

**STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE**

REQUEST: March 10, 2008
CASE #: PXXXXXXZD
AGENCY: Erie
FH #: 4984608J

In the Matter of the Appeal of
A M
from a determination by the Erie County
Department of Social Services

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**DECISION
AFTER
FAIR
HEARING**

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 March 19, 2008, in Erie County, before Kay Fiegl-Bock, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

A M, Appellant; Traserra Adams, paralegal, Neighborhood Legal Services

For the Social Services Agency

David Kaznida, Sr. Social Welfare Examiner
Judith Hill, Sr. Welfare Examiner
Judy Fort, Sr. Welfare Examiner

ISSUE

Was the Agency's determination to discontinue the Appellant's Public Assistance and Food Stamps because the Appellant failed to complete recertification forms necessary to determine the Appellant's continuing eligibility correct?

Was the Agency's determination to deny the Appellant's request for shelter assistance to prevent her eviction correct?

FINDINGS OF FACT

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. The Appellant, age 47 had been receiving Public Assistance, Food Stamps and Medical Assistance for herself only.

2. A CNS notice was prepared on January 18, 2008 to advise the Appellant to complete a recertification/eligibility questionnaire for Public Assistance and Food Stamps by January 28, 2008.

3. The Appellant did not submit the questionnaire to the Agency by January 28, 2008.

4. On February 4, 2008, the Appellant appeared at the Agency, advised the Agency that she had moved and provided the Agency with a landlord statement signed by R S for 18 D, Buffalo. The Agency provided the Appellant with a recertification questionnaire which the Appellant completed and submitted.

5. Upon review of the application and new landlord form, the Agency determined that the landlord statement was not signed by the landlord, J S.

6. By notice dated February 5, 2008, addressed to the Appellant at 185 C A, L, the Agency notified the Appellant of its determination to discontinue the Appellant's Public Assistance effective February 16, 2008 because the Appellant failed to complete recertification forms and Food Stamps, effective February 5, 2008, because the Appellant did not complete a periodic report. The notice indicated that if information was submitted by February 15, 2008 a redetermination of Food Stamps would be completed.

7. By FAX dated March 3, 2008 the Appellant's landlord for her current address, 8 P, W D, sent the Agency a landlord statement.

8. On March 10, 2008, the Appellant requested this fair hearing.

9. On March 11, 2008, the Appellant reapplied for Public Assistance and indicated an immediate need for Emergency Assistance to prevent eviction. The Appellant provided the Agency with a note from R S in which he stated the following:

I, R S, pays directly to the landlord the balance in which DSS doesn't pay for A M's rent. If you have any questions feel free to call me at (716) 563-6255.

10. The maximum shelter allowance for a one person household in Erie County is \$169.00 monthly. The maximum public assistance grant for such a household is \$306.10 if heat is included. An additional allowance of \$54 is allowed for gas heat.

11. The Appellant's rent is \$475.00, not including heat and utilities.

12. By letter dated March 10, 2008, the Appellant's landlord, W D, advised the Appellant that she would have to pay \$475.00 in rent by March 13, 2008 or would have to move out of 8 P, Buffalo.

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13. The Appellant has resided at 8 P since February 14, 2008 and has made no rent payments. By phone conversation with the Agency on March 18, 2008, the landlord advised the Agency that a security deposit in the amount of \$475.00 had been paid on behalf of the Appellant.

14. On March 19, 2008, the Appellant continues to reside at 8 P, Buffalo.

15. The Appellant is not employed and currently has no source of income.

16. On March 11, 2008, the Agency denied the Appellant's request for shelter arrears to prevent her eviction on the basis that she would be unable to meet continuing shelter costs.

APPLICABLE LAW

Regulations at 18 NYCRR 351.20 provide that continuing eligibility for Public Assistance must be established through face-to-face recertification interviews, at which all eligibility factors are reconsidered, including the recipient's identity, residence, family composition, rent payment or cost of housing, income, savings or other resources, and, for aliens, their lawful residence in the United States. Regulations at 351.21(d) require recipients to appear at the face-to-face recertification and to present appropriate documentation.

