-related utility service has already been terminated, the appellant fell into a "class of people who were forced to wait their turn until more pressing cases were resolved. This lowest priority class is dealt with on a first come/first served basis."

8. The appellant's representative's answer to the agency's response, dated August 20, 1990, indicates, inter alia, that the agency offered no evidence to establish that BUG does not intend to terminate heat-related utility service and alleges that the agency's response constitutes an admission that the agency has failed to comply with timeliness standards related to the utility referral.

#### ISSUE

With respect to the appellant's heat-related utility arrearages, has the agency violated applicable statutory and regulatory authority requiring action within 15 days on referrals of customers of utility providers who are, or who reside with an individual who is, determined by such utility company to be likely to suffer serious impairment to health or safety as a result of termination of heat-related utility service during the cold weather period?

#### APPLICABLE LAW

The Public Service Commission shall establish procedures to be followed by a utility or municipality supplying heat-related service in cold weather periods. Such procedures shall be designed to identify and assist, prior to termination of service, those residents who may suffer serious impairment to health or safety as a result of any such termination. The commission shall establish the applicable cold weather periods; specify criteria for identifying residents who are likely to suffer serious impairments, and require that such service not be terminated unless a representative of the utility or municipality makes a diligent effort to contact by telephone or in person an adult resident of the customer's premises at least seventy-two hours prior to termination, makes a personal visit at the time of termination and provides the customer with information regarding the protections available under this article. The commission shall provide for the manner in which such contacts and personal visits are made. Public Service Law Section 32(3)(c)(i).

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The commission shall also require a utility or municipality supplying service to continue service to customers where a serious impairment to health or safety is likely to result from termination of service and the person supplied is unable because of mental or physical problems to manage his or her own resources or to protect himself or herself from neglect or hazardous situations without the assistance of others. Doubts shall be resolved in favor of continued service. Continuations of service shall be for a period of time to be established by the commission. The commission shall consult with the department of social services and the state office for the aging in implementing the provisions of this paragraph. Public Service Law Section 32(3)(c)(ii).

The local social services district shall take the actions set forth in 18 NYCRR Section 394.1 in cases in which a suspected serious impairment to human health is identified. A special procedure must also be utilized to protect individuals who are both seriously impaired and who are unable because of mental or physical problems to manage their own resources or to protect themselves from neglect or hazardous situations without the assistance of others. These actions shall complement and be in concert with rules and regulations of the Public Service Commission regarding discontinuance of utility service. These actions shall be in effect as a mandate during the period from November 1st through April 15th of each year. 18 NYCRR 394.1(a).

A serious impairment to human health is indicated if the utility customer of record, or other person residing in the premises, appears to be seriously impaired and may, because of mental or physical problems, be unable to manage his or her own resources, carry out activities of daily living or protect himself/herself from neglect or hazardous situations without assistance from others. Indicators of serious impairments include, but are not limited to:

- (1) age, infirmity or mental incapacitation;
- (2) use of life support systems, such as dialysis machines or iron lungs;
- (3) serious illness;
- (4) physical disability or blindness;
- (5) any other factual circumstances which indicate severe or hazardous health situations.

18 NYCRR 394.1(c)

A neglect or hazardous situation is indicated if a residential customer is identified as likely to suffer a serious impairment to health or safety if utility service is terminated and if the customer is unable because of mental or physical problems to manage his or her own resources or to protect himself or herself from neglect or hazardous situations without the

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assistance of others. The utility company will identify these cases through responses to their annual notification of rights to all their residential customers; through notification by a local social services district, office of aging, board of health, or other responsible agency or person; or through identification by any utility personnel. 18 NYCRR 394.1(d).

Upon receipt of a suspected serious impairment and/or neglect or hazardous situation referral, the local social services district shall perform the following activities:

- (1) screen all referrals against public assistance and SDX files to determine if the customer is a recipient of public assistance or SSI and initiate appropriate action;
- (2) initiate onsite investigation to assess each situation and devise a plan of action as appropriate;
- (3) report, on or prior to the 15th working day subsequent to receipt of the written referral, its findings to the utility corporation. This may be done orally or in writing on forms prescribed by the department; however, if the report is oral, the written report must follow immediately;
- (4) implement the plan of action to alleviate the situation and insure the provision of necessary protective and/or other required services; and
- (5) prepare and submit program reports on forms prescribed and schedules required by the department.

18 NYCRR 394.1(f).

In the case of a person applying for public assistance, supplemental security income benefits or additional state payments pursuant to this chapter, the social services official of the social services district in which such person resides shall, unless alternative payment or living arrangements can be made, make a payment to a gas corporation, electric corporation or municipality for services provided to such person during a period of up to, but not exceeding, four months immediately preceding the month of application for such assistance or benefits if such payment is needed to prevent shut-off or to restore service. Social Services Law Section 131-s(1).

In the case of a person receiving public assistance, supplemental security income benefits or additional state payments pursuant to this chapter, the social services official of the social services district in which such person resides shall, unless alternative payment or living arrangements can be made, make a payment to a gas corporation, electric corporation or municipality for services provided to such person for the most recent four months in which service was rendered prior to the

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application for a utility payment pursuant to this section, provided that no such payment shall be made for services rendered more than ten months prior to the application for such a payment, and provided further that:

- (a) such person does not have any funds to pay for such service and such payment is needed to prevent termination or to restore service and such person has fully applied his public assistance grant, if any, to purposes intended to be included in such grant, or
- (b) such person in receipt of public assistance has made a written request of such official for an advance allowance for utility services already received pursuant to department regulations and has also made a written request that his monthly assistance grant be reduced by a portion of the amount of the advanced allowance, in such amounts as not to cause undue hardship. Such payment shall be in addition to any direct payment or any guarantee of payment for utility service for the month for which timely payment may still be made. In no event may any part of such payment subject to recoupment be made unless the social services official first determines under the particular circumstances that the recipient is not entitled, at the time of requesting such payment, to a grant pursuant to titles one, three, eight or ten of this article or any other provision of this chapter which could be utilized to cover all or a portion to be advanced. If during the period of recoupment, the recipient becomes entitled to a grant, pursuant to titles one, three, eight or ten of this article or any other provision of this chapter, which could be utilized to cover all or a portion of the amount to be recovered, such grant shall be so utilized.

Social Services Law Section 131-s(2).

When a fair hearing decision indicates that a social services agency has misapplied provisions of law, department regulations or such agency's own State-approved policy, the commissioner's letter transmitting such decision to such agency may contain a direction to the agency to review other cases with similar facts for conformity with the principles and findings in the decision. 18 NYCRR 358-6.3.

When a direction has been given to a social services agency to correct a misapplication of law, department regulations or such agency's own State-approved policy in all cases similar to the one in which a decision has been issued, such social services agency must report the actions it has taken to comply with such direction to the department within 30 days after receipt of the direction. The social services agency must make such additional reports as the department may require. 18 NYCRR 358-6.5

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DISCUSSION

The appellant herein, by her representative, seeks review of the agency's failure to timely act on the referral that it received from the Brooklyn Union Gas Company (BUG) indicating that the appellant resides with an individual who, by virtue of the fact that such individual is a one year-old child, is likely to suffer serious impairment to health or safety as a result of termination of heat-related utility service during the cold weather period. It is uncontroverted that this action on the part of BUG was precipitated by the fact that the appellant owed certain arrears to the utility company. BUG correctly followed the procedures set forth in 18 NYCRR Part 394 and, on or about March 20, 1990, utilizing the form contained in Administrative Directive 82 ADM-69 (DSS-2338), notified the agency of the appellant's arrearages and of the potential impairment of a household member's health and safety that would be caused by a termination of service and awaited receipt of the agency's report. Pursuant to the above-cited provisions of 18 NYCRR 394.1, the agency was required, within 15 working days following the receipt of the referral, to initiate an on-site investigation, devise a plan of action and report back to the utility company. According to a letter from BUG, dated July 6, 1990, that is a part of the record of this appeal, no such report has been provided.

The agency, in its response of July 27, 1990, does not attempt in any way to refute the appellant's allegations that its actions were not timely and therefore not in compliance with 18 NYCRR Part 394. Rather, the agency's position is essentially that delays greater than 15 days are sometimes inevitable since it utilizes a system which grants first priority to cases where heat-related utility service has already been terminated and that the appellant's case falls into a "class of people who were forced to wait their turn until more pressing cases were resolved. This lowest priority class is dealt with on a first come/first served basis."

While the Department is mindful of the budgetary constraints faced by the agency and of the necessity of distributing limited resources in the most efficient manner possible, the agency's disregard of State-mandated requirements nevertheless cannot be condoned. The agency's action in failing to act on BUG's referral within the required 15 working days violates applicable law and regulations and was not proper.

It is noted that the appellant's representative raises, in the context of requested relief, the question of whether the amount of utility arrears to be provided by the agency should be calculated using the four-month period beginning with the date of BUG's referral or the date that the agency makes its calculations. Clearly, in light of the above-cited provisions of Section 131-s of the Social Services Law, it would be improper to measure the four-month period from an arbitrary date on which the agency decides to take action. Section 131-s states that the period is measured from the "date of application." While there is no evidence that the appellant has filed a formal "application" for an allowance to pay utility arrears, the agency had an affirmative obligation pursuant to 18 NYCRR Part 394 to take

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action to deal with the appellant's arrearage problem in March 1990 when it was apprised of such problem. Had the agency complied with this obligation, the appellant would have been afforded the opportunity to apply for required assistance. Therefore, if the appellant is determined eligible for a special grant to pay her utility arrears, such payment should be calculated from the date of the BUG referral.

Finally, the appellant's representative seeks the issuance of a direction relative to similar cases pursuant to 18 NYCRR 358-6.3 by which the agency would be required to comply with the requirements of 18 NYCRR Part 394 on all pending and future utility referrals and would further be directed to recompute the utility arrears payments provided to all previous recipients of referrals to ensure that such payments were calculated from the date of the referral. With regard to the agency's failure to comply with Part 394 on pending and future referrals, it is clear, as discussed above, that it is the agency's policy to prioritize utility referrals in a manner that necessarily violates Departmental regulations concerning timely action on such referrals. Hence, the agency is not in compliance with applicable regulatory requirements and the request of the appellant's representative meets the requirements for a direction relative to similar cases.

With regard to the appellant's representative's request for a direction relative to similar cases requiring recomputation of utility arrears payments for all previous recipients of utility referrals, however, there is not sufficient evidence in this record to indicate that the agency has a policy of miscalculating the date on which the four-month period of utility arrears begins to run. Therefore, this is not an appropriate subject for a direction relative to similar cases and, insofar as it pertains to this issue, the appellant's request for such a direction must be denied.

#### DECISION AND ORDER

The agency's failure to take timely action on the referral by the appellant's heat-related utility provider based on such provider's determination that an individual with whom the appellant resides is likely to suffer serious impairment to health or safety as a result of termination of heat-related utility service during the cold weather period is not correct and is reversed.

1. The agency is directed immediately to take all necessary action in compliance with the requirements of 18 NYCRR Part 394, including the development and implementation of plan of action to alleviate the appellant's situation and insure the provision of necessary protective and/or other required services.
2. In the event that the agency determines to provide the appellant with a special grant pursuant to Social Services Law Section 131-s to pay heat-related utility arrears, the agency is directed to calculate such special payment for the four-month period beginning with the date of the BUG referral.

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The agency's failure to take timely action in accordance with 18 NYCRR Part 394 on referrals by heat-related utility providers based on such providers' determinations that an individual in the home is likely to suffer serious impairment to health or safety as a result of termination of heat-related utility service during the cold weather period is not correct and is reversed.

1. The agency is directed, with respect to all pending and future utility referrals, to take all necessary action in compliance with the requirements of 18 NYCRR Part 394, including reporting to a utility provider within 15 working days of receipt of a referral the results of the agency's investigation commenced in response to such referral.
2. This direction is made for all similar cases in accordance with the provisions of 18 NYCRR 358-6.3
3. The agency is directed, pursuant to the provisions of 18 NYCRR 358-6.5, to report to the Department within 30 days the actions it has taken to comply with the direction relative to similar cases set forth in paragraph (1), above.

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

DATED: Albany, New York

CESAR A. PERALES  
COMMISSIONER

SEP 07 1990

By



Commissioner's Designee