

**STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE**

REQUEST: February 21, 2008
CASE #: XXXXXXXXXXXXA
CENTER #: 18
FH #: 4972591P

In the Matter of the Appeal of
A G
from a determination by the New York City
Department of Social Services

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**DECISION
AFTER
FAIR
HEARING**

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 March 5, 2008, in New York City, before Elizabeth Hewitt, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

A G, Appellant; Abdus-Salaam Wahid, Appellant's Representative

For the Social Services Agency

Jurema Hadley, Fair Hearing Representative

ISSUES

Was the Agency's failure to grant the Appellant's application for emergency assistance to pay rent arrears, correct?

Was the Agency's determination to discontinue the Appellant's shelter allowance supplement under the Housing Stability Plus program correct?

Was the determination of the Agency to discontinue the Appellant's Public Assistance and Food Stamp benefits correct?

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 twenty-eight, resides with her two children, ages four and six years old.
2. The Appellant's household is in receipt of Public Assistance and Food Stamp benefits.
3. The Appellant has a monthly rental obligation in the amount of \$964.31.
4. In February 2008, the Appellant requested that the Agency provide her with emergency assistance to pay her rent arrears.
5. The Agency has failed to grant the Appellant's request for emergency assistance to pay rent arrears.
6. The Appellant owes rent arrears in the amount of \$8,293.08.
7. On July 14, 2007, the Agency sent a Notice of Intent to the Appellant setting forth its intention to discontinue the Appellant's Public Assistance and Food Stamp benefits because Appellant failed to report to a face-to-face recertification interview.
8. Effective August 2007, the Appellant's shelter allowance supplement under the Housing Stability Plus program was discontinued without notice.
9. On February 21, 2008, the Appellant requested this fair hearing to contest the Agency's determinations.

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.

Resources shall be so utilized as to eliminate or reduce the need for assistance, rehabilitate the client and conserve public funds through assignment and recovery. 18 NYCRR 352.23(a).

Shelter arrears payments are limited to a total period of six months once every five years unless the district determines, at its sole discretion, that additional shelter arrears payments are

necessary based on the individual case circumstances. 18 NYCRR 352.7(g).

Social Services Law Sections 131-a.1 requires Social Services districts to provide Public Assistance to needy persons who are determined to be eligible in accordance with standards of need set forth in Social Services Law Section 131-a.2. The standard of need and a monthly grant of assistance must include amounts for shelter.

Department Regulations provide that each social services district shall provide a monthly allowance for rent in the amount actually paid but not in excess of the appropriate maximum in such district depending upon family size. 18 NYCRR 352.3. The maximum monthly shelter allowance in this Social Services district for a household of three persons where children reside in the household is \$400.00.

Sections 351.1 and 351.2 of the Regulations provide that it is the responsibility of the recipient to provide verification of factors which affect eligibility for assistance and the amount of entitlement, including rent payment or cost of shelter.

Department Regulations provide that, upon special authorization by the local Agency, an emergency assistance grant may be issued for payment of rent, property taxes or mortgage arrears for the time prior to the month in which a Public Assistance case is opened or for applicants for ESNA or EAF, when such payment is essential to forestall eviction or foreclosure, no other housing facilities are available, and the health and safety of the person is severely threatened by failure to make such payment. The applicant must reasonably demonstrate an ability to pay shelter expenses, including any amounts in excess of the agency maximum shelter allowance, in the future and must not have sufficient income or resources to secure and maintain alternative permanent housing. The applicant, if accepted for ongoing Public Assistance, must agree to future restriction of shelter payments. 18 NYCRR 352.7(g)(3).

For any period of time prior to which the person received Public Assistance, the amount of the emergency assistance grant that may be provided pursuant to 352.7(g)(3) cannot exceed the maximum Public Assistance shelter allowance. The agency may issue a grant for shelter arrears in excess of the maximum monthly shelter allowance but any such amount is an overpayment subject to recovery and recoupment in accordance with Section 352.31 of the Department's Regulations.

A recipient of Family Assistance or Safety Net Assistance who is threatened with eviction or foreclosure or who is being evicted or whose property is being foreclosed upon for non-payment of rent, mortgage or taxes incurred during a period for which a grant had been previously issued to the recipient may be provided with an advance allowance for rent, mortgage principal and interest payments or taxes. Advance investigation of the need for restricted payments must be conducted in accordance with Part 381 of this Title. 18 NYCRR 352.7(g)(4)

An advance allowance may only be provided if the recipient has made a request in writing for such an allowance and has also requested that the monthly grant be reduced to recoup such an allowance. For Family Assistance recipients, such recoupment must be ten percent of the

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household's needs. For Safety Net Assistance recipients such recoupment must be 15 percent of the household's needs. In either case, if undue hardship is claimed and substantiated, the recoupment must not be less than five percent of the household's needs. For purposes of determining the amount to be deducted from a Public Assistance grant, the household's needs include an allowance for recurring needs, the home energy and supplemental home energy allowances, the shelter allowance, any fuel for heating allowance, any personal needs allowance, any restaurant allowance, any allowances for chattel mortgages or conditional sales contracts, any pregnancy allowance and any water allowance. 18 NYCRR 352.11; 18 NYCRR 352.31(d).

An allowance which exceeds the appropriate local agency maximum monthly shelter allowance can be made only if all of the following conditions are met:

- (i) the recipient agrees to use all available liquid resources for the payment of shelter expenses necessary to prevent eviction or foreclosure;
- (ii) the recipient demonstrates an ability to pay shelter expenses in the future, including any amounts in excess of the appropriate local agency maximum monthly shelter allowance;
- (iii) the recipient agrees to future restriction of rent or mortgage payments; and
- (iv) the recipient has not previously received an allowance in excess of the appropriate local agency maximum monthly shelter allowance pursuant to this paragraph and, subsequent to receiving such allowance, requested discontinuation of restriction of the shelter payments to which he or she agreed pursuant to this paragraph.

18 NYCRR 352.7(g)(4).

Section 352.35(f) of the Regulations states that a homeless individual or family applying for or receiving temporary housing assistance is subject to the income and resource requirements of this Title; and must cooperate with the social services district's efforts to determine available resources, and must apply for and use any benefits and resources that will reduce or eliminate the need for temporary housing assistance, in accordance with the provisions of this Title.

A social services district with the approval of the Office of Temporary and Disability Assistance may provide an additional monthly shelter supplement to families with children who are public assistance applicants or recipients and who will reside in private housing. Social Services districts choosing to provide a supplement must submit a plan to the Office of Temporary and Disability Assistance, attention: Division of Temporary Assistance prior to providing the supplement. The supplement must be a monthly amount that, when combined with the shelter allowance, does not exceed the rental obligation of the applicant or recipient. 18 NYCRR 352.3(a)(3)(i).

Housing Stability Plus is a New York City shelter supplement that is potentially available to eligible Public Assistance participants residing in shelter facilities (e.g., shelters administered by

the Department of Homeless Services, Human Resources Administration Domestic Violence, and Housing Preservation and Development). It is also potentially available to Public Assistance families with children reunifying from foster care where the only barrier to reunification is housing. Financial assistance to help pay the rent in the form of a rent supplement is provided. To encourage self-sufficiency, the rent supplement will last for a period of five years and will be reduced automatically each year by 20 percent after the first 12 months in the program. Further, continued receipt of the rent supplement requires compliance with all public assistance requirements, including employment requirements.

For Housing Stability Plus, eligible singles and childless couples will be able to participate in a demonstration project for the chronically homeless on a limited basis. The demonstration project is limited to 1,000 eligible households per year and will be reevaluated for continuation at the end of two years. Eligible adults must be referred by a Housing Specialist or Case Manager from their shelter. There is no limit to the number of family cases that can participate in Housing Stability Plus.

For Housing Stability Plus there are length of stay requirements in the shelter system that may be impacted by the status of being a family, childless couple, or a single individual, as well as being impacted by the type of shelter placement.

Basic, but not necessarily exclusive, requirements for applicants for Housing Stability Plus include: at least one family member must have an active Public Assistance case, where no member of the case is in sanction status; sign a Housing Stability Plus application and Statement of Understanding; comply with applicable Client Responsibility standards; and, secure permanent housing within the five boroughs; and, agree to review/walk-through of the apartment by Department of Homeless Services and/or the Human Resources Administration.

A family member not in receipt of regularly recurring Public Assistance (including those in receipt of SSI) is not included when determining the rent supplement amount. Non-Public Assistance family members are required to contribute 30 percent of their total income or a pro rata share of the actual rent, whichever is less, toward the shelter expense; this provision does not apply to ineligible noncitizens. For a household with an SSI recipient, the maximum rent that may be permitted for a Housing Stability Plus family equals the amount of the regularly recurring Public Assistance shelter allowance and rent supplement plus the amount of a non-Public Assistance member's SSI contribution. In no event will the maximum rent permitted exceed the Public Assistance shelter allowance for the case if the entire household was on Public Assistance.

Income earned or received by members of a Public Assistance household does not reduce the Housing Stability Plus rent supplement but may reduce the Public Assistance shelter allowance under normal Public Assistance budgeting; this would result in the need for the family to make an out-of-pocket contribution toward the rent. Households must pass the 185-percent gross income test and remain eligible for Public Assistance in order to receive the Housing Stability Plus supplement.

Regulations at 18 NYCRR 358-3.7(a) provide that an Appellant has the right to examine the contents of the case record at the fair hearing. The Agency must provide complete copies of its documentary evidence to the hearing officer at the hearing and also to the Appellant or representative where such documents were not otherwise provided in accordance with 18 NYCRR 358-3.7. 18 NYCRR 358-4.3(a). Unless a waiver of appearance is approved by the Office of Administrative Hearings, a representative of the Agency must appear at the hearing along with the case record and a written summary of the case and be prepared to present evidence in support of its determination. If a waiver has been approved, the hearing officer may require the Agency's appearance if necessary to protect the appellant's due process rights. 18 NYCRR 358-4.3(b) and (c). In fair hearings concerning the discontinuance, reduction or suspension of Public Assistance, Medical Assistance, Food Stamp benefits or services, the Agency must establish that its actions were correct. 18 NYCRR 358-5.9(a).

When a Food Stamp household requests a hearing to review the Agency's determination to discontinue, suspend or reduce its Food Stamp benefits, Federal regulations require that the local Agency must appear at the hearing with the household's case record. Federal Regulations also require that the contents of the case file be made available to the Food Stamp household during the hearing. Such information is essential in order to provide for the proper review of the Agency's determination. (7 CFR 273.15(p))

Where Food Stamp benefits are lost due to an error by the Agency, the Agency is required to restore lost benefits. However, lost benefits shall be restored for not more than twelve months prior to whichever of the following occurred first:

1. The date the Agency received a request for restoration from a household; or
2. The date the Agency is notified or otherwise becomes aware that a loss to a household has occurred.

7 CFR 273.17; 18 NYCRR 387.18 and Food Stamp Source Book, Section 10.

DISCUSSION

The Appellant stated that she resides with her two minor children. The Appellant stated that the household is in receipt of Public Assistance benefits. The Appellant testified that the household is not in receipt of any additional income. The Appellant stated that she has a monthly rental obligation in the amount of \$964.31. The Appellant testified that she owes rent arrears in the amount of \$8,293.08.

The evidence in this case establishes that the Appellant requested that the Agency provide her with emergency assistance to pay her rent arrears. The Agency has failed to grant the Appellant's request for emergency assistance to pay rent arrears.

The evidence in this case fails to establish that the Appellant is eligible for emergency

assistance to pay rent arrears. The Agency's failure to grant the Appellant's application for emergency assistance to pay rent arrears must be sustained. Rent arrears payments are limited to a total period of six months once every five years unless the district determines, at its sole discretion, that additional rent arrears payments are necessary based on the individual case circumstances. In the present case the Appellant owes rent arrears for a period in excess of six months. Consequently, the Appellant is ineligible for assistance to pay her rent arrears unless the Agency exercises its discretion and determines that the Appellant is eligible for an exception to the six-month rent arrears limitation.

In the event that the Appellant is unable to prevent eviction and is evicted, the Appellant may apply for temporary housing assistance from the Agency.

The Appellant's shelter allowance supplement under the Housing Stability Plus program was discontinued without notice effective August 2007. Although duly notified of the time and place of the present fair hearing, the Agency did not submit any evidence at the hearing in support of its determination to discontinue the Appellant's Housing Stability Plus shelter allowance supplement. Consequently, the evidence fails to support the Agency's determination to discontinue the Appellant's Housing Stability Plus shelter allowance supplement.

The evidence establishes that the Agency sent a Notice of Intent to the Appellant advising the Appellant that it had determined to discontinue the Appellant's Public Assistance and Food Stamp benefits because Appellant failed to report to a face-to-face recertification interview.

The Agency was duly notified of the time and place of the hearing. However, the Agency failed to present any documentation concerning the determination in issue. Therefore, with respect to the Agency's determination to discontinue the Appellant's Public Assistance, the Agency failed to meet its obligations under 18 NYCRR 358-4.3(b), and failed to establish that its determination was correct pursuant to 18 NYCRR 358-5.9(a). With respect to the Agency's determination to discontinue the Appellant's Food Stamp benefits, the Agency failed to meet its obligations under 18 NYCRR 358-4.3(b) and federal regulations, and failed to establish that its determination was correct pursuant to 18 NYCRR 358-5.9(a).

The Appellant requested this hearing on February 21, 2008. Section 22 of the Social Services Law provides that a request for a Fair Hearing to review an Agency's determination must be made within sixty days of the date of the Agency's action complained of regarding Public Assistance benefits, and within ninety days of the date of the Agency's action complained of regarding Food Stamp benefits. In this case, the Agency cited the Statute of Limitations and presented the July 14, 2007 notice at the fair hearing, which notice contained the requisite statute of limitations language regarding the Appellant's rights of appeal, to establish that the Appellant was advised of the statutory limitations for requesting a Fair Hearing. With respect to the failure to request a fair hearing within the applicable time limits, the Appellant contended that this failure was caused by the fact that Appellant did not receive the notice of July 14, 2007 and consequently was never notified of the statutory limitations for requesting a Fair Hearing. The Agency presented an affidavit of mailing to establish that the July 14, 2007 notice was mailed to the Appellant. However, the Agency failed to establish that the Notice of Intent was mailed to

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the Appellant, inasmuch as the Agency failed to establish the existence of a nexus between the Agency's affidavit of mailing and the Notice of Intent in question. The evidence establishes sufficient grounds for tolling the sixty day and ninety day statute of limitations.

DECISION AND ORDER

The Agency's failure to grant the Appellant's application for emergency assistance to pay rent arrears is correct.

The Agency's determination to discontinue the Appellant's shelter allowance supplement under the Housing Stability Plus program is not correct and is reversed.

1. The Agency is directed to restore the Appellant's shelter allowance supplement under the Housing Stability Plus program retroactive to the date such supplement was discontinued.

The determination of the Agency to discontinue the Appellant's Public Assistance and Food Stamp benefits is not correct and is reversed.

1. The Agency is directed to withdraw its Notice of Intent dated July 14, 2007 with respect to the Appellant's Public Assistance and Food Stamp benefits.
2. The Agency is directed to restore any Public Assistance and Food Stamp benefits lost as a result of the Agency's action in accordance with the provisions of 18 NYCRR 352.31(f) and 18 NYCRR 387.18, respectively.

Should the Agency in the future determine to implement its previous action, it is directed to procure and review the Appellant's case record with respect to a determination relating to the Appellant's Public Assistance and Food Stamp benefits, to issue a new Notice of Intent and to produce the required case record(s) at any subsequent fair hearing.

Should the Agency need additional information from the Appellant in order to comply with the above directives, it is directed to notify the Appellant promptly in writing as to what documentation is needed. If such information is requested, the Appellant must provide it to the Agency promptly to facilitate such compliance.

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

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DATED: Albany, New York
March 7, 2008

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee