

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

CASE #
CENTER # 53 AND 54
FH # 1040914N
1040922K
1054949M
1085916P
1110566N
1128263L

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

JURISDICTION

This appeal is from determinations by the local Social Services District (hereinafter the Agency) relating to the adequacy and discontinuance of grants of Public Assistance, and the Agency's failure to act in a timely manner on the Appellant's applications for, and the adequacy of grants of Emergency Assistance to Families (hereinafter EAF) and Emergency Assistance to Adults (hereinafter EAA).

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 October 26, 1987, at , Bayside, New York, before Michael Vass, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

For the Agency

L P , Appellant
Eugene Doyle, Appellant's
Representative
C P , Witness
A L , Witness

Kenneth Lee, Caseworker
Special Tasks Unit, IMC #53
Leslie Jones, Caseworker,
Special Tasks Unit, IMC #54

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:

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1. On or about October 14, 1986, the Appellant applied for Supplemental Security Income.

2. On October 18, 1986, Appellant applied for Home Relief and in connection with this application the Appellant signed an authorization to allow the Social Security Administration to send the initial payment of Supplemental Security Income benefits to the Agency and to allow the Agency to deduct from such initial payment the amount of Home Relief benefits provided to the Appellant while the application for Supplemental Security Income benefits was pending.

3. On November 21, 1986, the Agency accepted the Appellant's application for Home Relief.

4. The Appellant received Public Assistance grants of \$59.50 semi-monthly from December 1, 1986, through the first semi-monthly period in February, 1987.

5. On January 13, 1987, the Social Security Administration (hereinafter SSA) notified the Appellant that her application for Supplemental Security Income had been approved.

6. On January 28, 1987, the SSA notified the Appellant that her initial Supplemental Security Income payment of \$972.96 (for the period from November 1, 1986, through February 28, 1987) was being sent to the Agency.

7. The Agency determined that the Appellant had received interim assistance in the amount of \$1,589.00 and thus she was not entitled to any refund from the initial Supplemental Security Income payment.

8. On April 25, 1987, the Agency sent a Notice of Intent to the Appellant setting forth its intention to discontinue the Appellant's Public Assistance grant effective May 5, 1987, because she "failed to comply with (its) policies regarding assignment or utilization of (her) property".

9. On June 28, 1987, the Agency sent a Notice of Intent to the Appellant setting forth its intention to discontinue the Appellant's Public Assistance grant, effective July 8, 1987, because she "failed to comply with (its) policies regarding assignment or utilization of (her) property".

10. Although duly notified regarding all issues for the fair hearing, the Agency did not present any evidence to support its determinations dated April 25, 1987, and June 28, 1987. It also failed to establish the amount of interim assistance issued to the Appellant for the period from December 1, 1986, through the first semi-monthly period of February, 1987.

11. On or about May 1, 1987, the Appellant's daughter, aged twenty, returned to live with the Appellant.

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12. The Appellant had requested a hearing concerning the Agency's denial of her reapplication for Food Stamp benefits and at the hearing the Appellant withdrew her request for a hearing concerning that issue.

13. On July 7, 1987, the Agency sent a Notice of Discontinuance to the Appellant informing the Appellant that her Public Assistance grant was discontinued effective July 7, 1987, because her income from Supplemental Security Income is sufficient to meet her needs.

14. On October 5, 1987, the Appellant's house was damaged by a fire.

15. The Appellant and her daughter lost all their clothing in the fire.

16. The Appellant and her daughter have not been able to meet their needs for the total replacement of their clothing from any other source.

17. The Appellant has been unable to prepare meals at home since October 5, 1987.

18. During the period from October 5, 1987, through October 7, 1987, the Appellant and her daughter resided with the Appellant's sister.

19. On October 8, 1987, the Red Cross arranged for the Appellant and her daughter to be placed in a motel for one week.

20. On October 9, 1987, and October 13, 1987, the Appellant's representative made numerous requests by telephone to IMC #53 and IMC #54 for a visit to the Appellant's motel room to enable the Appellant to apply for Emergency Assistance for temporary shelter, and restaurant and clothing allowances.

21. On October 14, 1987, the Agency sent a representative to the Appellant's motel room to conduct an eligibility interview and to receive the Appellant's and her daughter's applications for EAA and EAF.

22. On October 15, 1987, the week-long stay at the motel paid by the Red Cross expired at 12:00 noon.

23. The Agency failed to provide the Appellant and her daughter with temporary shelter, restaurant or clothing allowances, nor a written notice of denial.

24. On or about October 15, 1987, the Appellant's representative persuaded the Red Cross to pay for one more week at the motel.

25. On October 22, 1987, at 12:00, the Appellant and her daughter became undomiciled.

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26. The Appellant and her daughter stayed the night of October 22, 1987, at the home of the Appellant's sister.

27. On October 23, 1987, the Agency paid for temporary shelter for the Appellant and her daughter for three nights at the A Motor Inn in Bayside, New York.

28. As of the end of the hearing, the Agency had made no determination to provide temporary shelter to the Appellant or her daughter beyond 12:00 noon on October 26, 1987.

29. On April 2, 1987, May 2, 1987, July 8, 1987, September 4, 1987, and October 22, 1987, the Appellant's representative requested this hearing, on the Appellant's behalf, to review the Agency's determinations.

ISSUES

Was the Agency's determination, dated February 17, 1987, to retain the Appellant's initial Supplemental Security Income payment in the amount of \$972.96, correct?

Was the Agency's determination, dated April 25, 1987, to discontinue the Appellant's Public Assistance, effective May 5, 1987, because she failed to comply with the Agency's policies regarding assignment or utilization of property, correct?

Was the Agency's determination, dated June 28, 1987, to discontinue the Appellant's Public Assistance, effective July 8, 1987, because she failed to comply with the Agency's policies regarding assignment or utilization of property, correct?

Was the Agency's determination, dated July 7, 1987, to discontinue the Appellant's Public Assistance, effective July 7, 1987, because the income she receives from Supplemental Security Income is sufficient to meet her budgetary needs, correct?

Were the Agency's determinations, not to provide Appellant with temporary shelter and restaurant and clothing allowances, correct?

Was the Agency's failure to provide the Appellant with a restaurant allowance, correct?

Was the Agency's failure to provide the Appellant with a grant of Emergency Assistance for the replacement of clothing, correct?

Was the Agency's failure to provide the Appellant with Emergency Housing Assistance, correct?

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APPLICABLE LAW

Section 370.7(a)(1) of the Regulations defines "interim assistance" as Home Relief grants furnished to an applicant for Supplemental Security Income during the period from the month of application and eligibility for Supplemental Security Income through the month after the month in which the initial Supplemental Security Income payment is received.

Section 370.7(a)(4) of the Regulations defines "repayment of interim assistance authorization" as an instrument signed by the applicant for Home Relief on the State-prescribed form, authorizing the SSA to make the initial payment to the Agency and authorizing the Agency to deduct therefrom the amount of interim assistance provided to the recipient.

Until July 3, 1987 in those local districts that utilize automated computer matching of Home Relief payments against Supplemental Security Income records the authorization remained valid for 180 days.

Section 352.27 of the Regulations provides that the Agency may take a deed or mortgage on the property of a Public Assistance recipient.

Section 352.30(c) of the Regulations provides that the needs of an individual shall be eliminated from the grant when an applicant or recipient willfully fails or refuses to execute a deed mortgage or lien pursuant to Section 352.27 of the Regulations.

Pursuant to the settlement in the case of Rodriguez v. Blum, the New York City Agency is required to produce the Appellant's complete relevant case record at any fair hearing that involves the discontinuance, reduction, or restriction of Public Assistance benefits. If the Agency appears at the hearing without the complete relevant case record, the Agency is required to withdraw its Notice of Intent.

Section 358.8(a) of the Regulations of the State Department of Social Services provides that timely and adequate notice of any proposed action to discontinue or reduce Public Assistance payments or to discontinue or reduce a Medical Assistance Authorization must be sent to the recipient. Timely and adequate notice means a written notice mailed at least ten days prior to the effective date of the proposed action and which contains details of the reasons for the proposed action as well as information regarding conference and hearing rights and the right to continued Public Assistance and Medical Assistance Authorization.

Section 397.1(a) of the Regulations defines Emergency Assistance to Adults as:

"grants of assistance to aged, blind or disabled individuals and couples who have been determined eligible for or are

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receiving Federal supplemental security income benefits or additional State payments and applied for such assistance to meet emergency needs, in the circumstances specified in this Part, that cannot be met by the regular monthly benefits of SSI and additional State payment."

Section 397.1(b) of the Regulations defines "emergency needs" as those needs which, if not met, would endanger the health, safety or welfare of such persons, and include, but are not limited to replacement of clothing and nutritional requirements.

Section 397.4 of the Regulations provides that in order to be eligible for EAA an applicant shall:

- (a) reside in New York State;
- (b) be eligible for SSI benefits or additional State payments; and
- (c) have emergency needs that cannot be met by the regular monthly SSI benefit and additional State payments, by emergency assistance for families under Part 372 of this Title, or by income or resources not excluded by the Federal Social Security Act, and which if not met would endanger the health, welfare or safety of the applicant.

Section 397.5 of the Regulations provides that, when provision cannot be otherwise be made, the Agency shall grant EAA to meet the emergency needs including, but not limited to replacement of clothing and temporary shelter (until replacement shelter is secured) result of fire or similar catastrophe which could not have been foreseen by, and was not under the control of the recipient.

It further provides that clothing shall be replaced in accordance with Schedule SA-4b of Part 352 of the Regulations and food based on a "pro rata" share of Schedule SA-1 of Part 352 of the Regulations.

Section 372.1(a) of the Regulations defines EAF as "all aid care and services granted to families with children to deal with crisis situations threatening the family which are necessary to meet urgent needs resulting from a sudden occurrence or set of circumstances demanding immediate attention.

Section 372.2(a) of the Regulations provides that EAF shall be provided immediately by a social services district to or on behalf of a needy child under the age of 21 and any other member of the household in which he is living if the conditions set forth in section 372.1 of this Part are met, and in addition:

- (1) the child is (or, within six months prior to the month in which emergency assistance is requested, has been)

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living with any of the relatives specified in subdivision (a) of section 369.1 of this Title in a place of residence maintained by one or more of those relatives as his or their own home;

- (2) the child is without resources immediately accessible to meet his needs and those needs cannot be met under Part 352 of this Title by an advance allowance;
- (3) emergency assistance is necessary to avoid destitution of the child or to provide living arrangements for him in a home;
- (4) his destitution or need for living arrangements did not arise because he or a relative with whom he lives refused without good cause to accept employment or training for employment; and
- (5) for a recipient of public assistance, such destitution did not arise from the mismanagement of a public assistance grant, or the emergency grant being applied for will not replace or duplicate a public assistance grant already made under Part 352 of this Title. This section does not prohibit the issuing of EAF to replace a lost or stolen public assistance grant.

Section 372.4 of the Regulations provides, in relevant part, that EAF to eligible needy families with children shall be provided for such items of need, and in such amounts, as provided for in Part 352 of the Regulations, and shall include services necessary to cope with the emergency situation including securing family shelter.

Section 352.7(c) of the Regulations provides that the Agency shall provide for the additional cost of meals, for persons unable to prepare meals at home, in accordance with Schedule SA-5.

Section 352.7(d) of the Regulations provides, in pertinent part, that the Agency shall provide for total replacement of clothing lost in a fire or other like catastrophe up to a maximum of the amounts provided in Schedule SA-4b, provided such needs cannot otherwise be met through assistance from relatives, friends, other agencies or other resources.

Administrative Directive 83 ADM-47, dated September 29, 1983, provides that the Agency must ensure that homeless persons or persons in imminent 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 person's community and any disruption to the child's life cause by such dislocation, with particular attention being paid to the client's

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educational and community ties. The Agency must also take appropriate action when an individual's medical condition makes shelter placement inappropriate.

DISCUSSION

In this case the record establishes that the Appellant applied for Home Relief on October 18, 1986, and was accepted effective November 21, 1986. At the time of application the Appellant signed an application form which also included an authorization to allow the SSA to send the initial payment of Supplemental Security Income benefits to the Agency and to allow the Agency to deduct from such initial payment the amount of Home Relief benefits provided to the Appellant while the application for Supplemental Security Income benefits was pending. Although the Appellant's representative argued that the Appellant was lacking understanding of this part of the agreement on the application, his argument is not meritorious. The Appellant did, in fact sign the said application. Furthermore, her Supplemental Security Income application was accepted in January, 1987, and she was determined eligible for Supplemental Security Income benefits effective November 1, 1986. Such determination of Supplemental Security Income eligibility is clearly within 180 days of the date of Appellant's signed Home Relief application of October 18, 1986. Therefore, the Agency's determination to recover regular assistance payments from November 21, 1986, through the first semi-monthly period of February, 1987, was proper. However, the assistance received by the Appellant during this period included Emergency Assistance as well as regularly recurring grants. The Emergency Assistance is not recoverable by the Agency as it is not "interim assistance". The record fails to establish the amount of regular assistance that the Appellant received during this period. Such regular assistance is the total amount that the Agency may retain from the initial Supplemental Security Income payment.

Furthermore, although duly notified as to the time and place of the fair hearing, the Agency presented no evidence in support of its April 25, 1987, and June 28, 1987, determinations to discontinue Appellant's Public Assistance for failure to comply with its policies regarding assignment or utilization of property. In view of the lack of supporting evidence, the Agency's determinations are not sustainable. It must also be noted, that pursuant to the case of Rodriguez v. Blum, the Agency is required to withdraw its Notice of Intent where the Agency lacks its complete relevant case record. In that the Agency failed to withdraw the said notices of April 25, 1987, and June 28, 1987, the Agency's determinations would be reversible pursuant to the terms of Rodriguez v. Blum as well.

