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In the Matter of the Appeal of  
T A  
from a determination by the Erie County  
Department of Social Services

:  
: DECISION  
: AFTER  
: FAIR  
: HEARING  
:

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JURISDICTION

Pursuant to Section 22 of the New York State Social Services Law (hereinafter referred to as "the Social Services Law") and Part 358 of Title 18 of the New York Code of Rules and Regulations (18 NYCRR, hereinafter referred to as "the Regulations"), a Fair Hearing was held on August 27, 2004, in Buffalo, New York, before Administrative Law Judge Snitzer. The following persons appeared:

For the Appellant

T A , the Appellant; P A , the Appellant's wife;  
Sarah Smith, the Appellant's attorney (NLS);  
Danielle Dabate, the Appellant's advocate

For the Erie County Department of Social Services  
(herein referred to as "the Agency")

Mr. Penny, Senior Examiner

ISSUE

Was a determination to discontinue the Appellant's Emergency Housing Services, based on what might have been a time limit, 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 has been in receipt of Temporary Housing Assistance ("THA") for his family, which consists of himself, his wife and one child.

2. On August 13, 2004, the Agency issued a notice of intent to discontinue the Appellant's THA. Said notice, issued on a form (DSS-4002) designed for use following a request for assistance to meet an Immediate Need or for a Special Allowance, indicated that that the Agency would help the Appellant by meeting his need, but then indicated,

"Your funding for shelter ends on 8/16/04. No extensions,

no matter what, will be given...At this time two adults and one child are included in that funding".

- a. At some time reportedly about two months ago, the Appellant and his family were placed in temporary housing at the Hotel L in B , pending their relocation to permanent housing.
- b. On or about August 10th, the Appellant submitted a landlord statement to the Agency to show that he would be relocating his family to housing at a H Avenue address on August 16th. Said statement gave other information regarding that housing.

3. On August 16, 2004, a request for a Fair Hearing was made by or on behalf of the Appellant, seeking review of the August 13th determination.

#### APPLICABLE LAW

Section 358-3.3(a) of the Regulations provides that a recipient has a right to timely and adequate notice when a social services agency proposes to take any action to discontinue, suspend, or reduce a Temporary Assistance grant, Medical Assistance authorization or services. Section 358-2.2 of the Regulations defines "adequate" notice, referring to the content thereof. Section 358-2.23 of the Regulations defines "timely" notice as that which is mailed at least ten days prior to the date upon which it is to be effective.

Section 372.1 of the Regulations defines "Emergency Assistance" (EAF) to include all aid, care and services granted to families with children (including migrant workers) to deal with crisis situations threatening the family and to meet urgent needs resulting from a sudden occurrence or set of circumstances demanding immediate attention. [Section 350 of the Social Services Law requires that the emergency situation must be one that was sudden, could not have been foreseen, and was beyond the applicant's control.] Such assistance may be furnished only if, and for so long as, Federal funds are available, may be authorized during only one period of 30 consecutive days in any twelve consecutive months (including payments which are to meet needs which arose before the 30-day period or which extend beyond the 30-day period). The State Plan provides that EAF shall not be provided if the family has gross available income, as of the date of application, exceeding 200 percent of the Federal Poverty Level for that household size.

An Administrative Directive (96 ADM 20) issued by the NYS Department of Social Services December 27, 1996, effective January 1, 1996, advised local districts of the enactment of Section 352.35 of the Regulations regarding the provision of Temporary Housing Assistance ("THA"), and of procedures for reviewing and acting upon applications for THA by homeless families and individuals. Additionally, the Directive describes eligibility requirements with which a homeless individual or family must comply to receive THA. Local districts must conduct an Assessment, defined as an evaluation of the applicant's housing and housing-related public assistance and care needs including, but not limited to, the availability of housing, the need for THA, 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.

Section 352.35 of the Regulations further describes the obligation of any person or household receiving THA to complete an Independent Living Plan ("ILP"), for making a transition to permanent housing, and, if a person fails to comply with an ILP two or more times, a local district may discontinue the THA authorized for that person or household. The Section also provides other eligibility requirements for persons receiving THA, and expressly (at subsection "g") provides that a local district must deny or discontinue THA if it determines that a person or family has other housing available, or if it determines (consistent with the regulations) that the person or family is required to, but is not applying income or available resources to reduce or eliminate the need for THA.

#### DISCUSSION

To the extent that the determination under review is identifiable as one intending the discontinuance of THA, it cannot be affirmed. In the first instance, that notice is defective in form and in content; even without consideration of the merits of the case, the notice is void.

Moreover, the Agency representative was not prepared to offer any substantive evidence in support of the action the Agency may have intended; no Fair Hearing Summary or other documentation was presented, nor was the Agency's case record available. Although there was an implication that the Agency may have provided THA for a period beyond what it felt was appropriate, there was no evidence showing when such services were initially authorized, or under what circumstances. Nor was there any documentation to show any previous advice given to the Appellant regarding any time limit, or of any specific expectations regarding housing procurement and relocation efforts.

When it was observed, on a notice in the Appellant's possession, that the Agency's notice was issued on the same day that the Appellant submitted a Landlord Statement indicating an intent to relocate to housing at a H Avenue address, the Agency representative was unable to explain why any notice was even necessary at that point.

On the other hand, when asked why he felt a request for a Fair Hearing was necessary on the same day as his family's move was intended to occur, the Appellant responded that it was discovered, after the landlord agreed to rent them the apartment on August 10th, that the premises had been extensively damaged and were not ready for occupancy at the time promised. A Fair Hearing was requested because the Agency had made it clear that it would not consider any further extensions. When asked if he had ever been given written information regarding any specific time limits, the Appellant testified that he had never been given any such information, but had been keeping the Agency informed of his progress on a weekly basis. The notice he received on August 13th was said to be the only notice ever received.

Under these circumstances, the Agency action cannot be upheld.

DECISION AND ORDER

The Agency's August 13, 2004 determination to discontinue the Appellant's Temporary Housing Assistance is not correct, and is reversed.

- \* The Agency is directed to take no action on its August 13, 2004 notice, and continue to provide Temporary Housing Assistance for the Appellant, to the extent his household is currently otherwise eligible and in need of such assistance.
- \* If, in the future, the Agency makes any new determination to discontinue the Appellant's Temporary Housing Assistance, it is required to issue proper written notice of such determination in the manner required by law.

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

DATED: Albany, New York  
September 1, 2004

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

  
Commissioner's Designee