

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

REQUEST: November 23, 2005
CASE #: N/A
AGENCY: Erie
FH #: 4444354J

In the Matter of the Appeal of
LS
from a determination by the Erie County
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 December 7, 2005, in Erie County, before Susan Hutchison, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

L S, Appellant; Sarah Smith and Megan Connelly, Neighborhood Legal Services

For the Social Services Agency

Ms. Baez , Fair Hearing Representative; Ms. Bird, Fair Hearing Representative

ISSUE

Was the Agency's determination to discontinue the Appellant's Temporary Housing services correct?

FINDINGS OF FACT

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. Since September 27, 2005, the Appellant, age 50, has been in receipt of temporary housing assistance, residing at the B T L, B, New York.
2. The Agency instructed the Appellant to report to the Agency on a weekly basis and to provide proof of obtaining permanent housing.

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3. By Notice dated November 3, 2005, the Agency denied the Appellant's application for Food Stamp benefits on the grounds that the Appellant did not provide a landlord statement by October 15, 2005.

4. By Notice dated November 22, 2005, the Agency advised the Appellant as follows: "This is your 10-day notice effective 11/22/05-12/1/05. You have to bring in proof that you have a permanent place to move into before your 10 days are finished. No other extension will be given."

5. On November 23, 2005, the Appellant requested this fair hearing.

6. At the fair hearing on December 7, 2005, the Agency stipulated that it would withdraw its Notice dated November 3, 2005, concerning its denial of the Appellant's application for Food Stamp benefits.

APPLICABLE LAW

A recipient of Public Assistance, Medical Assistance or Services has a right to a timely and adequate notice when the Agency proposes to discontinue, suspend, reduce or change the manner of payment of such benefits. 18 NYCRR 358-3.3(a).

An adequate notice is a notice of action, an adverse action notice or an action taken notice which sets forth the action that the 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. In addition, the notice must contain:

- the specific reasons for the action;
- except in the case of a denial, the effective date of the action.

18 NYCRR 358-2.2

A timely notice is a notice of action which is mailed at least 10 days before the date upon which the proposed action is to become effective.

18 NYCRR 358-2.23

18 NYCRR Section 352.35 Eligibility for temporary housing assistance for homeless persons, provides as follows:

- (a) Scope. This regulation governs the provision of temporary housing assistance to persons who are homeless. It sets forth the requirements with which an individual or family who applies for temporary housing must comply in order to be eligible for temporary housing assistance.
- (b) Definitions.
 - (1) Assessment is the evaluation of an individual's or family's housing and housing-related public assistance and care needs including, but not limited to, the availability of housing, the need for temporary housing assistance, employment and educational needs, the need for preventive or protective

- services, the ability to live independently, and the need for treatment of physical and mental health problems, including substance abuse.
- (2) Independent living plan is 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.
 - (3) Temporary housing includes 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.
 - (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.
- (c) 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.
- (1) An individual or family must cooperate in and complete an assessment conducted by the social services district. When an individual or family fails to cooperate in and complete the assessment, the social services district must deny the individual's or family's application for temporary housing assistance.
 - (2) An individual or family must cooperate with the social services district in developing, carrying out and completing an independent living plan, if the social services district, based on its assessment of the individual or family, has determined that such a plan will assist such individual or family to relocate to housing other than temporary housing. When an individual or family unreasonably fails to comply with the independent living plan requirements, the social services district must discontinue temporary housing assistance. When an individual or family unreasonably fails two or more times to comply with the independent living plan requirements, the social services district must discontinue temporary housing assistance and the individual or family is disqualified from receiving temporary

housing assistance until the failure ceases or for 30 days, whichever period of time is longer.

- (3) 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. When an individual or family fails to comply with these requirements, the social services district must discontinue temporary housing assistance until the failure ceases, or for 30 days, whichever period is longer.
- (4) An individual or family must refrain from engaging in acts which endanger the health or safety of oneself or others, or which substantially and repeatedly interferes with the orderly operation of a temporary housing facility. When an individual or family commits such acts, including but not limited to acts of violence, selling drugs, or repeated violations of the rules of a temporary housing facility, the social services district must discontinue temporary housing assistance until the failure ceases, or for 30 days, whichever period is longer.
- (d) (e) A homeless individual or family applying for or receiving temporary housing assistance, pursuant to sections 352.3(e) or 352.8 of this Part or Parts 371 or 491 of this Title, also must comply with all other applicable public assistance and care requirements including, but not limited to:
 - (1) requirements for participation in employment and training programs, in accordance with part 385 of this title, including looking for work, engaging in training, accepting jobs and work assignments, and participating in rehabilitative services;
 - (2) requirements for participation in rehabilitative services, as described in section 370.2(d)(7) of this Title and Part 385 of this Title;
 - (3) requirements for participation in the child support enforcement program, as described in sections 351.2(e)(2)(iv), 369.2(b) and 370.2(d) of this Title;
 - (4) requirements to apply for supplemental security income benefits, as described in sections 369.2(h) and 370.2(c)(5) of this Title;
 - (5) requirements for location of resources, as described in section 351.2(e) of this Title; and
 - (6) requirements for acceptance of the offer of a home, as described in section 370.2(c) of this Title.

Failure to comply with any public assistance and care requirements, including, but not limited to, those described above, will subject the recipient of temporary housing assistance to the sanctions specified in the applicable sections of this Title.

- (f) 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.
- (g) A social services district must deny or discontinue a person's or family's temporary housing assistance if it determines that the person or family has other housing available, or if it determines, consistent with the regulations in this Title, that the person or family is required to, but is not applying income and/or using available resources to reduce or eliminate the need for temporary housing assistance.
 - (h) Any individual or family whose application for temporary housing assistance is denied or whose temporary housing assistance is discontinued pursuant to subdivision (c) or (g) of this section, is entitled to a fair hearing, in accordance with subpart 358-3 of this Title.