Section 351.1 and 351.2 of the Regulations require recipients of Public Assistance to present appropriate documentation to the Agency in order to demonstrate eligibility. These obligations also apply to non-legally responsible caretaker relatives of children receiving public assistance, as well as minor siblings of such children residing in the same household. Section 351.6 of the Regulations provides that verification is an essential element of the investigation of continuing eligibility. Sections 351.6(b) and 351.20(b)(4) of the Regulations provide that where the recipient is unable to secure eligibility documentation for a recertification interview, the Agency shall conduct a collateral investigation.

Failure or refusal to cooperate in providing necessary information establishing the factors of eligibility is a ground for discontinuing Public Assistance.

An applicant for or recipient of public assistance is exempt from complying with any requirement concerning eligibility for public assistance if the applicant or recipient establishes that good cause exists for failing to comply with the requirement. Except where otherwise specifically set forth in regulations, good cause exists when the applicant or recipient has a physical or mental condition which prevents compliance; the applicant's or recipient's failure to comply is directly attributable to Agency error; or other extenuating circumstances, beyond the control of the applicant or recipient, exist which prevent the applicant or recipient from being reasonably expected to comply with an eligibility requirement. The applicant or recipient is responsible for notifying the Agency of the reasons for failing to comply with an eligibility requirement and for furnishing evidence to support any claim of good cause. The Agency must

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review the information and evidence provided and make a determination of whether the information and evidence supports a finding of good cause. 18 NYCRR 351.26.

Federal Regulations at 7 CFR 273.14 and Regulations at 18 NYCRR 387.17 provide that the Agency shall deny a reapplication for Food Stamp benefits if the household fails to attend any interview scheduled on or after the deadline for timely filing of the recertification application or to submit all necessary verification within the time frame established by the State.

The Agency must allow the household at least ten calendar days from the interview to submit any additional or missing verification. The Agency need not provide continued benefits if the household fails to submit the verification within the time frame specified by the Agency.

Regulations provide that, upon special authorization by the local Agency, an emergency assistance grant may be issued for payment of rent, property taxes or mortgage arrears for the time prior to the month in which a Public Assistance case is opened or for applicants for Emergency Safety Net Assistance or Emergency Assistance to Families, when such payment is essential to forestall eviction or foreclosure and no other housing facilities are available, or the health and safety of the person is severely threatened by failure to make such payment. The applicant must reasonably demonstrate an ability to pay shelter expenses, including any amounts in excess of the agency maximum shelter allowance, in the future and must not have sufficient income or resources to secure and maintain alternative permanent housing. The applicant, if accepted for ongoing Public Assistance, must agree to future restriction of shelter payments. 18 NYCRR 352.7(g)(3).

For any period of time prior to which the person received Public Assistance, the amount of the emergency assistance grant cannot exceed the maximum Public Assistance shelter allowance. The agency may issue a grant for arrears in excess of the maximum monthly shelter allowance but any such amount is an overpayment subject to recovery and recoupment in accordance with Section 352.31 of 18 NYCRR.

Shelter arrears payments authorized for applicants under Section 352.7(g)(3) are limited to a total period of six months once every five years, unless the district determines, at its discretion, that additional shelter arrears payments are necessary based on the individual case circumstances.

If the applicant is not eligible for Safety Net Assistance, Family Assistance, EAF or EAA, the applicant's income cannot exceed 125 percent of the federal income official poverty level at the time of application. Such applicant must sign an agreement to repay the assistance in a period not to exceed 12 months from receipt of such assistance. The repayment agreement must set forth a schedule of payments that will assure repayment within the 12 month period, and must specify the frequency of the payments, the due date of the first payment, the address where payments must be made and the consequences of failing to repay the assistance as agreed. Subsequent assistance to pay arrears may not be granted unless there are no past-due amounts owed under any such repayment agreement. The social services district, in addition to any rights

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it has pursuant to the Social Services Law, may enforce the repayment agreement in any manner available to a creditor.

Regulations at Title 18 NYCRR provide that "each social services district must provide a monthly allowance for rent in the amount actually paid, for cases with a verified rental obligation..." 18 NYCRR 352.3. The maximum shelter allowance is determined by reference to tables set forth in Section 352.3 of the Regulations, which list amounts which depend upon county of residence, family size, and whether there are children residing in the home. For purposes of determining maximum shelter allowance, a child is defined by Section 369.3(c) to be an individual under age 18, or under age 19 if regularly attending a secondary school or equivalent level of vocational or technical training on a full-time basis. Additionally, a needy pregnant woman whose pregnancy has been medically verified and is therefore eligible for Family Assistance in accordance with Section 369.5(c) is considered, for purposes of determining the maximum shelter allowance, to have a child in the home.

