

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST November 19, 2001
CASE # P
CENTER Suffolk
FH # 3628005Y

In the Matter of the Appeal of

S R

:

DECISION
: AFTER
FAIR
HEARING

from a determination by the Suffolk County
Department of Social Services

:

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 December 27, 2001, in Suffolk County, before Richard S. Levchuck, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

S R, Appellant; Kathleen Whelan, Esq., Appellant's
Representative; J, Witness

For the Social Services Agency

Randi Delirod, Fair Hearing Representative; Jeannette O'Keefe, Agency
Representative; Sue LaSala, Witness

ISSUES

Was the Agency's determination to discontinue Appellant's temporary housing assistance placement at the B E Motel without prior notice correct?

Was the Agency's determination to discontinue Appellant's supportive services of busing for her children to attend school in R, New York correct?

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 temporary housing assistance for herself and her five minor children, three of which for whom she receives Public Assistance.

2. The Appellant and her family were receiving temporary housing

assistance at the B E Motel, located in E Q , New York since February 26, 2001.

3. On November 16, 2001, which was a Friday, two workers from the Agency appeared at the B E Motel. The Appellant was at work at the time that the Agency workers appeared. The workers advised the Appellant's oldest child, who is eleven years of age, that their family would be relocated that evening.

4. A volunteer from M of K appeared at the B E Motel on November 16, 2001 and agreed to move the Appellant and her family the following day.

5. On November 19, 2001, the Appellant's representative requested this fair hearing.

6. On November 19, 2001, a representative of the Agency's Division of Housing Services (DHS) contacted the R School District to inform the district that the busing being provided by the Agency from the B E Motel was being terminated. This representative advised the school district that it and not the Agency is responsible for busing the Appellant's children.

7. On November 19, 2001, the Agency advised the Appellant that because she was in temporary housing that was not authorized by the Agency, the school district was responsible for busing her children. The letter further stated that the Agency had notified the school district of this change in her status and advised her to contact the R School District to arrange bus transportation.

8. On November 23, 2001, the Agency issued a Notice of Intent to the Appellant advising her of its determination to deauthorize her housing placement at the B E Motel as of November 17, 2001. The Agency's notice further advised the Appellant that she signed the independent living plan on February 27, 2001 and agreed to comply with all reasonable directives, written or verbal, from the Agency or shelter staff. The notice also advised the Appellant that "you agreed to leave the shelter upon deauthorization from DSS. On November 16, 2001, you received verbal notification from DHS of your transfer to L M Shelter, a DSS shelter. Your emergency housing placement and busing services has been at L M since November 17, 2001."

9. The Appellant remained at the B E Motel until November 30, 2001 when she moved to the L M Shelter after contacting R School District officials to arrange for transportation for her children.

10. The Agency paid the B E Motel for the period through November 17, 2001.

11. The Appellant and a volunteer from M of K incurred expenses for mileage and taxi cab fares to transport her children to and from school for seven school days during the period from November 19, 2001 through November 30, 2001.

APPLICABLE LAW

Administrative Directive 94 ADM-20, dated December 29, 1994, and amended December 27, 1996, requires local districts to provide services and assistance to prevent homelessness and to meet temporary housing and other immediate needs of eligible homeless persons. Districts must have procedures to: (a) ensure that emergency needs of homeless persons are evaluated and that homeless persons are advised of their rights to emergency and ongoing assistance; (b) permit persons who are in danger of becoming homeless to notify the district of such danger and to seek the assistance of the district in avoiding homelessness; (c) ensure that homeless persons or persons in danger of becoming homeless can apply for temporary housing whenever such housing is needed; (d) identify and, where appropriate, meet the immediate food and other immediate health and safety needs of eligible homeless persons; (e) provide Medical Assistance (MA) to otherwise eligible homeless persons; and (f) provide temporary housing assistance as soon as possible to eligible homeless persons who have no other available temporary or permanent housing. Pursuant to this ADM, the district must make reasonable efforts to determine the applicant's eligibility prior to providing temporary housing assistance. It is the expectation that assistance will be provided within 48 hours of application for such assistance. In providing assistance to homeless persons, districts must consider the differing services needs of families and of single adults. Such factors as the higher incidence of physical or mental impairment, chronic drug or alcohol abuse and prior incarceration or institutionalization exhibited by homeless single adults are relevant in determining housing needs and should be considered in developing procedures for the provision of temporary housing assistance.

As a general rule, individuals and families must be responsible for making their own housing arrangements. Districts have a limited ability to provide housing and are neither expected nor obligated to provide temporary housing assistance unless it is clearly demonstrated that the person requesting assistance is faced with an immediate need for housing, has made reasonable efforts to secure housing and cannot access any other housing even on a temporary basis.

Each district must provide temporary housing assistance only to persons who can establish that they are without housing at the time assistance is requested and have sought and cannot access any other housing even on a temporary basis. Persons who resided in their own or shared housing immediately prior to requesting temporary housing are presumed to not be in immediate need of assistance except in cases where a fire, flood or other sudden emergency has rendered the previous housing uninhabitable. Such persons must establish that they cannot return to their prior housing.

When placing persons in temporary housing or when transferring persons between temporary housing accommodations, a district must attempt, but is not required, to make placements within these persons' community, giving consideration to the children's educational needs, employment needs, medical needs and child care needs.

A district must meet emergency needs of eligible persons and determine,

based upon the particular circumstances, the most appropriate temporary housing assistance for such persons. Homeless persons do not have the right to choose their own temporary placements. The overriding concern is the district's efforts to locate, secure and pay for housing which meets basic standards of health and safety, as set forth in applicable regulations. When the district determines that a particular temporary housing placement is appropriate, the homeless person must accept the placement unless, in the district's judgment, he or she has good cause for refusing to do so. It may be good cause if the homeless person would be unable to participate in medical, alcohol or drug treatment or in employment or training because of a transportation hardship created by the location of the temporary housing placement.

Regulations at 18 NYCRR 352.35(a)(2) define independent living plan as a plan developed and/or revised by a social services district and/or its designee, with the cooperation of an individual or family, which sets forth a strategy for meeting such individual's or family's housing-related public assistance and care needs as identified in an assessment and for obtaining housing other than temporary housing and which establishes such individual's or family's responsibilities during their receipt of temporary housing assistance and specifies the conditions upon which temporary housing assistance will be provided. An independent living plan also must specify the temporary housing facility, if any, to which the individual or family has been or will be referred, any requirements of such facility, and the expected duration of the individual's or family's receipt of temporary housing assistance.

Subparagraph (3) defines temporary housing to include family shelters authorized by Part 900 of this Title and section 352.8(a) of this Part, room and board authorized by section 352.8(b) of this Part which is provided to a homeless person on a temporary basis, hotel/motel facilities authorized by section 352.3(e) of this Part and shelters for adults authorized by Part 491 of this Title.

Subparagraph (4) further defines temporary housing assistance as a public assistance benefit provided temporarily for an eligible homeless individual or family to meet an immediate need for shelter.

Regulations at 18 NYCRR 352.35(c) provide that as a condition of eligibility for temporary housing assistance, individuals and families must comply with the requirements of this subdivision. Temporary housing assistance will be denied or discontinued under the conditions specified below. Temporary housing assistance will not be denied or discontinued for failure of the individual or family to comply with the requirements of this subdivision when such failure is due to the physical or mental impairment of the individual or family member.

Subparagraph (3) of this subparagraph provides that an individual or family must actively seek housing other than temporary housing, as required by the social services district, and not unreasonably refuse or fail to accept any such housing, including but not limited to, permanent housing, reunification with family or relocation to other appropriate residential facility.

Pursuant to a letter from Michael J. Dowling, Deputy Commissioner of the New York State Department of Social Services to the local commissioners, dated August 15, 1983, the Agency must provide an allowance for transportation costs incurred by homeless families with children in seeking permanent housing and in enabling the children to continue in their school. These allowances are authorized by Part 372 of 18 NYCRR, which sets forth the requirements and entitlements under the Emergency Assistance to Needy Families with Children Program.

Regulations at 18 NYCRR 358-2.2 defines adequate notice as follows:

- (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. In addition, in the case of:
 - (i) a reduction of public assistance or food stamp benefits: both the dollar amount of assistance or benefits prior to the reduction and the reduced amount must be specified;
 - (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;
 - (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;
- (13) information concerning the availability of community legal services to assist an applicant or recipient at the conference and fair hearing; and

If you are an applicant or a recipient of assistance, benefits or services you have a right to a fair hearing if your public assistance, medical assistance, food stamps or services have been discontinued, suspended or reduced, or your public assistance, medical assistance or food stamps have been increased. 18 NYCRR 358-3.1(b)(3).

DISCUSSION

The Agency contended at the hearing that its letter dated November 19,

2001 (referred to in fact finding number seven above) was notice to the Appellant, albeit not an adequate notice within the definition set forth in 18 NYCRR 358-2.2 set forth above. The Agency noted that its usual practice is to provide recipients with one day's verbal notice prior to relocation.

The Agency has previously taken the position that temporary housing assistance at a motel is determined daily by the Agency, and the Agency is not required to send any notice when such assistance ceases. At this hearing, the Agency made reference to the independent living plan of the Appellant which advised her that her emergency housing placement would be changed if a more appropriate one becomes available and that she would be given adequate time to pack and move. The Agency also made reference to an addendum of the independent living plan in which the Appellant was advised of the requirement to comply with all reasonable directives, written or verbal from the Agency or shelter staff and that she must leave the shelter immediately upon deauthorization by the Agency.

However, in a prior Decision After Fair Hearing number 3513875J, which also involved the Appellant, the Commissioner stated that pursuant to 18 NYCRR 352.35(b)(4) temporary housing assistance is a public assistance benefit provided temporarily for an eligible homeless individual or family to meet an immediate need for shelter. The decision further stated that any cessation or other change in the Public Assistance benefit requires appropriate notice.

The Agency contended that the prior Decision After Fair Hearing was distinguishable in that no prior notice was ever given to the Appellant and that the issue in the cited Decision After Fair Hearing involved a discontinuance of temporary housing assistance payments.

In this case however, the relocation of the Appellant involved a change in her temporary housing assistance benefit, which has been defined as a Public Assistance benefit. As such, adequate notice is required. This was reiterated to the Agency in a letter dated October 16, 2001 from the Principal Administrative Law Judge following a request for review of the cited Decision After Fair Hearing. That letter specifically referred to the situation where the Agency would place a recipient in alternative housing such as from a motel to a shelter. The letter also noted that the decision properly directed the Agency to provide retroactive payments to the housing vendor including cost incurred at the "different motel." The fact that the Agency, after learning that the Appellant had retained an attorney and requested a fair hearing, then issued the Notice of Intent dated November 23, 2001 does not cure its failure to issue adequate notice at the time of the original determination. Therefore the Agency remained responsible for payment at the motel until the November 23, 2001 notice was issued.

The Agency also contended that a recipient of temporary housing assistance can be relocated to another location if a more appropriate placement becomes available. However, while a recipient of temporary housing assistance may not have the right to choose their own temporary housing placements, the authority set forth in Administrative Directive 94-ADM-20 provides for circumstances under which a recipient would have good cause for refusing a temporary housing placement.

With regard to the busing, the Agency contended that once Appellant

remained in a temporary housing location that was not authorized by the Agency, the Agency ceased being responsible for the busing, and that responsibility for that busing reverted to the R school district. The Agency also contended that no notice was required to be issued on the discontinuance.

When Appellant was placed in temporary housing assistance, she was provided bus service to enable her children to continue to attend school in R. This is a supportive service which requires notice before any discontinuance can be effected. Inasmuch as the Agency issued a notice of intent to move Appellant on November 23, 2001 the Agency's responsibility for any expenses incurred by the Appellant regarding her children transportation to school is limited to the effective date of that notice.

DECISION AND ORDER

The determination of the Agency to discontinue Appellant's temporary housing assistance placement at the B E Motel without prior notice is not correct and is reversed.

The Agency's determination to discontinue Appellant's supportive services of busing for her children to attend school in R, New York is not correct and is reversed.

1. The Agency is directed to provide payment to the B E Motel on behalf of the Appellant for the period from November 18, 2001 through November 23, 2001.

2. The Agency is directed to provide the Appellant with reimbursement for school transportation expenses incurred by her from November 19, 2001 through November 23, 2001.

3. Should the Agency determine to actions of this nature in the future, it is directed to provide Appellant with adequate notice, in accordance with the foregoing.

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 required, 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.

DATED: Albany, New York
January 3, 2002

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By


Commissioner's Designee