

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

REQUEST: August 9, 1991
CASE No. n/a
CENTER No. Dutchess
FH No. 1711094H

In the Matter of the Appeal of :
A :
: DECISION
: AFTER
: FAIR
from a determination by the Dutchess County : HEARING
Department of Social Services :
:
:

JURISDICTION

This appeal is from a determination by the local Social Services Agency relating to the denial of Emergency Housing.

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 August 20, 1991, in Dutchess County, before Maria T. Vidal, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Page Lockhart, Esq., Appellant's representative

For the Local Social Services Agency

Albert Carlson, Agency Representative

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 Public Assistance for a two person household which includes the Appellant and her child.
2. The Appellant has been receiving emergency housing at G House in P , New York.
3. The Appellant was evicted from Gannet House on July 25, 1991 for non compliance with shelter rules.

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4. The Agency determined to deny any further emergency housing request to the Appellant on the grounds that she had caused her own eviction from the shelter. The Agency hand delivered a denial notice to the Appellant on August 3, 1991. The notice failed to contain the Appellant's name, case number, date of notice, or effective date of Agency action.

5. As result of the request for this hearing, the Appellant was granted Aid to Continue and is currently placed at The V Motel in P V .

6. The Appellant requested this hearing to review the Agency's determination.

ISSUE

Was the Agency's determination to deny the Appellant's request for emergency housing correct?

APPLICABLE LAW

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 educational and community ties.

358-2.2 Adequate notice.

- (a) Except as provided in subdivision (b) of this section, an adequate notice means a notice of action, or an adverse action notice or an action taken notice which sets forth all of the following:
- (1) the action the social services agency proposes to take or is taking, and if a single notice is used for all affected assistance, benefits or services, the effect of such action, if any, on a recipient's other assistance, benefits or services. Otherwise the notice shall state that there will be a separate notice for other affected assistance, benefits or services.
 - (2) except in the case of a denial, the effective date of the action;
 - (3) except in the case of an acceptance of an application for a covered program or service, the specific reasons for the action;
 - (4) the specific laws and/or regulations upon which the action is based;

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- (5) the applicant's or recipient's right to request an agency conference and fair hearing;
- (6) the procedure for requesting an agency conference or fair hearing, including an address and telephone number where a request for a fair hearing may be made and the time limits within which the request for a fair hearing must be made;
- (7) an explanation that a request for a conference is not a request for a fair hearing and that a separate request for a fair hearing must be made. Furthermore, that a request for a conference does not entitle one to aid continuing, and that a right to aid continuing only arises pursuant to a request for a fair hearing.
- (8) when the agency action or proposed action is a reduction, discontinuance, restriction or suspension of public assistance, medical assistance, food stamp benefits or services, the circumstances under which public assistance, medical assistance, food stamp benefits or services will be continued or reinstated until the fair hearing decision is issued; that a fair hearing must be requested separately from a conference; and a statement that when only an agency conference is requested and there is no specific request for a fair hearing, there is no right to continued public assistance, medical assistance, food stamp benefits or services; and that participation in an agency conference does not affect the right to request a fair hearing and;
- (9) the right of the applicant or recipient to review the applicant's or recipient's case record and to obtain copies of documents which the agency will present into evidence at the hearing and other documents necessary for the applicant or recipient to prepare for the fair hearing at no cost. The notice must contain an address and telephone number where the applicant or recipient can obtain additional information about: the applicant's or recipient's case; how to request a fair hearing; access to the case file; and/or obtaining copies of documents;
- (10) the right to representation by legal counsel, a relative, friend or other person or to represent oneself, and the right to bring witnesses to the fair hearing and to question witnesses at the hearing;
- (11) the right to present written and oral evidence at the hearing;
- (12) the liability, if any, to repay continued or reinstated assistance and benefits, if the recipient loses the fair hearing;

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- (13) information concerning the availability of community legal services to assist an applicant or recipient at the conference and fair hearing; and
- (14) a copy of the budget or the basis for the computation, in instances where the social services agency's determination is based upon a budget computation. This subdivision does not apply to actions taken involving HEAP benefits.
- (15) when an action concerning medical assistance is based on a change in law, a statement of the circumstances under which a hearing may be obtained and assistance continued. Such statement must advise the recipient that although the recipient has the right to have a hearing scheduled, the hearing officer at the hearing may determine that the recipient did not have a right to a hearing or continuation of assistance if the sole issue is a federal or State law requiring an automatic change adversely affecting some or all medical assistance recipients.

DISCUSSION

The Agency's record at the hearing established that the Appellant was placed at the G House on July 19, 1991. The Agency's case record also established that the Appellant signed an agreement whereby she acknowledged that if she caused herself to be evicted from the shelter, the Agency would terminate her emergency assistance.

The undisputed evidence at the hearing established that the Appellant was evicted from the G House and that the eviction was caused by the Appellant.

The Appellant's representative argued at the hearing that her client was not given an appropriate or adequate notice of intent and that there is no basis in the Regulations or the Statute for the Agency's policy.

On the first argument, the record reflects that the Appellant's representative is correct in her contention. The notice issued by the Agency is far from an adequate notice. Even though the Agency contended that it was hand delivered, the notice has no name, case number, date, or effective date of the Agency's action. In addition, although the notice purports to be a denial, in actuality the Agency's actions constituted a discontinuance of assistance. While any one of these deficiencies might be cured so as to not render the notice void, given all of the deficiencies found in this notice, it is so inadequate that it must be considered to be void. The Agency's action can not, therefore, be found to have been proper inasmuch as the notice upon which such action is based is void. It is also noted that the Appellant's representative's further arguments need not be addressed at this time given the inadequacy of the notice.

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DECISION

The Agency's determination to discontinue the Appellant's emergency assistance benefits is not correct and is reversed.

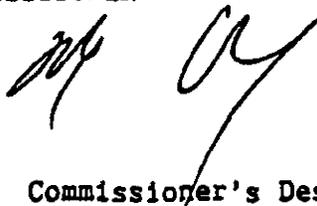
The Agency is directed to continue to provide the Appellant with emergency housing assistance.

DATED: Albany, New York

CESAR A. PERALES
COMMISSIONER

SEP 04 1991

By



Commissioner's Designee