A recipient of Public Assistance who is threatened with eviction or foreclosure or who is being evicted or whose property is being foreclosed upon for non-payment of rent, mortgage or taxes incurred during a period for which a grant had been previously issued to the recipient may be provided with an advance allowance for rent, mortgage principal and interest payments or taxes. Advance investigation of the need for restricted payments must be conducted in accordance with Part 381 of this Title. 18 NYCRR 352.7(g)(4)

Shelter arrears payments, including advance allowance payments, authorized under Section 352.7(g)(4) are limited to a total period of six months once every five years unless the district determines, at its discretion, that additional shelter arrears payments are necessary based on the individual case circumstances.

An advance allowance may only be provided if the recipient has made a request in writing for such an allowance and has also requested that the monthly grant be reduced to recoup such an allowance. Such recoupment must be ten percent of the household's needs (15 percent for Safety Net Assistance recipients prior to December 1, 2001). If undue hardship is claimed and substantiated, the recoupment must not be less than five percent of the household's needs. For purposes of determining the amount to be deducted from a Public Assistance grant, the household's needs include an allowance for recurring needs, the home energy and supplemental home energy allowances, the shelter allowance, any fuel for heating allowance, any personal needs allowance, any restaurant allowance, any allowances for chattel mortgages or conditional sales contracts, any pregnancy allowance and any water allowance. 18 NYCRR 352.11; 18 NYCRR 352.31(d).

An allowance which exceeds the appropriate local agency maximum monthly shelter allowance can be made only if all of the following conditions are met:

- (i) the recipient agrees to use all available liquid resources for the payment of shelter expenses necessary to prevent eviction or foreclosure;

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- (ii) the recipient demonstrates an ability to pay shelter expenses in the future, including any amounts in excess of the appropriate local agency maximum monthly shelter allowance;
- (iii) the recipient agrees to future restriction of rent or mortgage payments; and
- (iv) the recipient has not previously received an allowance in excess of the appropriate local agency maximum monthly shelter allowance pursuant to this paragraph and, subsequent to receiving such allowance, requested discontinuation of restriction of the shelter payments to which he or she agreed pursuant to this paragraph.

18 NYCRR 352.7(g)(4).

Pursuant to Department policy as set forth in Administrative Directive 02 ADM-2, districts are required to respond to an applicant's declaration of an emergency situation at the time of the application and to provide appropriate notice to the applicant regarding the meeting of his or her immediate needs. Identified emergencies require a same-day interview and the emergency need must be met the same day. Applicants include those applying for ongoing assistance and those seeking emergency assistance only to meet a specific need. Districts must attempt to obtain as much verification as possible from the applicant or through collateral contacts and must, at a minimum, verify identity, family composition and citizenship/alien status prior to meeting an immediate need. To meet an emergency/immediate need, districts must explore all available resources and income, including resources available in the community. Financial eligibility for assistance to meet an emergency/immediate need is based on available income and resources, including cash, community resources, expedited Food Stamps, HEAP, deferred payment agreements, etc.

Administrative Directive 94 ADM-20, dated December 29, 1994, requires local districts to provide services and assistance to prevent homelessness and to meet temporary housing and other immediate needs of eligible homeless persons. Pursuant to this ADM, the district must make reasonable efforts to determine the applicant's eligibility prior to providing temporary housing assistance. It is the expectation that assistance will be provided within 48 hours of application for such assistance. When placing persons in temporary housing or when transferring persons between temporary housing accommodations, a district must attempt, but is not required, to make placements within these persons' community, giving consideration to the children's educational needs, employment needs, medical needs and child care needs.

DISCUSSION

Public Assistance and Food Stamps Recertification

The Agency's determination to discontinue the Appellant's Public Assistance and Food Stamps for failure to complete recertification forms or a periodic report is not correct and is reversed.

The Agency's determination is incorrect for two reasons. First, the Agency was unable to meet the burden of proof necessary to establish that the recertification letter was properly mailed.

Secondly, the Appellant appeared at the Agency prior to issuance of the notice of discontinuance and completed a recertification application. Following review of the application, the Agency determined that some information was incorrect or incomplete, yet the Agency did not provide the Appellant with an opportunity to resubmit corrected documents. Instead, the Agency issued a notice of discontinuance and mailed it to the Appellant's former address.

