

STATE OF NEW YORK  
DEPARTMENT OF SOCIAL SERVICES

REQUEST May 31, 1991  
CASE No.  
CENTER No. PSA and # 62  
FH No. 1685188R

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| In the Matter of the Appeal of            | : |          |
|   | : |          |
| J            O                            | : |          |
|   | : | DECISION |
|   | : | AFTER    |
|   | : | FAIR     |
| from a determination by the New York City | : | HEARING  |
| Department of Social Services             | : |          |
|   | : |          |
|   | : |          |

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JURISDICTION

This appeal is from a determination by the local Social Services Agency relating to its denial of the Appellant's application for Protective Services to Adults (PSA) and a failure to act on the Appellant's application for a grant of Public Assistance, Medical Assistance, Food Stamps benefits and a grant to pay rent arrears.

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on June 6, 1991, in New York City, before Carol Feinman, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

J            O            , Appellant; John F. Castellano, Appellant's Attorney

For the Local Social Services Agency

Allen Ferster, Agency Attorney; Paul Bergen, Agency Representative;  
Fred Santo, Agency Witness

FACT FINDINGS

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, age 64 years old, has been in receipt of Social Security Benefits in the monthly amount of \$272.00.

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2. On March 18, 1991 the Agency's PSA unit was contacted by one of the Appellant's legal representatives and a request for PSA services on Appellant's behalf was made. The Agency was specifically advised that the Appellant sought assistance to prevent imminent eviction.

3. On March 27, 1991 an Agency worker from the PSA unit, with the assistance of Maimonides Neighborhood Center, visited the Appellant at his home. At that time the Appellant signed an Agency application for Public Assistance, Medical Assistance, Food Stamp benefits and Services.

4. On May 3, 1991 the Agency's PSA unit had the Appellant examined by a psychiatrist who concluded that the Appellant did not exhibit "severe mental illness or impaired judgment".

5. The Agency did not arrange for a physical, or other medical, examination of the Appellant.

6. On May 17, 1991 an Agency worker from the PSA unit telephoned the Appellant's attorney and verbally informed him that the Appellant was not eligible to receive services available through its PSA program. No written notice was sent either to the Appellant or his representative.

7. The Agency's PSA unit did not transfer the Appellant's application for other assistance and benefits to an Income Support Center for processing until May 30, 1991.

8. The Agency is presently evaluating the Appellant's eligibility to receive recurring grants of Public Assistance, Medical Assistance, Food Stamp benefits and a special grant of assistance for payment of rent arrears.

9. The Appellant's monthly rent is \$500.00 Prior to December, 1990 the Appellant's monthly rent was \$350.00.

10. On May 17, 1991 a final judgment was issued in the Civil Court of the City of New York, Housing Part, Kings County, directing the Appellant to pay his landlord \$3,000.00 representing rent arrears from December, 1990 through May, 1991. A warrant of eviction has been stayed until June 21, 1991.

11. The Appellant has been found eligible to receive a "Section 8" rent subsidy.

12. On May 31, 1991 the Appellant requested this hearing to review the Agency's determination to deny the Appellant's application for Protective Services for Adults, including its failure to provide written notice of its determination, and the Agency's failure to act on the Appellant's application for a grant of Public Assistance, Medical Assistance, Food Stamps and a special grant of assistance for payment of rent arrears.

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ISSUES

Was the Agency's determination to deny the Appellant's application for Protective Services For Adults, including its failure to provide written notice of its determination, correct?

Was the Agency's failure to act on the Appellant's application for a grant of Public Assistance, Medical Assistance, Food Stamp benefits, and a special grant of assistance for payment of rent arrears correct?

APPLICABLE LAW

Department Regulations at 18 NYCRR 457.1 provide that Protective services for adults are provided to individuals 18 years of age or older who, because of mental or physical impairments: (1) are unable to meet their essential needs for food, shelter, clothing or medical care, secure entitlements due them or protect themselves from physical or mental injury, neglect, maltreatment or financial exploitation; and (2) are in need of protection from actual or threatened harm, neglect or hazardous conditions caused by the action or inaction of either themselves or other individuals; and (3) have no one available who is willing and able to assist them responsibly.

The Department's Administrative Directive 90 ADM-40 states that an adult who is eligible to receive PSA services must have a mental impairment and/or a physical illness or disability which renders him/her unable to obtain services necessary for his/her own care and protection. The disabling condition may either be temporary, intermittent or permanent. Conditions contributing to a client's disability may include, but are not limited to: mental illness; mental retardation; developmental disorders; Alzheimer's Disease and related disorders primarily associated with the elderly; acute physical illness; physical handicaps; and alcoholism and other forms of substance abuse.

Department Regulations at 18 NYCRR 457.7 state that the provision of PSA shall not be viewed as a single agency responsibility but rather as a community-based service responsibility. As such the Agency shall make known and, to the extent possible, secure the active participation and cooperation of those community resources providing specific services for adults. Community resources to be involved include personnel from ... legal resources, advocacy groups ... and those other public and private service agencies of the particular community. These resources shall constitute a PSA delivery network. In addition to the involvement of other community agencies in the provision of services to PSA clients, the other divisions/units of the Agency, such as legal..., income maintenance and services, shall be effectively integrated into the PSA service delivery network.

