

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

REQUEST March 22, 1994
CASE#
CENTER# Suffolk
FH# 2105252N

In the Matter of the Appeal of :

V H

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 the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on March 23, 1994, in Suffolk County, before Richard S. Levchuck, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

V H Appellant; Marge Schaeffler, Esq., Appellant's
Representative; Ettie Taichman, Witness

For the Social Services Agency

Margaret Mason, Fair Hearing Representative; Amy Salinero, Esq., Agency
Representative; Cliff Johnson, Witness

ISSUES

Was the Agency's determination not to provide the Appellant with
emergency housing assistance correct?

Was the Agency's determination not to continue to provide the Appellant
with emergency housing assistance pending the issuance of a Decision after
Fair Hearing 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, who is in receipt of Supplemental Security Security
Income, was in receipt of emergency housing assistance for herself, her
three children, ages twenty, eighteen, sixteen and fourteen years old, and
her two year-old granddaughter.

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2. The Appellant is also in receipt of Public Assistance as payee for her three youngest children and her granddaughter. The Appellant's twenty year-old son is under sanction from receiving Public Assistance due to non-compliance with the requirements of the JOBS program.

3. The Appellant and her family have been in receipt of emergency housing assistance on an intermittent basis since 1980. The Appellant and her family have received emergency housing assistance on a continuous basis since May of 1993.

4. During the period since May of 1993, the Appellant and her family have received emergency housing assistance at five different locations.

5. The Appellant and her family had been residing at the F Motor Lodge for approximately three weeks. On March 17, 1994, the Appellant and her family were requested to leave the F Motor Lodge due to a complaint that they had damaged a shower door.

6. The Appellant was seen by a case worker from the Agency's emergency housing unit on March 17, 1994. The Appellant advised the Agency worker that she had been evicted from the F Motor Lodge. The Agency worker advised the Appellant that there was no emergency housing available for her.

7. The Appellant contacted her daughter-in-law who was able to obtain a motel room for the Appellant's daughter and her grandchild at the O Motor Lodge. The Appellant and the remainder of her children slept in her automobile on the night of March 17, 1994.

8. The Appellant appeared at the Agency on Friday, March 18, 1994 and requested that the Agency provide her with emergency housing assistance. The Agency advised the Appellant that there were no facilities that would accept her and her family.

9. The Appellant and her entire family slept in their automobile on the nights of March 18, 1994 and March 19, 1994.

10. The Appellant borrowed funds from her sister and stayed at the O Motor Lodge on Sunday night, March 20, 1994.

11. On March 21, 1994, the Appellant appeared at the Agency and requested that she be provided with emergency housing assistance. The Agency advised the Appellant that there was no emergency housing facility available for her and her family.

12. The Appellant utilized borrowed funds from her sister and stayed at the O Motor Lodge on Monday night, March 21, 1994.

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13. On March 22, 1994, the Appellant appeared at the office of her representative who arranged a loan with Catholic Charities in the amount of \$144.00 to enable her and her family to stay at the C Motor Inn that night.

14. On March 22, 1994, the Appellant requested this fair hearing.

APPLICABLE LAW

Administrative Directive 83 ADM-47, dated September 29, 1983, provides that the Agency must ensure that homeless persons or persons in immediate 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 client's life caused by such dislocation, with particular attention being paid to the client's educational and community ties.

Department Regulations at 18 NYCRR 358-3.3(a) provide that a recipient of Public Assistance, Medical Assistance or services has a right to notice when the agency proposes to take any action to discontinue, suspend, or reduce a Public Assistance grant, Medical Assistance authorization or services.

Department Regulations at 18 NYCRR 358-3.6 provide that in certain situations, an appellant has the right to have his public assistance, medical assistance, food stamp benefits, and services continued unchanged until his fair hearing decision is issued. The department will determine whether he is entitled to aid continuing and advise the appropriate social services agency and the appellant of its decision.

- (a) Public assistance, medical assistance and services. For public assistance, medical assistance and services, the right to aid continuing exists as follows:
 - (1) (i) Except as provided in paragraph (2) of this subdivision, where the social services agency is required to give timely notice before it can take any action, an appellant has the right to aid continuing for his public assistance and medical assistance and services until the fair hearing decision is issued if he requests a fair hearing before the effective date of a proposed action as contained in the notice of action.
 - (ii) If assistance or services have been reduced or discontinued, restricted or suspended by the social services agency and the appellant requested a hearing by the effective date contained in the notice, assistance or

services must be restored by the social services agency as soon as possible but no later than five business days after notification from the department that he is entitled to have his public assistance, medical assistance or services continue uninterrupted pursuant to this paragraph.

DISCUSSION

At the hearing, the Agency contended that the Appellant and her family have chosen to reside in emergency housing as a "life-style" and that they are "unhousable." The Agency noted that the Appellant and her family had exhausted the list of emergency housing facilities utilized by the Agency. The Agency stated that the facilities contacted either refused to accept the Appellant or were inappropriate facilities for the Appellant and her family in that they specialized in single individual housing, substance abuse cases or the housing of young mothers. One of the facilities contacted alleged that the Appellant's son had threatened to kill an individual at the facility when they were housed there. Another facility refused to house the Appellant and her family because they had too many visitors and a third facility contended that the Appellant and her family were subletting their motel rooms. The remainder of the facilities contacted either did not state a reason for refusing to house the Appellant or based their refusal on the Appellant's experience at the other facilities.

However, the Agency's obligation to provide emergency housing assistance is not limited to a specific group of facilities in a given area. The Appellant demonstrated that she was able to secure emergency housing assistance on her own and that there are facilities in Suffolk County that would accept her. Furthermore, the Appellant testified that out of the five facilities that the Appellant and her family resided at since May of 1993, she was only evicted from two of the facilities for disruptive behavior. The Appellant testified that the remainder of her removals resulted from her not signing in and out, not searching for permanent housing and in one instance, because the room was too small for her and her family. Accordingly, the Agency's contention that the Appellant is unhousable is without merit.

The record therefore establishes that the Agency incorrectly determined to discontinue emergency housing assistance to the Appellant. The Agency contended at the hearing that it did not discontinue emergency housing assistance to the Appellant but was rather unable to place her and her family. However, the result of the Agency's failure to place the Appellant and her family in emergency housing has been a discontinuance of this assistance. The Agency's action was implemented without any prior notice to the Appellant. Accordingly, she is entitled to aid-to-continue pending the issuance of this Decision After Fair Hearing.

The Appellant's representative also requested a directive that the Agency pay for the Appellant's emergency housing expenses for the period

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since March 17, 1994. While the Agency has not denied any request for payment of these expenses, the Agency should provide the Appellant with reimbursement of the funds that she spent for three nights at the O Motor Lodge in the amount of \$58.00 per night, for a total of \$174.00 as well as the funds borrowed from Catholic Charities in the amount of \$144.00. These funds should be provided to the Appellant as a result of the aid to continue directive that has emanated from this Decision after Fair Hearing.

DECISION AND ORDER

The Agency's determination not to provide the Appellant with emergency housing assistance was not correct and is reversed.

The Agency's determination not to continue to provide the Appellant with emergency housing assistance pending the issuance of a Decision after Fair Hearing was not correct and is reversed.

1. The Agency is directed to provide the Appellant with emergency housing assistance.

2. The Agency is directed to provide the Appellant with reimbursement of the funds that she spent for three nights at the O Motor Lodge in the amount of \$58.00 per night, for a total of \$174.00 as well as the funds borrowed from Catholic Charities in the amount of \$144.00.

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

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

MAR 29 1994

By


Commissioner's Designee