
In the Matter of the Appeal of :

M J

DECISION

: AFTER

FAIR

HEARING

from a determination by the Nassau County
Department of Social Services :

JURISDICTION

This appeal is from a determination by the local Social Services Agency relating to the adequacy of Appellant's grant of Public Assistance and Medical Assistance.

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 July 3, 1989 and July 19, 1989, in Nassau County, before Benedict Schiraldi, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

M J Appellant
Douglas Ruff, Attorney
Jason Katz, Representative

For the Local Social Services Agency

Ellen Raim, Representative
Evelyn Dantzer, Eligibility Worker

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. On March 16, 1989, the Appellant applied for a grant of Aid to Dependent Children and Medical Assistance for her four minor grandchildren, E J , C J , T J and D J . Also residing in the household is Appellant's son.

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2. On May 4, 1989, the Agency denied Appellant's application for assistance. A fair hearing was held, and the Agency's determination was reversed, and the Agency was directed to provide assistance retroactively to March 16, 1989, for E and C J .

3. The Agency issued assistance to Appellant on July 3, 1989, retroactively to March 16, 1989. However, assistance was provided only for E and C J . No assistance was provided for T and D J .

4. In February, 1989, the Agency's Child Protective Services (CPS) placed the four grandchildren in the custody of the Appellant.

5. On February 28, 1989, the Appellant was appointed guardian of E and C J , by order of the Surrogate's Court of Nassau County.

6. The Agency has failed to provide any assistance to T and D J .

7. On March 28, 1989, the Surrogate's Court of Nassau County appointed Appellant guardian of T and D J .

8. The Appellant submitted the letters of guardianship to the Agency on or about March 29, 1989, and the Agency took no action.

9. On May 19, 1989, the Appellant requested payment from the Agency for a security deposit and broker's fees in connection with her move to her present residence, totaling \$2,100.00.

10. Appellant's former residence consisted of one room, at the time the Agency's CPS placed the four grandchildren in her care in February, 1989.

11. The Agency denied Appellant's request for payment of a security deposit and broker's fees.

12. The Appellant moved to her present residence, borrowing \$2,000.00 from her sister, and provided the balance from her personal funds.

13. On July 5, 1989, the Appellant appeared at this fair hearing, and requested reimbursement for child care expenses for her four grandchildren.

14. The Agency reimbursed Appellant for the child care expenses at the rate of \$4.00 per hour.

15. On July 19, 1989, the adjourned date of this hearing, the Appellant appeared and requested reimbursement for child care expenses for her four grandchildren.

16. The Agency determined to reimburse the Appellant for the child care expenses at the rate of \$4.00 per hour.

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17. On May 19, 1989, the Appellant again applied for Public Assistance and Medical Assistance for T and D J .

18. The Agency has failed to take any action on Appellant's May 19, 1989 application for Public Assistance and Medical Assistance.

19. On June 7, 1989, and June 22, 1989, the Appellant requested this hearing, as amended, to review the following Agency's determinations:

- A. The failure of the Agency to make a determination of the Appellant's eligibility for Public Assistance and Medical Assistance for her two grandchildren, T and D , within thirty days of the Appellant's March 16, 1989 application.
- B. The failure of the Agency to assist Appellant in securing assistance for T and D , and to include their needs in Appellant's Public Assistance and Medical Assistance case.
- C. The denial of Appellant's request for payment of a security deposit and broker's fees.
- D. The adequacy of the Agency's determination to reimburse the Appellant for child care expenses to attend fair hearings.

ISSUES

Was the Agency's determination not to include T and D 's needs as part of the Appellant's Public Assistance household and Medical Assistance Authorization and Food Stamp since March 16, 1989 correct?

Was the Agency's failure to make a determination of Appellant's grandchildren, T and D 's, eligibility for Public Assistance and Medical Assistance within thirty days of the Appellant's application for such benefits correct?

Was the Agency's determination not to assist Appellant in securing assistance for T and D correct?

Was the Agency's determination to deny the Appellant's request for payment of a security deposit and broker's fees correct?

Was the Agency's determination to reimburse Appellant for child care expenses to attend this fair hearing correct?

APPLICABLE LAW

Public Assistance eligibility and benefit levels are based upon household composition. Section 352.30(a) of Department Regulations provides

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that persons considered to be in the Public Assistance household for the purposes of determining eligibility and the level of benefits shall be those persons whom the applicant, recipient or their representative indicates desire to receive Public Assistance and who reside together in the same dwelling unit. The household may include persons who are temporarily absent from such household such as children or minors attending school away from home whose full needs are not otherwise met.

The investigation of an applicant's/recipient's eligibility and degree of need is a continuous process which is concerned with all aspects of eligibility for Public Assistance and care from the period of initial application to case closing. Investigation means the collection, verification, recording and evaluation of factual information on the basis of which determinations of eligibility and the degree of need are made. As part of this investigation it is the responsibility of a Public Assistance recipient to provide accurate, complete and current information including information as to his or her needs and resources and family composition. 18 NYCRR 351.1, 351.2, 351.20. A recipient is responsible for notifying the local Agency of any changes in his/her circumstances. 18 NYCRR 351.20(b)(7).

Households eligible for or in receipt of Public Assistance shall be eligible for and provided with Medical Assistance. 18 NYCRR 360-3.3.

Section 351.8(b) of the Department Regulations provides that the decision to accept an application for Public Assistance and care shall be made as soon as the facts to support it have been established but not later than thirty days from the date of application except where the applicant requests additional time or where difficulties in verification lead to unusual delay, or for other reasons beyond the Agency's control. The applicant shall be notified in writing of the Agency's determination.

Section 360-2.4 of the Department Regulations provide that eligibility for a Medical Assistance Authorization must be determined within thirty days of application. However where Medical Assistance eligibility is dependent on disability status the agency must determine eligibility within sixty days of application. Where an applicant for Public Assistance is determined ineligible for such benefits, the agency must make a separate determination of Medical Assistance eligibility within thirty days of the date the application for Public Assistance was denied. If timely action was not taken on the Public Assistance application, the agency must determine eligibility within thirty days of the date when action should have been taken.

Section 398 of the Social Services Law provides, in part, the following:

Commissioners of public welfare and city public officials responsible under the provisions of a special or local law for the children hereinafter specified shall have powers and perform duties as follows:

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1. As to destitute children: Assume charge of and provide support for any destitute child who cannot be properly cared for in his home.

2. As to neglected, abused or abandoned children:

(a) Investigate the alleged neglect, abuse or abandonment of a child, offer protective social services to prevent injury to the child, to safeguard his welfare, and to preserve and stabilize family life wherever possible and, if necessary, bring the case before the family court for adjudication and care for the child until the court acts in the matter and, in the case of an abandoned child, shall promptly petition the family court to obtain custody of such child.

(b) Receive and care for any child alleged to be neglected, abused or abandoned who is temporarily placed in his care by the family court pending adjudication by such court of the alleged neglect, abuse or abandonment including the authority to establish, operate, maintain and approve facilities for such purpose in accordance with the Regulations of the Department; and receive and care for any neglected, abused or abandoned child placed or discharged to his care by the family court.

Section 352.6 of Department Regulations provides that an Agency shall provide funds for household moving expenses utilizing the least costly practical method of transportation, rent security deposits and/or brokers' or finders' fees when in the Agency's judgment one of the following conditions exist:

- (1) the move is to a less expensive rental property and the amount paid for security deposit and moving expenses is less than the amount of a two-year difference in rentals; or
- (2) the move is necessitated by one of the following:
 - (a) the need to move results from a disaster/catastrophe and/or a vacate order placed against the premises by a health agency or code enforcement agency;
 - (b) the move is necessitated by a serious medical or physical handicap condition. Such need must be verified by specific medical diagnosis;

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- (c) the individual or family is rendered homeless as a result of having been put out by another occupant with whom they were sharing accommodations;
- (d) the move is from temporary to permanent housing;
- (e) the move is from permanent housing to temporary housing which is necessary due to the unavailability of permanent housing;
- (f) the move is from one temporary accommodation to another temporary accommodation which is necessary due to the unavailability of permanent housing;
- (g) the move is from an approved relocation site or to an approved cooperative apartment; or
- (h) there is a living situation which adversely affects the mental or physical health of the individual or family, the need for alternate housing is urgent, and not issuing a security deposit, moving expenses and/or brokers' or finders' fees would prove detrimental to the health, safety and well-being of the individual or family.

A security deposit and/or brokers' or finders' fees may be provided only when an applicant or recipient is unable to obtain a suitable vacancy without payment of such deposit and/or fees. 18 NYCRR 352.6(a)(2).

Whenever a landlord requires that he/she be secured against non-payment of rent or damages as a condition to renting a housing accommodation to a recipient of Public Assistance, the Agency may secure the landlord either by means of an appropriate security agreement between the Agency and the landlord or by depositing money in an escrow account. 18 NYCRR 352.6(b).

The amount of the security deposit or brokers' fees is not limited to the Agency's maximum shelter allowance.

Section 358-3.4 of the Regulations provides, in part, that as an Appellant you have the right, at your request to the Social Services Agency, to receive necessary transportation expenses to and from the fair hearing for yourself and your representatives and witnesses, and to receive payment for your necessary child care costs and for any other necessary costs and expenditures related to your fair hearing, and to have the fair hearing held at a time and place convenient to you as far as practicable, taking into account circumstances such as your physical inability to travel to the regular hearing location.