The Agency is required to use a mailing system designed to provide the client with proper notice of actions and requirements and with an established record of meeting that due process requirement. At the hearing, the Agency testified that a Public Assistance/Food Stamps recertification application had been mailed to the Appellant at her address of record, through the CNS system on January 18, 2008 with a requested return date of January 28, 2008. Although the Appellant stated that the address was correct at that time, she testified that she did not receive the recertification. The Agency testified that the recertification packet was mailed through the Albany CNS system but did not provide testimony or documents that would establish that the CNS system has an established record of meeting notification requirements.

It is undisputed that the Appellant appeared at the Agency on February 4, 2008, completed a recertification application and submitted a new landlord statement. The Agency testified that it had allowed the Appellant additional time to complete recertification and had not yet issued a notice of discontinuance. On February 5, 2008, the Agency determined that the landlord statement was not sufficient as it was determined that the Appellant's roommate had signed as the landlord, rather than the tenant of record. Regulations require that the Agency provide a client with ten additional days to provide documents following a recertification interview. The Agency acknowledged that it did not contact the Appellant with a document request form to allow ten days for additional documentation. Instead, the Agency testified that he had issued a notice of discontinuance addressed to the Appellant's former address. The Appellant also testified that she did not receive that notice. However, it is undisputed that by FAX dated March 3, 2008, the Appellant's current landlord submitted a landlord statement to the Agency.

The Agency's determination to discontinue the Appellant's Public Assistance and Food Stamps for failure to recertify is not correct as proof of mailing of the recertification questionnaire was not established. Additionally, once the Appellant did submit the forms in person, the Agency failed to provide the Appellant with an opportunity to provide further verification or an explanation of her shelter form. While the Agency could have denied a shelter allowance if such forms were not provided, the Agency was unreasonable in discontinuing benefits. It is further noted, that as to Food stamps, the notice at issue was not timely and is therefore invalid.

Emergency Assistance

The Agency's determination to deny the Appellant's request for shelter assistance for rent arrears is remanded for further investigation.

At the hearing, the Agency testified that the Regulations require that an applicant for emergency assistance must demonstrate an ability to continue meeting an ongoing rental

obligation. At the time of the application, the Appellant submitted a letter from her boyfriend, R S, which stated that he would pay the balance of the Appellant's rent not paid by Public Assistance. Initially, the Agency testified that the letter was insufficient to establish that Appellant would be unable to meet her monthly rent of \$475.00 because the Appellant had not provided wage statements for Mr. S. However, the Agency acknowledged that it had not requested that the Appellant provide wage statements for Mr. S. Without further information, the Agency assumption was not reasonable.

The Agency then asserted that the Appellant was not in receipt of public assistance due to a recent discontinuance and therefore the Appellant would be responsible for the entire \$475 in monthly rent. The Agency pointed out that Mr. S had only offered to pay the difference from the Public Assistance grant and the \$475 rent. The Appellant responded by stating that while at a former residence, her friend paid \$250 monthly towards the Appellant's \$450 rent and that the Agency required only a statement from the friend. The current situation may be distinguished in that this is emergency assistance, which requires the Agency to verify the Appellant's ongoing ability to pay rent. Furthermore, for reasons stated above, the Agency was not correct in closing Public Assistance.

Accordingly, the request for emergency shelter assistance to pay rent arrears is remanded to the Agency for a redetermination. The Agency is directed to allow the Appellant an opportunity to provide documentation that would support her continuing ability to pay rent.

DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Public Assistance and Food Stamps for failure to provide a recertification application/questionnaire or periodic report was not correct and is reversed.

1. The Agency is directed to restore lost benefits retroactive to February 16, 2008 the date of its discontinuance of the Appellant's Public Assistance and retroactive to February 5, 2008, the date of its discontinuance of the Appellant's Food Stamps.

The Agency's determination to deny the Appellant's request for shelter assistance to pay rent arrears is remanded for further review.

2. The Agency is directed to allow the Appellant time to provide the Agency with documentation that would support her ability to meet her ongoing rental obligation.

3. The Agency is directed to notify the Appellant in writing of its determination.

Should the Agency need additional information from the Appellant in order 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 requested, the Appellant must provide it to the Agency promptly to facilitate such compliance.

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

DATED: Albany, New York
March 21, 2008

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee