

In the Matter of the Appeal of

A H

from determinations by the Nassau County and New York City
Departments of Social Services

:
:
DECISION
AFTER
FAIR
HEARING
:

JURISDICTION

This appeal is from a determination by the local Social Services agency relating to the discontinuance of appellant's Public Assistance by Nassau County on the grounds that the appellant relocated to New York City; from a determination relating to the discontinuance of appellant's Food Stamp benefits by Nassau County, without notice; from a determination relating to Nassau County's failure to provide the appellant with information set forth in the Department's Consolidated Food Stamp Correspondence for February, 1983; from a determination relating to New York City's failure to allow the appellant to apply for assistance and benefits on July 17, 1986, and its failure to provide the appellant with written notification of its decision; from a determination relating to New York City's failure to provide the appellant with Emergency Assistance to Families on August 4, 1986; from a determination relating to New York City's failure to provide the appellant with pre-investigation assistance and care since August 1, 1986; from a determination relating to the denial of the appellant's applications for Public Assistance, Medical Assistance and Food Stamp benefits on August 22, 1986, September 20, 1986, and October 24, 1986; and from a determination relating to the adequacy of appellant's Public Assistance and Food Stamp benefits since November, 1986.

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 December 15, 1986, at 80 Centre Street, New York, New York, before Thomas J. Bepko, Jr., Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

A H , Appellant
Eugene Doyle, Appellant's Representative

For the Agency

Kinma Lockwook, FH Representative
(New York City)

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, Medical Assistance and Food Stamp benefits for herself and one minor child, since November 20, 1986, in New York City. The appellant is currently pregnant with an expected date of delivery of February 19, 1987.

(2) On July 31, 1986, the appellant requested a fair hearing to review:

- (a) the Nassau County's determination to discontinue appellant's Food Stamp benefits, without written notice, on or about May 29, 1986;
- (b) the Nassau County's failure to provide the appellant with the information set forth in the Department's Consolidated Food Stamp Correspondence for February, 1983, Section III-I (page eighteen) to enable the appellant to file immediately for Food Stamp benefits upon her relocation to New York City on June 5, 1986;
- (c) the Nassau County's determination contained in its Notice of Intent, dated July 11, 1986, to discontinue the appellant's Public Assistance and Medical Assistance, effective August 1, 1986, because the appellant moved to New York City;
- (d) the refusal by the New York City agency's Income Maintenance Center #79 on July 17, 1986, to provide the appellant with an opportunity to apply for Public Assistance, Medical Assistance and Food Stamp benefits for herself and minor child;
- (e) the refusal by the New York City's agency Income Maintenance Center #79 to provide the appellant with a written notice of denial of her request for Public Assistance, Medical Assistance and Food Stamp benefits on July 17, 1986;
- (f) the New York City agency's determination, on or about August 4, 1986, not to provide the appellant with Emergency Assistance to Families (hereinafter referred to as EAF) in the form of a water allowance, restaurant allowance and housing improvement services;
- (g) the New York City agency's determination not to provide the appellant with pre-investigation assistance and care since August 1, 1986, to enable the appellant to meet the immediate needs of herself, her child and unborn child;

- (h) the New York City agency's determination on August 22, 1986, to deny the appellant's August 5, 1986, application for Public Assistance, Medical Assistance and Food Stamp benefits;
 - (i) the New York City agency's determination on September 30, 1986, to deny the appellant's September 5, 1986, application for Public Assistance, Medical Assistance and Food Stamp benefits;
 - (j) the New York City agency's determination on October 24, 1986, to deny the appellant's October 3, 1986, application for Public Assistance, Medical Assistance and Food Stamp benefits;
 - (k) the adequacy of the appellant's Public Assistance grant since November, 1986, in that the agency has not provided the appellant with a shelter allowance since November, 1986; and
 - (l) the adequacy of the appellant's Food Stamp benefits since November, 1986, in that the agency did not include the appellant's rent as a shelter cost.
- (3) Prior to June 5, 1986, the appellant and her child resided in Nassau County,

New York.

- (4) The appellant had been employed in Nassau County until May 24, 1986.

(5) Prior to June, 1986, the appellant and her son were in receipt of monthly Medical Assistance authorizations and monthly Food Stamp benefits from the Nassau County local district.

(6) From December 1, 1985, through May, 1986, the appellant received varying amounts of Public Assistance from Nassau County.

(7) On May 27, 1986, Nassau County provided the appellant with a special allowance of \$700.00 to meet the costs needed for a security deposit for a new apartment in _____, New York.

(8) The appellant relocated to her present apartment in _____, New York on June 5, 1986.

(9) The appellant's new apartment had no running water, no refrigerator, no stove, no toilet and defective wiring.

- (10) The appellant obtained water from an open fire hydrant in the area.

(11) The appellant also borrowed money to purchase water.

(12) On June 27, 1986, the appellant's landlord installed a stove in the appellant's apartment.

(13) In July, 1986, the landlord installed a refrigerator and toilet.

(14) The appellant and her son have become ill on occasions due to the sediment contaminated water from the fire hydrant.

(15) Because of the lack of water in the apartment, the appellant has not been able to adequately prepare meals from June 5, 1986, to the present.

(16) The appellant's rent for her apartment is \$350.00 monthly.

(17) In June, 1986, the Nassau County agency provided the appellant with a monthly shelter allowance in the amount of \$271.00, a restaurant allowance in the amount of \$32.50 and two Public Assistance checks in the amounts of \$39.00 and \$71.50.

(18) In July, 1986, Nassau County provided the appellant and her son with \$414.00 in Public Assistance (\$271.00 monthly shelter allowance and \$143.00 for basic needs). The appellant also received her Medical Assistance for July, 1986.

(19) The Nassau County agency did not provide the appellant with Food Stamp benefits for June, 1986, or July, 1986. The appellant did not receive any Food Stamp benefits for August, 1986.

(20) Nassau County did not inform the appellant of any action she should take when she relocated to _____ to ensure that her Food Stamp benefits would continue unchanged.

(21) On July 11, 1986, the Nassau County agency sent to the appellant a Notice of Intent to discontinue her Public Assistance and Medical Assistance, effective August 1, 1986, because the appellant was now living outside of Nassau County.

(22) On July 17, 1986, the appellant appeared at the New York City agency's Income Maintenance Center #79 to apply for assistance and benefits.

(23) The appellant was not permitted to apply for assistance and benefits on that date, and she was informed to return to the agency after August 1, 1986, the effective date of her case closing in Nassau County.

(24) The appellant was not provided with a written determination of the denial of her July 17, 1986, request to apply for assistance.

(25) The appellant returned to the agency on August 5, 1986, and applied for assistance and benefits, including expedited Food Stamp benefits.

(26) The appellant also requested on August 5, 1986, that the agency meet her immediate needs for assistance and benefits, as well as providing her with Emergency Assistance to Families in the form of a restaurant allowance, water allowance and housing improvements.

(27) The New York City agency did not act on appellant's request for expedited Food Stamps, pre-investigation assistance and care or EAF.

(28) On August 22, 1986, the agency denied the appellant's application for Public Assistance, Medical Assistance and Food Stamp benefits because she had an active case in Nassau County.

(29) The New York City agency contacted Nassau County regarding the appellant's case and was erroneously informed that the appellant's case was still active in Nassau County.

(30) The appellant applied for Public Assistance, Medical Assistance and Food Stamp benefits again on September 5, 1986.

(31) The appellant also applied for a pre-investigation grant and Medical Assistance to meet her immediate needs at the same time, but her application was denied on that date.

(32) The agency denied the appellant's application, dated September 5, 1986, by issuing to the appellant its Notice of Non-Acceptance, dated September 30, 1986, because the appellant failed to submit unspecified required documents.

(33) On October 3, 1986, the appellant again applied for a pre-investigation grant and Medical Assistance to meet her immediate needs, as well as ongoing assistance and benefits.

(34) On October 24, 1986, the agency denied the appellant's October 3, 1986, application because the appellant failed to return certain specified documentation to the agency.

(35) On November 6, 1986, the appellant again applied for assistance and benefits.

(36) The agency accepted the appellant's application of November 6, 1986, and began providing Public Assistance and Food Stamp benefits to the appellant as of November 20, 1986.

(37) The agency, in its computation of the appellant's Public Assistance budget, determined that the appellant would receive a semi-monthly grant of \$119.50 for basic needs, energy and a pregnancy allowance.

(38) The agency has not provided the appellant with a shelter allowance as part of her regularly recurring cash grant.

(39) The appellant has not paid her rent since August, 1986.

(40) As part of its determination to accept the appellant's application, the agency computed the appellant's monthly Food Stamp entitlement to be \$118.00.

(41) In determining the amount of monthly Food Stamp benefits, the agency has not included the appellant's monthly rent as a shelter expense.

(42) The appellant received Food Stamp benefits in September, 1986, in the amount of \$127.00 and in October, 1986, in the amount of \$139.00.

(43) The appellant received her Medical Assistance authorization for November, 1986, on December 1, 1986.

(44) The appellant has outstanding medical bills for the time period she was not receiving assistance.

(45) Several medical bills have been paid by an unrelated individual, who seeks reimbursement for his expenses.

(46) The Nassau County fair hearing summary was sent to the City and to the Appellant's representative, but not introduced into evidence.

ISSUES

(1) Was the Nassau County agency's determination to discontinue appellant's Food Stamp benefits, without written notice, on or about May 29, 1986, correct?

(2) Was the Nassau County agency's failure to provide information as set forth in the Department's Consolidated Food Stamp Correspondence for February, 1983, correct?

- (3) Was the Nassau County agency's determination of July 11, 1986, to discontinue the appellant's Public Assistance and Medical Assistance correct?
- (4) Was the New York City agency's refusal on July 17, 1986, to provide the appellant with an opportunity to apply for assistance and benefits correct?
- (5) Was the New York City agency's refusal on July 17, 1986, to provide the appellant with a written notice of denial of her requests for assistance and benefits correct?
- (6) Was the New York City agency's failure to provide the appellant with EAF in the forms of a water allowance, restaurant allowance and housing improvement services correct?
- (7) Was the New York City agency's failure to provide the appellant, since August 1, 1986, with pre-investigation assistance and care correct?
- (8) Was the New York City agency's denial of appellant's application of August 4, 1986, correct?
- (9) Was the New York City agency's denial of appellant's application of September 5, 1986, correct?
- (10) Was the New York City agency's denial of appellant's application of October 3, 1986, correct?
- (11) Was the New York City agency's determination not to include a shelter allowance in her grant since November, 1986, correct?
- (12) Was the New York City agency's determination not to include a deduction for rent in computing her Food Stamp benefits, since November, 1986, correct?

APPLICABLE LAW

Section 387.20(c)(2) of the Regulations provides that individual notices of proposed action to discontinue Food Stamp benefits are not required when it is established that the household no longer resides within the geographical area of the Social Services district.

Section 387.12(e) (3) of the Regulations provides that, for purposes of computing Food Stamp entitlement, the following shall be considered as shelter expenses:

(i) Recurring charges including rent, mortgage, or other recurring charges leading to ownership of the shelter, e.g., loan and interest repayment for the purpose of a mobile home.

Section 387.14(g) (1) (ii) of the Regulations provides that a deduction from income in computing Food Stamp entitlement shall be allowed only in the month the expense is billed or otherwise becomes due, regardless of when the household intends to pay the expense.

Section 311.3(a) (1) of the Regulations provides that when a recipient in receipt of Home Relief or Aid to Dependent Children moves from one Social Services district to another district within the State, the Social Services official administering such aid, including Medical Assistance to such recipient, shall continue to provide such assistance for a period ending on the last day of the calendar month next succeeding the calendar month in which the recipient moved, provided the recipient continues to be eligible for such assistance. The former district of residence shall not continue to grant assistance when the recipient takes up residence outside the State.

Section 352.3(b) of the Regulations provides that when the recipient is obligated to pay for water as a separate charge to a vendor, an allowance shall be made for the additional amount required to be paid.

Section 352.7(c) of the Regulations provides that:

(c) Additional cost of meals. Each social services district shall provide for the additional cost of meals for persons unable to prepare meals at home in accordance with the following schedule:

Dinner in a restaurant	\$29.00
Lunch and dinner in a restaurant	\$47.00
All meals in a restaurant	\$64.00

Effective November 1, 1986, there is an additional restaurant allowance of \$36.00 per month for any pregnant woman or person under eighteen years of age.

Section 372.4(d) of the Regulations provides that EAF may be provided to families with children under age twenty-one who are in need of services necessary to cope with an emergency situation, including information referral, counseling, security family

shelter, child care (including day care and temporary foster care), and any other services which meet needs attributable to the emergency situation.

Section III-I (page eighteen) of the Consolidated Food Stamp Correspondence for February, 1983, provides that:

"In order to facilitate the certification of households moving to a new district, we are requesting that when a local district is advised that a household is moving to a new district the following information be given to the household to present to the receiving district:

- (1) Family size;
- (2) Amount and last month of Public Assistance, if applicable;
- (3) Amount and last month of Food Stamp benefits;
- (4) Name and telephone number of a contact person in the originating district office.

This will be particularly helpful for clients moving to or from New York City."

Section 352.3 of the Regulations provides that the agency shall issue a monthly allowance for rent in the amount actually paid, but not in excess of the appropriate maximum for each family size in accordance with the schedule listed in the Regulations.

Section 143-b of the Social Services Law provides that every public welfare official shall have power to and may withhold the payment of rent in any case where he has knowledge that there exists or there is outstanding any violation of law in respect to the building containing the housing accommodations occupied by a Public Assistance recipient which is dangerous, hazardous or detrimental to life or health.

DISCUSSION

The record, in this case, establishes that on or about May 29, 1986, the Nassau County agency determined to discontinue the appellant's Food Stamp benefits without notice. The appellant moved to _____, Queens County, in New York City on June 5, 1986. Pursuant to Section 387.20 of the Regulations, no written notice to the recipient is required when the recipient no longer resides within the geographical

area of the Social services district. However, since the Appellant moved in June, 1986, the Nassau County Agency improperly failed to issue benefits for that month. However, as of July, 1986, since the Appellant no longer lived there, there is no basis to require Nassau to issue benefits. It should be noted that the authority relied upon by the Appellant is permissive, not mandatory.

The record in this case establishes that on July 11, 1986, the Nassau County agency determined to discontinue the appellant's Public Assistance and Medical Assistance, effective August 1, 1986, because the appellant relocated to New York City on June 5, 1986. The appellant's representative contended, at the hearing, and in his memorandum that there is no authority in either federal or state law or regulation for Public Assistance and Medical Assistance to be terminated because a recipient moves from one Social Services district to another. The appellant's representative further contended that the Nassau County agency should have transferred appellant's case to New York City. There is no authority to support the appellant's position regarding transfer of her case. On the contrary, Section 311.3 of the Regulations provides that when a recipient of Public Assistance relocates to another Social Services district within the State, the Social Services district administering such aid, including Medical Assistance, shall continue to provide such assistance for a period ending on the last day of the calendar month next succeeding the calendar month in which the recipient moved. In the appellant's case, the Nassau County agency was only required to provide Public Assistance and Medical Assistance through July, 1986, which it did, in this case. Nassau County, therefore, complied with the requirements of Section 311.3 of the Regulations. It should be noted that on November 5, 1986, this Department issued Directive 86 ADM-40 in order to minimize disruption of benefits.

The appellant's representative further contended, at the hearing on December 2, 1986, that the Nassau County's determination, contained in its Notice of Intent,

dated July 11, 1986, must be reversed because that agency did not produce the appellant's case record on that date, as required by the case of Rodriguez v. Blum. 79 Civ 4518 (SDNY). The appellant's representative, subsequent to the adjourned fair hearing on December 15, 1986, submitted an additional document entitled "Motion to Annul the Nassau Agency's Determination for Failure to Produce My Case Record" dated December 19, 1986. The motion renewed the appellant's request that the determination of July 11, 1986, be reversed. It is the appellant's representative's contention that the terms of the stipulation and judgment in Rodriguez v. Blum must be applied on a statewide basis. However, the Rodriguez case is limited in its application to New York City, only, as only New York City agency was a party thereto and does not apply to any other local district. The litigation was brought against New York City because that agency had an alleged practice of harassing recipients by issuing Notices of Intent to discontinue or reduce benefits, withdrawing the notice of the fair hearing because the agency had no record and then, without reviewing the matter, issuing a new notice on the same grounds. The plaintiffs did not allege that other agencies had a similar practice. An agency is required pursuant to Part 358 of the Department's Regulations to produce evidence to support any action to discontinue or reduce benefits even without the Rodriguez court settlement, if no evidence is produced, the agency will not be upheld. However, in this case the appellant admits the only relevant fact, i.e., that she moved out of Nassau County in June, 1986. That fact is dispositive since benefits must be discontinued effective August 1, 1986. Furthermore, it appears that a copy of the agency summary verifying that fact was sent to the appellant's representative and New York City prior to the fair hearing but was not introduced into evidence.

The appellant's representative also cites the settlement in Bizjak v. Blum (USDC:NDNY 80 Cv 381 regarding access to case records). However the appellant's representative has failed to show that he requested the Nassau County Agency to

provide such access prior to the fair hearing nor did the appellant's representative request that the hearing be adjourned to Nassau County so that the case record could be made available at the hearing. Most importantly, in view of the discussion following, the Appellant will not be prejudiced.

The record, in this case establishes that on July 17, 1986, the New York City agency denied the appellant's request to apply for Aid to Dependent Children, Medical Assistance and Food Stamp benefits. On July 17, 1986, the appellant appeared at the New York City agency's center #79 for the purpose of applying for assistance and benefits. The agency's receptionist refused to provide the appellant with an application form, thereby denying the appellant her right to apply on that date to enable the appellant to begin receiving assistance and benefits on or about August 1, 1986, after the Nassau County agency discontinued her assistance. The appellant was erroneously informed that she could not apply for assistance and benefits until after August 1, 1986, the effective date of the Nassau County agency's Notice of Intent. No written notice of the denial of her request was provided to the appellant. This was in contravention of Section 350.3 of the Regulations, above.

On August 4, 1986, the appellant returned to the agency and completed an application for assistance and benefits. In the course of its review of the appellant's application, the New York City agency contacted the Nassau County agency regarding the appellant's case. The New York City agency was erroneously informed that the appellant still had an active case in Nassau County when, in fact, that agency had discontinued her assistance, effective August 1, 1986. Based upon the communication

from Nassau County that the appellant's case was still open, the New York City agency denied the appellant's application for assistance and benefits on August 22, 1986. The evidence, in this case, is uncontroverted that the Nassau County local district discontinued the appellant's assistance, effective August 1, 1986. Under these circumstances, the appellant is entitled to receive Public Assistance, Medical Assistance from New York City retroactively from August 1, 1986 and Food Stamp benefits retroactively from July 17, 1986.

Inasmuch as the appellant is entitled to receive Public Assistance and Medical Assistance from New York City from August 1, 1986, and Food Stamps from July 17, 1986. and inasmuch as the appellant received Public Assistance and Medical Assistance from Nassau County for June and July, 1986, there are no issues to be decided with respect to the agency's subsequent determinations to deny her applications for assistance, Medical Assistance and Food Stamp benefits.

The record, in this case, establishes that on or about August 4, 1986, the New York City agency determined not to provide the appellant with EAF in the form of a water allowance, restaurant allowance and housing improvement services. When the appellant relocated to New York City on June 5, 1986, her new apartment had no running water, refrigerator, stove or toilet. The appellant was subsequently provided with a stove, refrigerator and toilet, but as of the fair hearing, the appellant has had no running water. The appellant has obtained sediment filled water from a local fire hydrant, but the appellant and her son have become ill on occasions from the use of this water. The appellant has been unable to adequately prepare food in her home from June 5, 1986, through the present. The appellant has had to borrow funds to buy water for herself and minor child. Under these circumstances, the appellant is entitled to receive a water and restaurant allowance from August 1, 1986, the date of eligibility for Public Assistance in New York City, and June 5, 1986 to August 1, 1986 from Nassau County.

The record, in this case, establishes, however, that the appellant has been living in unsuitable housing conditions since June 5, 1986. The appellant currently

has no running water and has had none since her move into the apartment. Even though the appellant was provided a stove and refrigerator in June and July, 1986, the appellant has been unable to adequately prepare meals for herself and her minor child. Given the fact that the appellant is currently pregnant with an expected delivery date in February, 1986, the appellant's living condition becomes a further threat to the health and safety of her family. It is inappropriate for the agency to allow the appellant to continue to live in her present environment. There is no issue to be decided, therefore, with respect to housing improvements, inasmuch as it is necessary for the agency to provide the appellant with alternate housing.

The record, in this case, establishes that the New York City agency has determined not to provide the appellant with a shelter allowance since November, 1986, as part of her regularly recurring cash grant. Inasmuch as the appellant has not been paying rent since August, 1986, and since Section 352.3 of the Regulations requires the agency to provide a shelter allowance for rent actually paid, the appellant is not entitled to a shelter allowance.

Further, pursuant to the provisions of Section 143-b of the Social Services Law, and because it is necessary for the agency to place the appellant in alternate housing, the appellant is not entitled to the shelter allowance for these reasons as well.

The record, in this case, further establishes that the New York City agency has determined not to include \$350.00 monthly rent as a shelter expense in determining the amount of the appellant's household's excess shelter deduction for Food Stamp purposes. The appellant has not paid her rent since August, 1986. However, pursuant to Section 387.14(g)(1)(ii) of the Regulations, above, there is no requirement that rent actually be paid in order to receive this deduction in computing Food Stamp entitlement, but only that rent be actually charged. The appellant is, therefore, entitled to such deduction in computing her Food Stamp entitlement.

DECISION AND ORDER

The Nassau County agency's determination to discontinue the appellant's Food Stamp benefits, effective on or about May 29, 1986, is not correct and is reversed.

The Nassau County agency is directed to provide the appellant with Food Stamp benefits for June, 1986, in accordance with her verified degree of need.

The New York City agency's determination to deny the appellant's August 5, 1986, application for Public Assistance, Medical Assistance and Food Stamp benefits on August 22, 1986, is not correct and is reversed.

The New York City agency is directed to provide the appellant with Public Assistance and Medical Assistance retroactively from August 1, 1986 in accordance with the verified degree of need and Food Stamps from July 17, 1986.

The New York City agency is further directed to reimburse the appellant for her medical expenses in accordance with Administrative Directive 83 ADM-72.

Inasmuch as the appellant is eligible for assistance and Medical Assistance as of August 1, 1986, and Food Stamps as of July 17, 1986, there is no issue to be decided concerning her subsequent reapplications.

The New York City agency's determination not to provide the appellant with a restaurant allowance and water allowance is not correct and is reversed.

The New York City agency is directed to provide the appellant with a water allowance in accordance with Section 352.3(b) of the Regulations, retroactively from August 1, 1986.

The New York City agency is directed to provide the appellant with a restaurant allowance in accordance with the schedules contained in Section 352.7(c) of the Regulations, retroactively from August 1, 1986.

The New York City agency is further directed to immediately provide the appellant with an Emergency Housing Placement in accordance with Administrative Directive 83 ADM-47, to assist the appellant in locating suitable permanent housing, and to provide transportation and child care services to the appellant to allow her to search for permanent housing.

The New York City agency's determination not to include the appellant's shelter expense as a deduction in computing the appellant's Food Stamp entitlement is not correct and is reversed.

The New York City agency is directed to recompute the appellant's Food Stamp entitlement since July, 1986, utilizing the appellant's actual rental expense of \$350.00 monthly in such computation and to restore any lost Food Stamp benefits, retroactively to July, 1986.

The New York City agency's determination not to provide the appellant with a shelter allowance is correct.

The Nassau County's determination to discontinue Medical Assistance and Public Assistance effective August 1, 1986 is correct.

The Nassau County determination to discontinue Food Stamps as of July 1, 1986 is correct.

The Nassau County determinations not to provide a water and restaurant allowance for the period June 5, 1986 - July 31, 1986 is not correct and is reversed.

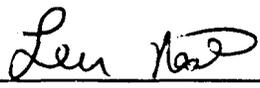
Nassau County is directed to issue a water and restaurant allowance for the period June 5, 1986 through July 31, 1986.

As required by Department Regulations at 18 NYCRR 358.22, the agencies must comply immediately with the directives set forth above.

DATED: Albany, New York

MAR 24 1987

CESAR A. PERALES,
COMMISSIONER

BY 
Commissioner's Designee