

STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST October 27, 2004  
CASE # PXXXXXXXXX  
CENTER # Suffolk  
FH # 4215800N

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In the Matter of the Appeal of :

EB

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

from a determination by the Suffolk 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 November 17, 2004, in Suffolk County, before Jonathan M. Kastoff, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

EB, Appellant  
Antonia Ezechi, Representative

For the Social Services Agency

Amie Salinero, Fair Hearing Representative

ISSUE

Was the Agency's determination not to schedule an interview for Appellant within seven working days correct?

Was the Agency's determination not to act on the Appellant's application for an allowance for a security deposit 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:

1. Appellant applied for Public Assistance, Medical Assistance, and Food Stamps on October 21, 2004.
2. The Appellant is not in receipt of Public Assistance and is not in receipt of nor determined eligible for Supplemental Security Income.
3. The Appellant's household consists of three persons.
4. The Agency scheduled a certification interview for Appellant for November 23, 2004.

5. On October 21, 2004, the Appellant also requested that the Agency provide an allowance for a security deposit to enable Appellant to relocate to new housing.

6. The Agency determined that Appellant was not in immediate threat of eviction and requested Appellant to submit a housing package.

7. Appellant attempted to submit a housing package to the Agency in October, 2004. Appellant was advised to bring the package to her certification interview.

8. The Agency has not acted on the Appellant's request for an allowance for a security deposit.

9. On October 27, 2004, the Appellant requested this fair hearing. Appellant also requested a fair hearing to review an Agency failure to act on Appellant's application for Medical Assistance and Food Stamps in a timely manner. However, at the hearing, the Appellant withdrew her request for review of such issues.

#### APPLICABLE LAW

Section 351.8(b) of 18 NYCRR provides that the decision to accept an application for Public Assistance and care must be made within 30 days from the date of application for Family Assistance and within 45 days from the date of application for Safety Net Assistance, except where the applicant requests additional time or where difficulties in verification lead to an unusual delay, or for other reasons beyond the Agency's control. The applicant must be notified in writing of the Agency's determination.

A personal interview with the applicant or a designated representative is required in all cases to establish eligibility for public assistance. Interviews must ordinarily be scheduled within seven working days, except when there is indication of emergency, in which case the interview must be held at once. 18 NYCRR 350.3(c).

Section 352.6 of 18 NYCRR 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:
  - (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). Security deposits cannot be paid nor can money be paid into an escrow account where recipients of public assistance reside in public housing. 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

Appellant applied for ongoing assistance and benefits on October 21, 2004. The Agency scheduled a certification interview for Appellant for November 23, 2004. Before scheduling the interview, the Agency determined that Appellant had no emergency needs that had to be met at that time, and advised Appellant that she could return to the Agency sooner than November 23, 2004 should an emergency situation arise. Pursuant to 18 NYCRR 350.3(c), interviews must ordinarily be scheduled within seven working days, except when there is indication of emergency, in which case the interview must be held at once. While the Regulations allow the Agency some leeway in scheduling certification interviews, the Regulations, at 18 NYCRR 351.8 provide that the decision to accept an application for Public Assistance and care must be made within 30 days from the date of application for Family Assistance and within 45 days from the date of application for Safety Net Assistance, except where the applicant requests additional time or where difficulties in verification lead to an unusual delay, or for other reasons beyond the

Agency's control. No such exception exists in this case. While the Agency should try to schedule all certification interviews within seven working days as a general practice, there is no relief that can be granted to Appellant, as the certification interview will be held before this decision is received by the Agency.

The Appellant's representative also sought a directive in all similarly affected and future cases regarding the scheduling of certification interviews more than seven working days after the application date. While Appellant's representative indicated that she was aware of one other case where there was one month delay, the certification interview was rescheduled for an earlier date. Appellant's representative failed to present sufficient evidence to establish that the actions in this case or failure to act were a part of Agency procedure or policy or that cases in addition to that of the Appellant's were similarly affected. As such, the record did not establish that there was a basis for a directive to the Agency for similar or future cases at this time.

At the time of application, Appellant requested an allowance for a rent security deposit. The Agency determined that there was no immediate need and advised Appellant to submit a completed housing package so that an inspection of the property could be made. Appellant testified that she had the housing package completed and that she attempted to present it to the Agency in October, 2004, and was advised that she should bring it to her certification interview in November, 2004. Appellant's testimony was uncontroverted, consistent as to detail and persuasive. The Agency should have promptly acted on Appellant's request for the special grant instead of delaying any processing of the request for almost one month. Appellant presented sufficient evidence to establish that she requested an allowance for a rent security deposit, and that the Agency has not acted on that request in a timely manner. Therefore, the Agency's failure to act on Appellant's request for a security deposit cannot be sustained at this time.

It is noted that on or about November 1, 2004, Appellant borrowed funds to move into the new housing, funds which she may not have had to borrow had the Agency timely process Appellant's request.

#### DECISION AND ORDER

The Agency's determination not to schedule an interview for Appellant within seven working days was not correct and is reversed.

1. However, there is no relief to which Appellant is entitled at this time.

The Agency's failure to act on the Appellant's request for an allowance for a security deposit is not correct and is reversed.

1. The Agency is directed to make a determination as to the Appellant's eligibility for an allowance for a security deposit as of October 21, 2004, in accordance with the foregoing.

2. The Agency is further directed to notify the Appellant in writing of its determination and to provide any allowances to which the Appellant may be entitled.

Should the Agency need additional information from the Appellant in order

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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  
November 24, 2004

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee