

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

REQUEST July 24, 1990
CASE #
CENTER # Suffolk
FH # 1567902N

In the Matter of the Appeal of :
P B DECISION
: AFTER
FAIR
from a determination by the Suffolk County :
Department of Social Services :
HEARING

JURISDICTION

This appeal is from a determination by the local Social Services Agency relating to the adequacy of Appellant's Public Assistance benefits on the grounds that the Agency determined to deny the Appellant's request for a cash security deposit.

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 August 20, 1990, in Hauppauge, New York, before Benedict Schiraldi, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

P B Appellant
Peter Vollmer, Attorney

For the Local Social Services Agency

Martha Rogers, Assistant County Attorney
Cliff Johnson, Central Housing Division

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. The Appellant has been in receipt of a grant of Aid to Dependent Children for herself and her five minor children.
2. On May 30, 1990, Appellant's landlord instituted an eviction proceeding against the Appellant, alleging that the Appellant is a hold-over tenant as of May 1, 1990, and the landlord is seeking a judgment awarding

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possession of the premises to the landlord. The landlord is seeking possession of the premises in order to convert the two family house into a single family dwelling.

3. On June 25, 1990, the Appellant located permanent housing at _____, with a monthly rental of \$939.00, which includes heat.

4. The proposed landlord was willing to accept a Section 8 Housing Certificate, which brought the Appellant's share of the rental to \$454.00 per month, which is less than the maximum shelter allowance of \$503.00 in Suffolk County.

5. The proposed landlord requested a security deposit in the amount of \$503.00.

6. On June 26, 1990, the Appellant requested the Agency to make payment of the \$503.00 cash security deposit.

7. On June 27, 1990, the Agency determined to deny the Appellant's request for a cash security deposit on the grounds that the Appellant's landlord is not willing to accept a security agreement.

8. On July 9, 1990, the prospective landlord advised the Agency that he would not accept a security agreement and that in order to secure the housing, a voucher and/or cash would be required.

9. On July 11, 1990, the Appellant's representative contacted a Deputy Commissioner from the Agency and requested that the Agency provide the Appellant with either a cash security deposit or an alternative Section 8 landlord who would accept a security agreement.

10. On July 13, 1990, the Agency notified the Appellant's representative that the Appellant had already paid the \$503.00 to the prospective landlord.

11. On July 10, 1990, a warrant of eviction was issued awarding possession of the premises to Appellant's landlord.

12. On July 15, 1990, the Sheriff of Suffolk County issued a seventy-two hour notice to the Appellant to vacate the premises.

13. On July 17, 1990, the Appellant's representative contacted the Agency in response to the Agency's letter of July 13, 1990, and stated that Appellant has only Public Assistance funds which she could not divert to pay a cash security deposit, and again requested the cash security deposit.

14. The Agency did not respond to the Appellant's representative's letter of July 17, 1990.

15. On July 13, 1990, the Town of _____ Housing Authority requested the Appellant to sign her new Section 8 lease as soon as possible.

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16. On July 23, 1990, the Appellant borrowed \$503.00 from a Revolving Loan Fund, set up by STUDENTS for 60,000, a non-profit organization at Northport High School, Northport, and administered by Nassau/Suffolk Law Services (NSLS). The Appellant agreed to repay NSLS's Revolving Loan Fund for the funds borrowed.

17. On July 24, 1990, the Appellant moved into her new apartment at , where she presently resides.

18. On July 24, 1990, the Appellant requested this hearing to review the Agency's determination.

ISSUE

Was the Agency's determination to deny the Appellant's request for a cash security deposit correct?

APPLICABLE LAW

Section 143-c of the Social Services Law provides, in pertinent part, as follows:

143-c. Avoidance of abuses in connection with rent security deposits.

1. Whenever a landlord requires that he be secured against non-payment of rent or for damages as a condition to renting a housing accommodation to a recipient of Public Assistance, a local Social Services official may in accordance with the Regulations of the Department secure the landlord by either of the following means at the option of the local Social Services official:

(a) By means of an appropriate agreement between the landlord and the Social Services official; or

(b) By depositing money in an escrow account, not under the control of the landlord or his agent, subject to the terms and conditions of an agreement between the landlord and the Social Services official in such form as the Department may require or approve.

2. Except as expressly provided in subdivision three of this section, it shall be against the public policy of the state for a Social Services official to pay money to a landlord to be held as a security deposit against the non-payment of rent or for damages by a Public Assistance recipient, or to issue a grant to a recipient of Public Assistance therefor.

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3. When, however, in the judgment of the Social Services official, housing accommodations available in a particular area are insufficient to properly accommodate recipients of Public Assistance in need of housing, and in order to secure such housing it is essential that he pay money to landlords to be held as security deposits against the non-payment of rent or for damages by Public Assistance recipients, or to issue grants to recipients of Public Assistance therefor, such Social Services official may pay or furnish funds for such security deposits until sufficient housing accommodations are available in the particular area to properly accommodate recipients of Public Assistance in need of housing. Landlords receiving such security deposits shall comply with the provisions of article seven of the General Obligations Law. Such cash security deposits shall be subject to assignment to the local Social Services official by the recipients of Public Assistance or care.

4. This section shall apply to federally-aided categories of Public Assistance, except to the extent prohibited by applicable federal laws and regulations.

DISCUSSION

The Agency contended at the hearing that there was no necessity to provide a cash security deposit in this case because the landlord has accepted a Section 8 security agreement. However, the Agency's contention is without merit. The issue at this hearing is whether the landlord was willing to accept a security agreement from the Agency in lieu of a cash security deposit. The fact that the landlord did or did not accept a Section 8 security agreement is not relevant at this fair hearing. The landlord has stated that he would not accept a security agreement from the Department of Social Services, and that in order for the Appellant to secure the housing, a cash security deposit was required.

Social Services Law Section 143-c provides that whenever a landlord requires security against non-payment of rent or for damages as a condition to renting a housing accommodation to a Public Assistance recipient, a local Social Services official may, in accordance with Department Regulations, secure the landlord by means of an agreement or through an escrow account not under the control of the landlord. The law further provides that it is against the public policy of the State to pay cash to a landlord as security unless in the judgment of the local district, housing accommodations in a particular area are not available to Public Assistance recipients without the payment of a cash security deposit.

In this case, the Agency failed to present any evidence that permanent housing was available to the Appellant without the payment of a cash security deposit. In fact, from June 26, 1990 until the date of this hearing, the Agency did not refer the Appellant to any permanent housing. Furthermore, the Agency failed to present any evidence that Section 8 housing was available without the payment of a cash security deposit.

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The Appellant testified credibly that she looked at two other Section 8 housing but the accommodations were too small for her family of six. The Appellant further stated that faced with expiration of her Section 8 Housing Certificate and the loss of her only available Section 8 landlord, she borrowed the \$503.00 from NSLS Revolving Loan Fund, with the provision that she repay the borrowed funds.

It is a matter of public record that the securing of Section 8 housing is extremely difficult, and that applicants therefor are placed on a waiting list, in which applicants are not reached for a period of a few years.

The Appellant, in this case, not only was able to secure such housing, but the rental of \$454.00 was less than the maximum shelter allowance for a family of her size, which in Suffolk County is \$503.00. The Appellant was unable to secure Section 8 housing without the payment of a cash security deposit.

The Appellant was able to avoid losing the Section 8 housing, and therefore become homeless, by the intervention of her representative through the payment of the security deposit by the NSLS Revolving Loan Fund. Since the Appellant agreed to repay the Revolving Loan Fund for the funds she received from it, the Agency is required to provide Appellant with a grant of assistance in order to satisfy her obligation.

DECISION AND ORDER

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

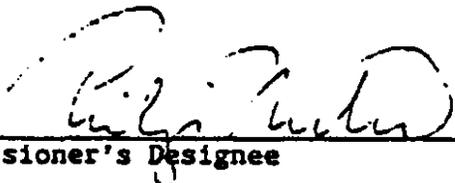
1. The Agency is directed to provide Appellant with an allowance for a security deposit in the amount of \$503.00, by making a direct payment to NSLS in order for Appellant to satisfy her obligation to NSLS for such security deposit.

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

SEP 20 1990

BY 
Commissioner's Designee