

STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST July 29, 2004  
CASE # Pxxxxxx  
CENTER # Nassau  
FH # 4163482L

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In the Matter of the Appeal of :  
PJ :

**DECISION**  
: **AFTER**  
**FAIR**  
**HEARING**

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

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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 August 2, 2004, in Nassau County, before Susan Lerner, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

PJ, Appellant  
D. Ruff, Esq., Nassau Suffolk Law Services

For the Social Services Agency

M. Zimmerman, Supervisor, Fair Hearing Representative

ISSUE

Did the Agency provide funds sufficient to pay for adequate temporary housing?

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, age forty-four, resides in temporary housing with her three children, ages eleven, ten and seven.

2. The Agency's physician reviewed medical documentation provided by the Appellant's children's physician, and determined, on or about July 30, 2004, that the Appellant is to "stay in a shelter that allows the client to prepare meals for the children due to food allergies".

3. The Appellant's child, SG has a diagnosis of gastroesophageal reflux. Her child, MG has a diagnosis of asthma and food allergies, and her child TG has a diagnosis of asthma and allergies.

4. The Agency had previously been aware of the Appellant's need for

temporary housing which includes cooking facilities.

5. By notice dated July 27, 2004 the Agency provided the Appellant with \$295.00 to pay for temporary motel placement through July 29, 2004.

6. On July 27, 2004 the Appellant found temporary housing with cooking facilities, i.e., a kitchenette, at a cost of \$189.00 per night.

7. The Appellant was unable to find temporary housing with cooking facilities, at a lower rate. She had to borrow funds in order to pay that rate and had to supplement the funds provided by the Agency.

8. On July 30, 2004 the Agency provided the Appellant with \$834.36 to pay for temporary housing with cooking facilities for a one week period, i.e., a rate of \$119.00 per day.

9. On July 30, 2004 the Appellant was provided with a list of motels and their rates; some equipped with a microwave oven and refrigerator, and some equipped with a kitchenette.

10. The Appellant continues to pay \$189.00 per night for temporary housing, equipped with a kitchenette.

11. On July 29, 2004, the Appellant requested this fair hearing.

#### APPLICABLE LAW

Section 352.3(g) of the Regulations sets forth the standards for hotels for which the local agency seeks reimbursement. Specifically, each family with children must have a private bathroom. There shall be a regular vermin control program and rooms shall be cleaned at least every other day by hotel staff. A heating system shall be permanently installed and operated in accordance with local law. The hotel must arrange for maintenance of the heating system, as well as removal of garbage, furniture necessary for daily living, including sufficient beds. Security factors must be considered by the Agency in making the placement.

352.35 Eligibility for temporary housing assistance for homeless persons.

- (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) Prior to denying or discontinuing temporary housing assistance pursuant to subsection (c) of this section, the social services district must evaluate the individual's or the family's need for protective services for adults, preventive services for children and protective services for children and, if necessary, make an appropriate referral.
- (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

FH# 4163482L

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.

#### DISCUSSION

The record shows that the DI in , LI, has rooms equipped with a kitchenette at a weekly rate of \$769.00. The Appellant stated that she was unable to find a non-smoking room there, which she requires because of her children's asthmatic condition. She stated that she was only able to find a room equipped with a kitchenette at the RI at daily rate of \$189.00. The record shows that although required to do so, the Agency did not assist the Appellant in finding housing sufficient to meet her needs. The Appellant stated that she had to borrow funds to supplement the allowance provided by the Agency in order to pay the room rate of \$189.00.

The Agency argues that a room equipped with a microwave oven and refrigerator, constitute "a room with cooking facilities" as referred to by regulation. The Appellant and her attorney take the position that the Appellant cannot meet her children's medical needs without a full kitchenette, i.e., a refrigerator and stove. While the applicable regulation does not provide a working definition of the term "cooking facilities", in this case, in view of the medical and nutritional needs of the Appellant's children, "cooking facilities" must include more than a refrigerator and a microwave oven; they must include a stove on which the Appellant can cook the specific foods required by her children.

Accordingly, the Agency must provide the Appellant with the funds she requires, in order to pay for a temporary housing site which has the requisite cooking facilities discussed above. The Agency is to afford the Appellant the opportunity to document those expenses paid, in excess of the allowance provided by the Agency. The Agency must then reimburse the Appellant accordingly, and provide future shelter payments sufficient to meet her needs.

#### DECISION AND ORDER

The Agency has not provided funds sufficient to pay for adequate temporary housing.

1. The Agency is directed to afford the Appellant the opportunity to document those expenses paid in excess of the allowance provided by the Agency. The Agency must then reimburse the Appellant accordingly, and provide future shelter payments sufficient to meet her needs.

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.

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

DATED: Albany, New York  
August 4, 2004

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee