

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

REQUEST: January 25, 1992
CASE No.
CENTER No. Nassau
FH No. 1850246J

In the Matter of the Appeal of :
P C :
from a determination by the Nassau County : **DECISION**
Department of Social Services : **AFTER**
 : **FAIR**
 : **HEARING**
 :
 :
 :

JURISDICTION

This appeal is from a determination of the local social services agency (Agency) to deny the Appellant's application for an allowance for a 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 September 18, 1992, in Nassau County, before James J. Dalton, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

P C , Appellant; Herb Harris, Esq., Appellant's Representative

For the Local Social Services Agency

Beverly Sennett, Esq., and Evelyn Boykin, Agency Representatives,

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. Appellant is in receipt of Public Assistance.
2. On or about January 16, 1992, the Appellant requested that the Agency provide an allowance for a security deposit.

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3. The Agency did not provide the Appellant with a security deposit. The Appellant was provided with an allowance of \$139.35 for the move to his new residence on January 22, 1992.

4. The Appellant moved into a single furnished room in January, 1992. The landlord did request a security deposit of \$300.00 in order to move in.

5. A previous Fair Hearing decision on this matter was issued on March 30, 1992, wherein the Agency determination to deny the Appellant's request for a security deposit was affirmed by the Commissioner. Subsequent to the issuance of said Fair Hearing decision, an inquiry was made by the Appellant's representative concerning the Commissioner's decision. A request for review was made. Pursuant to said review, it has been determined that a new hearing was necessary to review the Agency's determination. The March 30, 1992 decision is hereby vacated.

6. The Appellant did advise the Agency of the need for a security deposit.

7. The Appellant borrowed \$300.00 from the Nassau Support and Advocacy Center on January 25, 1992, in order to move into his new residence. He is seeking reimbursement from the Agency in order to repay the Nassau Support and Advocacy Center.

8. The Appellant had been in a shelter from December 27, 1991 to January 17, 1992.

9. The Appellant was moving into permanent housing.

10. The Appellant was not able to obtain permanent housing without payment of a security deposit.

ISSUE

Was the Agency's determination to deny the Appellant's application for an allowance for a security deposit correct?

APPLICABLE LAW

Section 352.6 of the Department Regulations provides that an Agency shall provide funds for household moving expenses utilizing the least costly practical method of transportation, rent security deposits and/or broker's or finders' fees when in the Agency's judgment one of the following conditions exist:

- (1) the move is to a less expensive rental property and the amount paid for security deposit and moving expenses is less than the amount of a two-year difference in rentals; or
- (2) the move is necessitated by one of the following:

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- (a) the need to move results from a disaster/catastrophe and/or a vacate order placed against the premises by a health agency or code enforcement agency;
- (b) the move is necessitated by a serious medical or physical handicap condition. Such need must be verified by specific medical diagnosis;
- (c) the individual or family is rendered homeless as a result of having been put out by another occupant with whom they were sharing accommodations;
- (d) the move is from temporary to permanent housing;
- (e) the move is from permanent housing to temporary housing which is necessary due to the unavailability of permanent housing;
- (f) the move is from one temporary accommodation to another temporary accommodation which is necessary due to the unavailability of permanent housing;
- (g) the move is from an approved relocation site or to an approved cooperative apartment; or
- (h) there is a living situation which adversely affects the mental or physical health of the individual or family, the need for alternate housing is urgent, and not issuing a security deposit, moving expenses and/or broker's or finders' fees would prove detrimental to the health, safety and well-being of the individual or family.

A security deposit and/or broker's or finders' fees may be provided only when an applicant or recipient is unable to obtain a suitable vacancy without payment of such deposit and/or fees. 18 NYCRR 352.6(a)(2).

Whenever a landlord requires that he/she be secured against non-payment of rent or damages as a condition to renting a housing accommodation to a recipient of Public Assistance, the Agency may secure the landlord either by means of an appropriate security agreement between the Agency and the landlord or by depositing money in an escrow account. 18 NYCRR 352.6(b).

The amount of the security deposit or broker's fees is not limited to the Agency's maximum shelter allowance.

DISCUSSION

The evidence establishes that the Appellant moved on the advice of his caseworker. The evidence further establishes that the Appellant was seeking permanent housing, and that the Appellant actually found such housing on January 16, 1992.

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The Agency stated that the issue for this hearing should be moot, since the Appellant has recently moved to a second permanent residence. The Agency further contends that it has no record to show that a security deposit was requested. The Agency contended that the landlord's letter does not show that a security deposit was being charged. The Agency's summary also stated that a security deposit is not usually provided for a single room rental.

The Appellant testified that he requested a security deposit in January, 1992, in order to move into the proposed residence. The Appellant further testified that he was told by the caseworker that a security deposit would not be provided for a single room rental. Consequently, according to the Appellant, the landlord did not state in her letters that a security deposit was required (even though she still charged such an expense to the Appellant). The Appellant submitted evidence to show that he borrowed \$300.00 to pay the security deposit. The Appellant contends that he still owes this amount to the Nassau Support and Advocacy Center.

The Appellant also submitted evidence, in the form of a letter from the Nassau Support and Advocacy Center, showing that the center and the Appellant approached twelve prospective landlords of one room rentals. All of these prospective landlords sought payment of a security deposit. The Appellant's representative also contended that the applicable Department Regulations do not prevent the provision of a security deposit for single room rentals. The Appellant's contentions are valid.

The Agency's claim that the issue is moot lacks merit. Even if the Appellant has subsequently moved, he owes this money to the Nassau Support and Advocacy Center. The Appellant borrowed this amount as a direct result of the Agency's determination not to provide the Appellant with a security deposit. The evidence otherwise supports the Appellant's claim that he had to pay a security deposit in order to obtain housing. Therefore, the Agency's determination was not correct.

However, the evidence fails to establish what the Appellant did with the security deposit from the former apartment (i.e., the monies borrowed from the Nassau Advocacy Center), or whether those funds are still available. The Appellant did not offer an explanation of the disposition of those monies, subsequent to his move, at the hearing. The Agency should investigate the Appellant's circumstances, and determine what the Appellant did with that security deposit. To the extent that the security was forfeited the agency will not be required to reimburse the security money if to do so would have resulted in an overpayment per section 352.6(c).

DECISION AND ORDER

The Agency's determination to deny the Appellant's application for an allowance for a security deposit is not correct and is reversed.

1. The Agency is directed to evaluate the Appellant's circumstances, in order to determine what the Appellant did with the security deposit monies borrowed from the Nassau Advocacy Center, and whether the money is still available; and

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2. The Agency is directed to provide the Appellant with an allowance for a security deposit in the amount of \$300.00, if the Appellant has not otherwise mismanaged the security deposit monies borrowed from the Nassau Advocacy Center within the guidelines of section 352.6 of the regulations.


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

NOV 19 1992

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

By



Commissioner's Designee