In this case, the uncontroverted evidence establishes that by notice dated July 7, 1987, the Agency advised Appellant that her Public Assistance would be discontinued that same day on the grounds that "the income you receive from Supplemental Security Income is sufficient to meet your budgetary needs."

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The basis for the Agency's discontinuance of Appellant's Public Assistance grants does not fall within the exceptions to the requirement in 18 NYCRR 358.8(d)(1) that a recipient is entitled to timely notice before his/her Public Assistance grant is discontinued. A notice dated the same date as the effective date of the discontinuance is not timely as defined in Section 358.8 of the Regulations. The Agency did not send a Notice of Intent to the Appellant prior to its Notice of Discontinuance dated July 7, 1987.

The record further establishes that the Appellant was rendered homeless on October 5, 1987, when her house was damaged by a fire. The Appellant's clothing was lost in the fire. Since October 5, 1987, the Appellant has spent time at a friend's home and in a hotel where the Red Cross paid for a two week stay and the Agency for a three day stay which was to end on October 29, 1987.

The record establishes that since the time she was rendered homeless the Appellant has been without cooking facilities. She requested a restaurant allowance from the Agency and her request was denied. Since the Appellant has had no access to cooking facilities, she has been entitled to a restaurant allowance pursuant to Section 352.7(c) since she became homeless on October 5, 1987.

The record further establishes that the Appellant and her daughter lost all their clothing in the fire in the Appellant's apartment. This fire qualifies as an Emergency situation making the Appellant eligible for a grant of Emergency Assistance for the replacement of the clothing destroyed in the fire. The Agency has not provided the Appellant with the grant of Emergency Assistance for the replacement of clothing to which she is entitled. Therefore, the Agency's determination was not correct.

With regard to the Agency's failure to provide the Appellant with emergency temporary shelter, the record in this case establishes that the Appellant has on numerous occasions since she became homeless requested emergency housing assistance from the Agency. The Agency has not provided the Appellant with Emergency Housing Assistance except when it provided the Appellant with a three day emergency housing referral on October 23, 1987. Even though the Appellant was able to obtain the Red Cross's assistance in obtaining housing, the record fails to establish that the Agency took required action under the provisions of Administrative Directive 83 ADM-47 to deal with the Appellant's housing situation.

It should be noted that the Appellant's representative, in a Memorandum of Law submitted subsequent to the hearing suggested use of a trailer on the Appellant's property as an appropriate method of providing emergency housing. The Agency should review the feasibility of this suggestion in determining what form of emergency shelter should be provided to the Appellant

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DECISION AND ORDER

The Agency's determination to retain the Appellant's initial Supplemental Security Income payment in the amount of \$972.96, is not correct and is reversed.

1. The Agency is directed to determine the amount of interim assistance received during the period from December 1, 1986, through the first semi-monthly period of February, 1987, and to restore all monies received from Supplemental Security Income in excess of that amount to the Appellant.

The Agency's determination, dated July 7, 1987, to discontinue the Appellant's Public Assistance grant, was not correct and is reversed.

2. The Agency is directed to restore the Appellant's Public Assistance grant in the amount of \$59.50 semi-monthly retroactive to the date of the Agency's action; and

3. If the Agency intends to implement its previous action it is directed to issue a timely and proper notice.

The Agency's determination to discontinue the Appellant's grant of Home Relief by notice dated April 25, 1987, and June 28, 1987, is not correct and is reversed.

4. The Agency is directed to restore all lost assistance retroactive to the date of the Agency action.

The Agency's failure to provide the Appellant with a restaurant allowance is not correct and is reversed.

5. The Agency is directed to provide the Appellant with a restaurant allowance in accordance with the provisions of Section 352.7(a) of the Regulations for the period since October 7, 1987.

The Agency's failure to provide the Appellant with a grant of Emergency Assistance for the replacement of clothes destroyed in a fire is not correct and is reversed.

6. The Agency is directed to investigate the Appellant's situation and to determine exactly what clothing of the Appellant and her daughter was destroyed and to provide the Appellant with a grant of Emergency Assistance for the replacement of this clothing.

The Agency's failure to provide the Appellant with Emergency Housing Assistance is not correct and is reversed.

7. The Agency is directed to provide the Appellant with all necessary Emergency Housing Assistance pursuant to the provisions of Administrative Directive 83 ADM-47 and to assist the Appellant in her efforts to locate alternate, permanent housing. In so doing, the Agency is directed to review the feasibility of utilizing a trailer on the Appellant's property.

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As required by Department Regulations at 18 NYCRR 358.22, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York

CESAR A. PERALES
COMMISSIONER

DEC 03 1987

BY *Lucretia Nolasco*
Commissioner's Designee