

In the Matter of the Appeal of :
: L D : DECISION
: : AFTER
from determinations by the New York City Department : FAIR
of Social Services (hereinafter called the agency) : HEARING

A fair hearing was held at 80 Centre Street, New York, New York, on April 17, 1984, before Michael R. Berg, Administrative Law Judge, at which the appellant, the appellant's representative and a representative of the agency appeared. The appeal is from a determination by the agency relating to the adequacy of appellant's grant of Aid to Dependent Children. An opportunity to be heard having been accorded all interested parties and the evidence having been taken and due deliberation having been had, it is hereby found:

1. Appellant is currently in receipt of a grant of Aid to Dependent Children for herself and her three minor children. Also residing with appellant, but in receipt of Supplemental Security Income benefits, is her husband.
2. From October, 1983, to March 5, 1984, appellant rented a house where she was responsible for the cost of heating said premises using oil fuel. From March 5, 1984, to the date of the hearing, appellant has rented a different house which she heats using natural gas fuel.
3. On January 31, 1984, appellant requested a hearing to review the following:
 - (a) the failure of the agency to act on December 13, 1983, and January 5, 1984, requests for an additional allowance for fuel for the 1983-84 heating season;
 - (b) the failure of the agency to act on a January 5, 1984, request to restrict fuel for heating allowance and additional allowances for fuel to the appellant's fuel oil provider; and
 - (c) the failure of the agency to act on December 25, 26, and 27, 1983, and January 5, 1984, requests for repair of essential heating-related plumbing.
4. From October, 1983, through the date of the hearing, the agency has provided appellant with a monthly allowance for fuel in the amount of \$47.00.

5. On December 13, 1983, appellant provided documentation to the agency indicating that she had incurred costs for heating fuel in amounts in excess of her fuel allowance.

6. On January 5, 1984, appellant requested the agency to restrict the fuel allowance portion of her grant to make voucher payments directly to her fuel provider.

7. As of the date of the hearing, the agency had not begun voucher payment of appellant's fuel bills pursuant to her aforesaid request.

8. On December 24, 1983, appellant informed the agency that she had no fuel to heat her residence, no funds to purchase additional fuel and that her fuel provider had refused to make a delivery on credit. Appellant requested the agency to provide her with assistance to enable her to heat her residence.

9. The agency verbally denied appellant's December 24, 1983, request for assistance on that day.

10. On December 25, 1983, certain pipes necessary to the operation of appellant's heating system cracked as a result of the fact her home was unheated.

11. On December 25, and 26, 1983, appellant requested the agency to provide her with assistance to enable her to repair her home heating system and to purchase fuel for heating.

12. The agency verbally denied appellant's aforesaid requests of December 25, and 26, 1983.

13. On December 26, 1983, appellant borrowed \$140.00 to pay for the aforesaid plumbing repairs and \$115.72 to pay for the fuel delivery of December 26, 1983.

14. On January 5, 1984, appellant requested the agency to provide her with reimbursement for the aforesaid loan, and the agency verbally denied such request.

Administrative Directive 83 ADM-31, Section IV, provides in pertinent part:

C. Additional Allowances for Fuel

Department Regulations 352.5(b) provides that an additional allowance for fuel shall be granted when made necessary by exceptionally severe weather, overly exposed location or unusually poor construction of a dwelling, poor health, or when the Department deems that additional fuel allowances are necessary as a result of increased fuel prices. The Department has deemed that additional fuel allowances are necessary. Thus, in accordance with existing regulation, when a recipient's actual heating fuel costs exceed the current fuel schedules (SA-6a and SA-6b) the local district shall authorize an additional allowance of:

- up to 165% of the current SA-6a schedule for Other than Natural Gas;
- up to 90% of the current SA-6b schedule for Natural Gas.

NOTE: Additional allowances for fuel are to be provided when the recipient has incurred and documented that actual fuel costs exceed the SA-6a or SA-6b schedules. Additional allowances for fuel are not to be provided on an ongoing basis without such documentation. The additional allowance for fuel computation is based on the entire heating season (either 8 or 12 month schedule).

For households whose fuel bills exceed these established limits, there must be an individual, case-by-case evaluation to determine the reasons (exceptionally severe weather, overly exposed location, unusually poor construction of a dwelling, poor health, or reduced energy supplies coupled with rising cost) for such excessive bills. The evaluation may include but is not limited to field investigations, contacts with landlords, fuel/utility suppliers, and/or building code enforcement agencies.