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DISCUSSION

The evidence in this case establishes that the Agency's Child Protective Service (CPS) placed the Appellant's four grandchildren in the custody of the Appellant in February, 1989. The Appellant credibly testified that since February, 1989, the Agency's CPS or the Agency did not offer any assistance to the Appellant in obtaining Public Assistance and Medical Assistance for the four grandchildren. The aforementioned Section 398 of the Social Services Law provides that the Commissioner of Public Welfare shall assume charge of and provide care for any destitute child, and to receive and care for any child alleged to be neglected, abused or abandoned.

The Agency failed to include two of Appellant's grandchildren, T and D , as part of the Appellant's Public Assistance household and Medical Assistance Authorization, or to make a determination of the children's eligibility for assistance within thirty days of application.

The Agency contends that Appellant did not apply for Public Assistance and Medical Assistance for the two grandchildren, and therefore they could not provide assistance. The Agency's contention is without merit. As noted in the aforementioned Section 398 of the Social Services Law, the local Commissioner is responsible for the care of the children in question.

The evidence further establishes that the Appellant requested payment of a security deposit and broker's fee, required for Appellant to move into suitable housing for the four grandchildren, the Appellant and her son. The Appellant, at the time CPS placed the four grandchildren in her care, resided in one room with her son.; The Agency took no action on the Appellant's request. The Appellant borrowed \$2,000.00 from her sister, in order to pay \$1,050.00 for a security deposit and \$1,050.00 for a broker's fee. The balance required to move was provided from Appellant's own funds. The Appellant moved into a four bedroom home.

Pursuant to the aforementioned Section 352.6(2)(d) and (h) of the Regulations, the Agency shall provide funds for rent security deposits and broker's fees if the move is necessitated by a move from temporary to permanent housing, and when there is a living situation which adversely affects the mental or physical health of the family and not issuing a security deposit and broker's fees would prove detrimental to the health, safety and well-being of the family. In this case, six people residing in one room is clearly temporary housing, and is a situation that adversely affects the mental and physical health of Appellant, her son and four grandchildren. Furthermore, it was the responsibility of CPS to inspect the living conditions of Appellant before placing the four grandchildren in her one room.

Pursuant to Section 352.7(g) of the Regulations, assistance may be issued only to meet current needs. Repayment of a loan does not, under ordinary circumstances, qualify as a current need. However, assistance may be provided, the net of which is to repay a loan, when the loan is necessary because of improper Agency actions. In this case, Appellant borrowed \$2,000.00, and provided \$1,000.00 from her own funds.

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The evidence further establishes that the Appellant appeared at a fair hearing on July 5, 1989 and on July 19, 1989. Appellant incurred child care expenses for a sitter for her four grandchildren while she attended the hearings. Appellant requested that the Agency reimburse her for the child care expenses. The Agency determined to reimburse Appellant for child care at the rate of \$4.00 per hour.

Appellant submitted letters from the child care provider that she charged Appellant \$8.00 per hour for the four grandchildren. The Agency stated that its determination was based upon the \$160.00 monthly child care allowance provided Public Assistance recipients who are employed. It computed \$160.00 per month per child as one hundred sixty hours per month, which equals \$1.00 per hour per child, or in this case, \$4.00 per hour for the four children.

The Agency has identified the basis of its policy, and has established a reasonable basis to compute a rate of child care reimbursement. The evidence does not establish an abuse of Agency discretion.

DECISION AND ORDER

The Agency's failure to determine the children's eligibility for Public Assistance and Medical Assistance within thirty days of the Appellant's application was not correct and is reversed.

The Agency's determination not to assist Appellant in securing assistance for T and D is not correct and is reversed.

The Agency's determination not to include T and D's needs as part of the Appellant's Public Assistance household and Medical Assistance Authorization is not correct and is reversed.

1. The Agency is directed to recompute the Appellant's Public Assistance grant effective March 16, 1989, the date Appellant verified T and D's presence in the household and include their needs in the grant.

2. The Agency is directed to restore to the Appellant any benefits lost as a result of the failure to include such persons' needs in the household grant, retroactive to March 16, 1989, which is the date that Appellant verified T and D's presence in the household.

3. The Agency is directed to restore to the Appellant any Medical Assistance benefits lost as a result of the failure to include such person in the Medical Assistance Authorization, retroactive to March 16, 1989, which is the date that Appellant verified T and D's presence in the household.

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The Agency's determination to deny the Appellant's request for payment of a security deposit and broker's fees is not correct and is reversed.

1. The Agency is directed to provide the Appellant with an allowance for a security deposit and broker's fees in the amount of \$2,100.00.

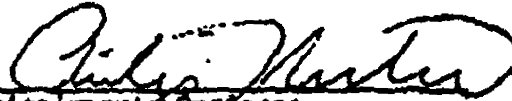
The Agency's determination to reimburse Appellant for child care expenses at \$4.00 per hour is correct.

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

DATED: Albany, New York

CESAR A. PERALES,
COMMISSIONER

AUG 30 1989

BY 
Commissioner's Designee