

STATE OF NEW YORK  
DEPARTMENT OF SOCIAL SERVICES

REQUEST December 10, 1993  
CASE#  
CENTER# Monroe  
FH# 2070580N

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In the Matter of the Appeal of :  
J B DECISION  
: AFTER  
FAIR  
HEARING  
from a determination by the Monroe 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 the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on March 4, 1994, in Monroe County, before James Parwulski, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

J B , Appellant; Reverend John C ; Ann Mason, Appellant's Representative

For the Social Services Agency

D. Young, Fair Hearing Representative

ISSUES

Was the Agency's determination to remove the shelter allowance for taxes and water assessments from the Appellant's Public Assistance grant correct?

Was the Agency's determination that the Appellant received an overpayment of assistance because she received a shelter allowance to which she was not entitled 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:

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1. Appellant is in receipt of a grant of Public Assistance for a household of one person.
2. The Appellant lives in her own home.
3. The Appellant received a shelter allowance in the amount of \$129.62 monthly for taxes and an allowance for water assessments in the amount of \$32.81 monthly.
4. On October 18, 1993, the Agency determined to reduce the Appellant's grant of Public Assistance by removing the shelter allowance for taxes and water assessments from the Appellant's budget on the ground that the Appellant was not paying her tax or water bills.
5. The Agency further determined that the Appellant had received an overpayment of assistance because she had received allowances for taxes and water assessments to which she was not entitled. The Agency informed the Appellant that a recoupment had been stored.
6. On December 10, 1993, the Appellant requested this fair hearing.

#### APPLICABLE LAW

Social Services Law Section 131-a.1 requires Social Services districts to provide Public Assistance to needy persons who are determined to be eligible in accordance with standards of need set forth in Social Services Law Section 131-a.2. The standard of need and a monthly grant of assistance must include, among other things, amounts for shelter.

Department Regulations provide that on client-owned property used as a home, carrying charges must be met in the amount actually paid by the recipient, but not in excess of the appropriate maximum of the rent schedule, for the items of taxes; interest on mortgage; fire insurance; and garbage disposal, sewer and water assessments. 18 NYCRR 352.4(b).

Agencies are required to take all necessary steps to correct any overpayment or underpayment of assistance to a Public Assistance recipient. Overpayments shall include payments made to an eligible person in excess of his/her needs and payments made to an ineligible person. In addition, overpayments shall include aid-continuing payments made to such person pending a fair hearing decision. Social Services Law Section 106-b; 18 NYCRR 352.31(d).

#### DISCUSSION

The Agency's determination was based on the fact that the Appellant was not paying her tax or water bills. The uncontroverted evidence established that the Appellant was not personally paying her tax or water bills. The evidence further established that the bills were being paid by a friend, Reverend John C . However, Reverend C has not been paying

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Appellant's bills as a gift to her. He paid \$2,100 in tax arrears in 1988 to prevent foreclosure and has been paying the Appellant's tax bills, including water arrears, since then. The Appellant has agreed to repay the \$2,100 loan for payment of the arrears at \$50 to \$150 a month. (Since the amount paid for the tax arrears was a loan, it is not budgetable as lump sum income.) The Appellant has also agreed to repay Reverend C for any amounts subsequently paid for her taxes. Reverend C had been using the money received by the Appellant in payment of the loan to cover her ongoing tax bills. Under these circumstances, it is found that the Appellant has incurred carrying charges for taxes and water and that she actually has been paying such charges. Accordingly, the Agency's determination to remove the Appellant's shelter allowance will not be affirmed. Additionally, the Agency's determination that the Appellant received an overpayment of assistance cannot be sustained.

It is noted that Reverend C testified at the hearing that he can no longer afford to pay the Appellant's tax and water bills.

DECISION AND ORDER

The Agency's determination to remove the shelter allowance for taxes and water assessments from the Appellant's Public Assistance grant is not correct and is reversed.

The Agency is directed to provide the Appellant with an allowance for taxes and water assessments to correct the underpayment of assistance retroactive to the date of its reduction.

The Agency's determination that the Appellant received an overpayment of assistance due to nonpayment of taxes and water assessments is not correct and is reversed.

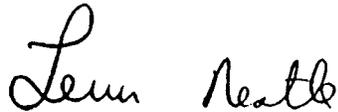
As required by Department Regulations at 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York

NEW YORK STATE DEPARTMENT  
OF SOCIAL SERVICES

MAR 18 1994

By

  
Commissioner's Designee