Where the individual case evaluation does not substantiate that extenuating circumstances exist, the recipient must agree to a recoupment of the additional amount exceeding the 165% or 90% limit. Where the case evaluation warrants authorization of an additional amount which exceeds the established limits, the reason for such authorization (exceptionally severe weather, overly exposed location, unusually poor construction of a dwelling, poor health, or reduced energy supplies coupled with rising costs) must be fully documented in the case record. Also, the authorization must be approved by a supervisor higher in authority than the supervisor who usually signs authorizations

For those PA cases on vendor payment, accounting staff should monitor fuel bills and notify Income Maintenance of excessive bills (bills exceeding the 165% or 90% additional allowance. The appropriate review action outlined above will be undertaken by Income Maintenance or other appropriate LDSS staff.

For households receiving a standard fuel allowance and responsible for paying their own heating bills, the Income Maintenance worker will evaluate the individual case circumstances at the time the household requests such an additional allowance.

NOTE: PA recipients are categorically eligible for HEAP. When determining a recipient's eligibility for an additional allowance for fuel, the HEAP benefit will be used to offset the amount of additional allowance for fuel. If the PA household received a HEAP cash payment, the worker must verify that both the standard fuel allowance (SA-6a or SA-6b) and the HEAP benefit were paid toward the heating bill. any amount not paid toward the heating bill must be recouped from future PA grants.

D. Use of Vendor Payments for Fuel for ADC Households

Voluntary Restriction

Local social services districts may inform ADC applicants/recipients of their right to have their fuel allowance restricted. However, per 81 ADM-52, if the ADC applicant/recipient requests to have his/her fuel allowance restricted, the local district must comply.

I. Emergency Utility Assistance

Chapter 895 of the Laws of 1981 requires local social services districts to make a payment to a utility company for a period of up to, but not exceeding, 4 months immediately preceding the month of application for an applicant or 4 months out of the last 10 months for a recipient of PA when such a payment is needed to prevent shut-off or restore service.

When an applicant/recipient of PA is without utility service or is faced with a shut-off and an emergency payment is required to restore or continue service, the local district must follow the guidelines provided in Administrative Directive 82 ADM-30.

Before issuing an emergency PA benefit (EAF, EAA, Emergency HR), local districts must explore the availability of HEAP to meet the household's utility needs. However, HEAP emergency eligibility requirements must be met.

In this case, the evidence presented at the hearing clearly established that on December 13, 1983, appellant requested the agency to provide her with an additional allowance for fuel and furnished it with documentation demonstrating that, as of that date, she had already incurred expenses for heating fuel in excess of her entire fuel allowance for the 1983 - 1984 heating season. Pursuant to the above-cited Administrative Directive, the agency should have provided her with an additional allowance for fuel. The record further establishes that the agency failed to comply with the requirements of 83 ADM-31 by denying appellant's request for assistance on December 24, 1983, when she reported that she had no fuel to heat her residence and was unable to obtain any

fuel. Inasmuch as the damage to appellant's heating system was caused by freezing pipes resulting from the agency's improper failure to assist her during her fuel emergency, the agency's refusal to reimburse her for her repair costs was also improper.

Finally, the record establishes that the agency has failed to act upon appellant's request of January 5, 1984, that her fuel allowance be restricted and that the agency make voucher payments for her fuel costs directly to her fuel supplier. The above-cited Administrative Directive mandates that the agency comply with such a request and, therefore, the agency's failure to make voucher payments for her fuel costs is improper.

Under the foregoing circumstances, the agency is directed to reevaluate appellant's eligibility for assistance for the 1983 - 84 heating season pursuant to Administrative Directive 83 ADM-31, and to take appropriate action in accordance with such re-evaluation. Additionally, the agency is directed to do the following:

- (a) to provide appellant with additional fuel allowances for the 1983-84 heating season;
- (b) to restrict appellant's fuel allowance from her grant and make voucher payments for her fuel costs directly to her fuel provider; and
- (c) to reimburse appellant for \$140.00 in expenses she incurred for the aforesaid repairs to heating equipment.

DECISION: The determination of the agency is not correct and is reversed. The agency must immediately comply with the directives set forth above as required by Section 358.22 of the Department's Regulations.

DATED: Albany, New York

JUN 11 1984

CESAR A. PERALES,
COMMISSIONER

BY 
Commissioner's Designee