Department Regulations at Section 404.1(d) provide that eligibility determinations should be made within 30 days of the application. Section 404.1(f) requires written notice of determination of eligibility or ineligibility for services be sent to the applicant within 15 calendar days after the determination has been made.

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Department Regulations at 18 NYCRR 358-3.3 require that the Agency provide an applicant for Public Assistance, Medical Assistance, Food Stamps or services with written notice upon acceptance or denial of the application.

Department Regulations at 18 NYCRR 358-6.3 provide that 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.

Section 351.8(b) of the Department Regulations provides that the decision to accept an application for Public Assistance and care shall be made as soon as the facts to support it have been established but not later than thirty days from the date of application except where the applicant requests additional time or where difficulties in verification lead to unusual delay, or for other reasons beyond the Agency's control. The applicant shall be notified in writing of the Agency's determination.

Section 360-2.4 of the Department Regulations provides that eligibility for a Medical Assistance Authorization must be determined within thirty days of application. However where Medical Assistance eligibility is dependent on disability status the agency must determine eligibility within sixty days of application. Where an applicant for Public Assistance is determined ineligible for such benefits, the agency must make a separate determination of Medical Assistance eligibility within thirty days of the date the application for Public Assistance was denied. If timely action was not taken on the Public Assistance application, the agency must determine eligibility within thirty days of the date when action should have been taken.

Federal Regulations at 7 CFR 273.2(g) provide that the Agency shall provide eligible households which complete the initial application process an opportunity to participate in the Food Stamp Program as soon as possible but no later than thirty days following the date that the application was filed. Households determined to be ineligible shall be sent a denial notice as soon as possible but not later than thirty days following the date the application was filed.

Department Regulations provide that upon special authorization by the local Agency an emergency assistance grant may be issued for payment of rent, taxes or mortgage for a period prior to the month in which a Public Assistance case is opened or prior to the period in which a current bill is due, when such payment is necessary to forestall eviction, no other housing facilities are available, and the health and safety of the person is severely threatened by failure to make such payment. 18 NYCRR 352.7(g)(4).

Section 352.3 of the Regulations states that each Social Services

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district shall provide a monthly allowance for rent in the amount of rent actually paid, but not in excess of the maximum in such district for the appropriate family size. The maximum monthly shelter allowance for a household of 1 person residing in heated premises in New York City is \$215.00.

Section 370.3 of the Department's Regulations provides that Agencies shall 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), Aid to Dependent Children (ADC), the Home Energy Assistance Program (HEAP) or Home Relief (HR). In cases where need is determined to be temporary, the grant may be limited to those items for which there is immediate need. The amount of such assistance is not limited to the maximum Public Assistance shelter schedule. Emergency Home Relief 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. An emergency is defined as a serious occurrence or situation needing prompt attention. State and federal reimbursement is not available to the local district for any allowance for shelter arrears issued more than once in a 12-month period.

Administrative Directive 83 ADM-47, dated September 29, 1983, provides that the Agency must ensure that homeless persons or persons in immediate danger of becoming homeless can apply for Emergency Housing whenever such Emergency Housing is needed. Emergency Housing must be provided immediately if a homeless person is determined eligible. Pursuant to this administrative directive, it is the stated policy of the Department that Emergency Housing placements are as brief as possible and minimize both the dislocation from the homeless persons community and any disruption to the client's life caused by such dislocation, with particular attention being paid to the client's community ties and medical needs.

#### DISCUSSION

The record establishes that services under the PSA Program were requested for the Appellant on March 18, 1991 by Ms. Beth Sutterlin, an attorney for MFY Legal Services Inc. which is representing the Appellant. At that time she informed the Agency's PSA unit that the Appellant was in danger of being evicted and that he suffered from short-term memory loss. The Agency found the Appellant ineligible to receive services from its PSA program due to a conclusion by its psychiatrist that the Appellant did not appear "mentally impaired". The documentary evidence, however, was not sufficiently specific to address the contentions made on Appellant's behalf that he suffers from short-term memory loss, and other medical conditions, which impair his ability to take care of certain of his needs without the assistance of others. It is undisputed that the Appellant was never evaluated by a doctor for impairments caused by physical conditions, despite the fact that Appellant cannot remember the last time that he underwent a medical examination. Therefore, the Agency's determination that the Appellant is ineligible to receive services from its PSA Program cannot be sustained at this time.

Both parties to this hearing agree that the Agency did not send either

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the Appellant or his representative written notice of its determination that the Appellant was ineligible to receive PSA. The Department's Regulations specifically require written notice of either the acceptance or denial of an application for services. At the hearing Mr. Fred Santo, the director of the Agency's PSA unit for Brooklyn, testified that it is Agency policy not to send written notices to applicants for PSA or to a person who has contacted PSA about such services for a third person. Mr. Allen Ferster, the Agency's attorney, contended that the Agency is not under an obligation to send notices of acceptance or denial to applicants for PSA and he argued that it is not feasible to do so with the large number of applicants and the workload caused by the current financial crisis in New York City. As stated, the Department's Regulations clearly and specifically require written notices to be provided in all cases of application for services. It is noted that some persons being evaluated for PSA services might not be able to understand the nature of such an evaluation. In such a case notice of acceptance or denial should also be sent to the person who referred the applicant to PSA. This is so in the present case where the Appellant's attorney advised the Agency of Appellant's need for her involvement. In view of the Agency Representatives' statements confirming the Appellant's challenge that it is Agency policy not to send notice of acceptance or denial to applicants for PSA services despite Department requirements to the contrary, the Agency is advised herein that it must provide adequate written notice to applicants for PSA.

The Appellant's monthly income of \$272.00 is less than the State standard of need for a one person household with Appellant's verified rent expense, and indicates the Appellant may be eligible to receive Public Assistance. However, the Agency did not begin to evaluate the Appellant's eligibility to receive a grant of Public Assistance, Medical Assistance, Food Stamps or a special grant of assistance for payment of rent until May 30, 1991 despite the fact that the Appellant had signed an application for assistance on March 27, 1991 and despite the Agency's knowledge that the Appellant was in imminent danger of eviction. At the hearing the Agency contended that it was unable to transfer the Appellant's case to an Income Support Center unless the Appellant was eligible to receive PSA. The inaction on the Agency's part to see that Appellant's application was adequately and timely processed is contrary to the requirements of the Social Services Law, the Department's Regulations and the Department's policy. It is the Agency's responsibility to advise applicants of the eligibility and processing requirements to ensure prompt evaluation of their applications. When an applicant contacts the Agency for assistance the Agency must advise the applicant of his/her responsibilities in the application process and, in fact, to provide assistance to the applicant in meeting those responsibilities if the applicant is in need of such help. That the Agency has a separate unit designated to determine eligibility for PSA only, does not absolve it of its responsibilities when approached with a request for assistance or services available under other programs provided by the Agency. There was no evidence at the hearing that the Appellant, or his representative, was made aware that his application for Public Assistance, Medical Assistance, Food Stamp benefits or special assistance to pay rent arrears would not be processed, or forwarded for processing, by the PSA unit in March 1991, or that there was any requirement that they report.

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to a different Agency office at that time to establish eligibility. The PSA unit should either have transferred the Public Assistance (including rent assistance), Medical Assistance and Food Stamp components of the Appellant's application to the correct Income Support Center on March 27, 1991, the date of the Appellant's application or have informed the Appellant's representative how to go about doing so. Therefore, the Agency should evaluate the Appellant's eligibility to receive such assistance based on an application of March 27, 1991. Although the Agency is now evaluating the application, its failure to have timely done so, particularly in light of the threatened eviction was not proper.

It is noted that the Appellant's rent arrears began in December, 1990 when his monthly rent was increased from \$350.00 to \$500.00 and that his current monthly income is less than his rent. The Appellant's attorney stated that the Appellant has plans for payment of his future rent including: eligibility for Supplemental Security Income in July, 1991 when he will be 65 years old and receipt of a Section 8 rent subsidy in two to three months. The Appellant's attorney further stated that he believes that the Appellant's landlord will wait until the Appellant's rent is lowered by the Section 8 rent subsidy if he receives full rent from December, 1990 through May, 1991.

#### DECISION AND ORDER

The Agency's determination to deny the Appellant's application for services under the PSA Program is not correct and is reversed.

1. The Agency is directed to re-evaluate the Appellant's eligibility to receive services, including a determination as to whether the Appellant has any medical conditions or impairments which render him unable to obtain services necessary for his own care and protection.

2. The Agency is directed to provide the Appellant and his representative with written notice of its determination to either accept or deny the Appellant's application for services under the PSA Program and to provide any services for which he is eligible.

3. The Agency is further directed to provide all applicants for PSA with written notice of the Agency's determination concerning their applications in accordance with the provisions of 18 NYCRR 358-6.3.

The Agency's failure to act on the Appellant's March 27, 1991 application for a grant of Public Assistance, Medical Assistance and Food Stamps, as well as for a special grant of assistance for payment of rent arrears is not correct and is reversed.

1. The Agency is directed to complete the processing of the Appellant's eligibility for a grant of Public Assistance, Medical Assistance and Food Stamps, as well as for a special grant of assistance for payment of rent arrears, expeditiously and in sufficient time to meet the Appellant's need for a decision with regard to his request for assistance for payment of rent arrears before June 21, 1991.

2. The Agency is further directed to provide the Appellant with written notice of its determination and to provide all assistance for which Appellant is eligible in accordance with Sections 351.8, 352.7(g)(4), 360-2.4(c), 370.3 and 387.5 of the Regulations.

3. In the event that the Appellant is unable to prevent eviction and becomes homeless, the Agency is directed to provide appropriate Emergency Housing Assistance in accordance with 83 ADM-47.

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

JUN 13 1991

By *Dulce V. Wisniewski*

Commissioner's Designee