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

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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.

All applicants must demonstrate by clear, convincing and credible evidence that they have actively sought and are unable to access any other temporary or permanent housing, including housing in which they had previously resided and temporary accommodations provided by friends or relatives. When an applicant has left shared housing, factors such as the duration of the stay, nature of the relationship of the applicant and the primary tenant, conditions in the household and the credibility of the applicant and the primary tenant all must be considered, and a determination of eligibility made based upon the totality of the circumstances. A primary tenant's claim, oral or written, that the family can no longer reside in the shared housing is not, by itself, sufficient to establish that the housing is no longer available.

Physical or mental impairments of the applicant or a family member that may have limited the applicant's ability to access other housing must be taken into consideration in determining if the applicant has made adequate efforts to secure other housing. Individuals or families fleeing domestic violence or child abuse should be distinguished from those claiming to be homeless for other reasons and the district must attempt to ensure that appropriate assistance is provided to such persons in a timely manner.

Applicants for temporary housing assistance are required to cooperate with the district's eligibility verification efforts by providing all information and documentation relevant to determining the applicant's eligibility for such assistance. Districts must make reasonable efforts to verify an applicant's eligibility for assistance. When assistance in obtaining information or documentation relevant to the verification of eligibility is required from an applicant, the district will attempt to assist the applicant to obtain such information or documentation, if necessary.

Temporary housing assistance is a temporary, emergency benefit and is intended to be provided only as long as is reasonably necessary for the recipient to find other housing. Persons in receipt of temporary housing assistance remain responsible for locating their own housing including, but not limited to, permanent housing, reunification with family, appropriate residential facilities and, if necessary, other temporary housing, such as shared 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

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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.

DISCUSSION

The Agency's determination to discontinue, effective December 1, 2005, the Appellant's temporary housing assistance, by Notice dated November 22, 2005 on the grounds the Appellant failed bring in proof that he had a permanent place to live was not correct and is reversed.

As noted above, an Appellant is entitled to both adequate and timely notice when an Agency proposes to discontinue, suspend, reduce or change the manner of payment of benefits. The Agency's Notice herein fails in both regards: it was neither timely nor adequate. The regulation, 18 NYCRR 358-2.23, requires that an Appellant be given at least 10 days notice of the proposed action. Here, the Agency Notice was dated November 22, 2005 and was effective December 1, 2005, which is less than 10 days. It is noted that aid continuing was properly directed. As the Appellant correctly noted, the Agency must provide a citation to the law and/or regulation it relied upon in the Notice.

However, notwithstanding the inadequacy of the Notice, the Agency erred in a more important respect in that it failed to provide an assessment of the Appellant and also failed to develop an independent plan for living for the Appellant. Such an assessment must include the availability of housing, the need for temporary housing assistance, employment and educational needs, the need for preventive or protective services, the ability to live independently, and the need for treatment of physical and mental health problems, including substance abuse. Here, the Agency admitted that no assessment had been performed.

In addition, the Agency failed to submit an independent living plan for the Appellant. The independent living plan should set forth a strategy for meeting the individual's housing assistance needs. No plan existed for the Appellant. Instead, the Agency issued multiple Notices, extending the Appellant's temporary housing assistance and requiring him to report to the Agency every 7 days, which he did. While it may not necessarily be unreasonable for an Agency to require an individual to report to the Agency on a weekly basis and to report his or her efforts to obtain permanent housing, such a requirement must be formulated after an assessment and as a part of an individual plan. That was not the case here.

The Appellant testified that he has spent time in numerous psychiatric centers in New York State. The Appellant also submitted documentation which showed that he suffers from mental health issues, namely schizophrenia, and is in need of assistance to obtain housing. This places a special burden on the agency to assist the Appellant.

Finally, notwithstanding the Appellant's mental health problems, the Appellant credibly testified as to his efforts to obtain permanent housing. The Appellant submitted evidence which showed that he had contacted Section 8 housing and had been looking for an apartment. The Appellant testified that he was told that there was a 5-year waiting list for Section 8 housing. The Appellant also submitted evidence from AFT PM that he was trying to locate an apartment. He also submitted other documents to the Agency that showed his effort to comply with their request. It is clear that the Appellant, to the best of his abilities, was trying to obtain permanent housing. It is also clear that the Appellant is in need of assistance in attempting to obtain such housing. The Appellant submitted documentation which showed that a representative payee had recently been put in place so that the Appellant could access his SSI benefits. Lastly, the Appellant presented a letter written on his behalf to NO, which was appealing the termination of that agency's services. All of these actions show a good faith effort on the part of the Appellant or actions taken on his behalf to assist him with the housing issue.

For all of the reasons stated above, the Agency determination to discontinue, effective December 1, 2005, the Appellant's temporary housing assistance, on the grounds the Appellant failed bring in proof that he had a permanent place to live was not correct and is reversed.

DECISION AND ORDER

The Agency's November 22, 2005 determination to discontinue the Appellant's Temporary Housing Assistance benefits was not correct and is reversed.

#1. The Agency is directed to continue to provide Temporary Housing Assistance to the Appellant.

#2. As stipulated, the Agency is directed to determine the Appellant's eligibility for Foods Stamps based upon the Appellant's October 4, 2005 application and if determined eligible, to accept the Appellant's October 4, 2005 application for Food Stamp benefits, in accordance with verified degree of need.

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. If the Agency determines to take any future action, timely and adequate notice must be issued.

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

DATED: Albany, New York
December 9, 2006

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee