

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

REQUEST: May 21, 1990
CASE No.
CENTER No. 51
FH No. 15414940

In the Matter of the Appeal of :
C C :
from a determination by the New York City :
Department of Social Services :
: DECISION
: AFTER
: FAIR
: HEARING
:
:
:

JURISDICTION

This appeal is from a determination by the local Social Services Agency relating to the denial of an application for expedited Food Stamp benefits, the failure to act on an application for Public Assistance, Medical Assistance, and Food Stamp benefits, the denial of a request for assistance to meet immediate needs, the denial of an application for Public Assistance, Medical Assistance, and Food Stamp benefits, and the denial of reimbursement for the cost of service of a subpoena.

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 June 1, 1990 and on June 5, 1990, in New York City, before Yvette H. Pomeranz, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

C C , Appellant; Eugene Doyle, Appellant's
Representative; C A. C , Appellant's Witness (June 5, 1990
only); B T , Appellant's Witness' Representative (June 5, 1990
only)

For the Local Social Services Agency

Stephens Juhan, Fair Hearing Representative

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, age 39, applied on March 20, 1990 for a grant of Home

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Relief, Medical Assistance, Food Stamp benefits, and expedited Food Stamp benefits for herself only.

2. At the time of her application Appellant was residing in another person's apartment. The prime tenant was not sharing meals with Appellant.

3. Appellant earned gross employment income of \$90 in March, 1990, which resulted in net income of \$78.53. She also received approximately \$40 in friends' contributions that month. Her rent of \$250 per month was paid by a friend. She had had \$11.84 in a savings account, which she had closed on March 5, 1990.

4. The Agency denied Appellant's application for expedited Food Stamp benefits on March 20, 1990.

5. The Agency took no action on Appellant's March 20, 1990 applications for Public Assistance, Medical Assistance, and Food Stamp benefits.

6. On April 5, 1990 Appellant filed a new application for a grant of Public Assistance, Medical Assistance, Food Stamp benefits, and expedited Food Stamp benefits. She also applied for a pre-investigation grant of assistance to meet immediate needs for food.

7. Appellant received approximately \$40 in friends' contributions during April, 1990. She explained to the Agency that she had received some funds from a friend for the purchase of food and had been eating meals at her friend's home. She also explained that she expected to receive a check for three days' employment on April 6, 1990. She advised the Agency that she had a serious medical problem.

8. On April 5, 1990 the Agency denied Appellant's application for a pre-investigation grant of assistance to meet immediate needs on the grounds that she resided in a "mixed" household.

9. On April 6, 1990 Appellant received a paycheck in the gross amount of \$48. The net amount of the check was \$44.33.

10. On April 17, 1990 the Agency provided Appellant with expedited Food Stamp benefits retroactive to April 5, 1990.

11. Appellant documented to the Agency that as of April 3, 1990 the only bank account on which she was designated as an owner was a certificate of deposit which was held jointly with her mother and which was in the amount of \$9,998.73.

12. Appellant informed the Agency that she had resided with and been supported by her mother until February, 1990, when her mother insisted that she depart from the premises.

13. Appellant documented to the Agency that the funds contained in the joint account would only be available to her upon her presentation of the passbook or upon a joint appearance with her mother at the bank.

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14. Appellant's mother retained possession of the passbook upon Appellant's departure in February, 1990. She changed the locks on her door to prevent Appellant's entry and did not appear with Appellant at the bank to enable Appellant to withdraw funds from the account.

15. On April 16, 1990, upon maturity of the certificate of deposit, Appellant's mother withdrew all the funds and deposited them into an account bearing her name only.

16. The Agency determined on April 26, 1990 to deny Appellant's application for Public Assistance, Medical Assistance, and Food Stamp benefits on the grounds that she was in possession of excess resources in the form of the funds from the joint account.

17. The Agency did not conduct a collateral investigation regarding whether or not the funds that had been contained in the joint account were actually available to Appellant prior to denying Appellant's applications.

18. As of April 6, 1990 Appellant left the apartment which she had been sharing and is now temporarily residing in a room in a family's home. She has been receiving meals and is not charged for rent, utilities, or telephone service.

19. On May 21, 1990, Appellant requested this fair hearing to review the Agency's March 20, 1990 denial of her application for expedited Food Stamp benefits, the Agency's failure to act on her March 20, 1990 application for Public Assistance, Medical Assistance, and Food Stamp benefits, the Agency's April 5, 1990 denial of assistance to meet immediate needs, and the Agency's failure to act on Appellant's April 5, 1990 applications for Public Assistance, Medical Assistance, and Food Stamp benefits.

20. At the hearing the issue of the Agency's failure to act on Appellant's April 5, 1990 applications for Public Assistance, Medical Assistance, and Food Stamp benefits was amended to be the Agency's denial of Appellant's April 5, 1990 applications for Public Assistance, Medical Assistance, and Food Stamp benefits.

21. On June 1, 1990 Appellant's representative requested that a subpoena be issued to require Appellant's mother to appear and testify regarding the joint bank account. This request was granted.

22. Appellant's representative requested that the Agency provide reimbursement for the cost of service of the subpoena. The Agency denied this request.

23. Appellant's representative paid \$50 for service of the subpoena from his personal funds.

24. The issue of the Agency's denial of Appellant's representative's request for reimbursement of the cost of service of a subpoenaed witness was added for review.

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ISSUES

Was the Agency's determination to deny Appellant's March 20, 1990 application for expedited Food Stamp benefits correct?

Was the Agency's failure to act on Appellant's March 20, 1990 application for expedited Food Stamp benefits correct?

Was the Agency's determination to deny Appellant's April 5, 1990 application for a pre-investigation grant to provide assistance to meet her immediate needs correct?

Was the Agency's determination to deny Appellant's April 5, 1990 application for Public Assistance, Medical Assistance, and Food Stamp benefits correct?

Was the Agency's determination to deny reimbursement for the cost of service of the subpoena correct?

APPLICABLE LAW

Section 387.8 of the Department's Regulations provides in pertinent part that Food Stamp benefits shall be issued on an expedited basis to households applying for recurring Food Stamp benefits whose liquid resources do not exceed \$100 and whose gross monthly income is less than \$150.

Section 351.8(b) of the Department Regulations provides that the decision to accept an application for Public Assistance and care shall be made as soon as the facts to support it have been established but not later than thirty days from the date of application except where the applicant requests additional time or where difficulties in verification lead to unusual delay, or for other reasons beyond the Agency's control. The applicant shall be notified in writing of the Agency's determination.

Section 360-2.4 of the Department Regulations provides that eligibility for a Medical Assistance Authorization must be determined within thirty days of application. However where Medical Assistance eligibility is dependent on disability status the agency must determine eligibility within sixty days of application. Where an applicant for Public Assistance is determined ineligible for such benefits, the agency must make a separate determination of Medical Assistance eligibility within thirty days of the date the application for Public Assistance was denied. If timely action was not taken on the Public Assistance application, the agency must determine eligibility within thirty days of the date when action should have been taken.

Federal Regulations at 7 CFR 273.2(g) provide that the Agency shall provide eligible households which complete the initial application process an opportunity to participate in the Food Stamp Program as soon as possible but no later than thirty days following the date that the application was filed. Households determined to be ineligible shall be sent a denial notice as soon as possible but not later than thirty days following the date the application was filed.

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Department policy (86 ADM-7) provides that when an applicant for Public Assistance indicates that an emergency situation exists, the applicant must be given an immediate interview to determine whether the applicant has immediate needs which must be met on that day. Where immediate needs are determined to exist and there are no resources available to Appellant to meet these immediate needs, and verification of eligibility has not been completed despite the applicant's cooperation, the Agency must meet the immediate need by providing either a pre-investigation or a pre-determination grant. A pre-investigation grant is available when financial eligibility has not been fully established. A pre-determination grant may be made where financial eligibility has been established and a presumption of categorical eligibility for Aid to Dependent Children exists.

Section 352.23 of the Department Regulations requires that resources be utilized to eliminate or reduce the need for Public Assistance, rehabilitate the client and conserve public funds through assignment and recovery. Each Public Assistance household may retain non-exempt property with an equity value not exceeding \$1,000.00.

Under section 366 of the Social Services Law a person who requires Medical Assistance is eligible for such assistance where such person:

- (a) is receiving or is eligible for Home Relief or Aid to Dependent Children or Supplemental Security Income;
- (b) although not receiving or in need of public assistance or care, has not sufficient income and resources to meet all the costs of medical care and services available under the Medical Assistance Program and such person is:
 - (i) under the age of 21; or
 - (ii) 65 years of age or older; or
 - (iii) the spouse of a cash Public Assistance recipient living with him/her and essential or necessary to his/her welfare and whose needs are taken into account in determining his/her cash payments; or
 - (iv) for reasons other than income or resources, is eligible for Aid to Dependent Children or Supplemental Security Income and/or additional state payments.
- (c) is at least 21 years of age but under the age of 65 and is not receiving or eligible to receive home relief or aid to dependent children and:
 - (i) who is the parent of a dependent child under the age of 21; and
 - (ii) who lives with such child; and
 - (iii) whose net income, without deducting the amount of any

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incurred medical expenses, does not exceed the net income exemption set forth in section 366.2(a)(8) of the Social Services Law.

Department Regulations at 18 NYCRR 360-2.2(d) provide that for a person who does not meet the criteria set forth above, other than financial, eligibility for Medical Assistance must be determined on the basis of that person's eligibility for Home Relief in accordance with the requirements of 18 NYCRR Part 352 and Part 370.

To be eligible for Food Stamp benefits a participant household's resources may not exceed a certain maximum amount which varies depending upon household size and composition. Liquid and non-liquid resources of all members of the household may not exceed \$2,000, except, for households which contain a member age sixty or older, such resources may not exceed \$3,000. 7 CFR 273.8 and 18 NYCRR 387.9(b). Households in which all members are recipients of or authorized to receive Aid to Dependent Children or Supplemental Security Income are deemed categorically eligible for Food Stamp benefits and are not subject to the resource limits. 7 CFR 273.8(a), 18 NYCRR 387.14(a)(4).

Pursuant to Section 358-3.4(i) of the Department's Regulations, the Agency is required to provide necessary transportation or payment for transportation expenses for an appellant, an appellant's representatives, and an appellant's witnesses, to provide payment for necessary child care, and for any other necessary costs and expenditures related to a fair hearing.

Pursuant to Section 358-5.6(b)(8) of the Department's Regulations, a hearing officer may, when he views it necessary to develop a complete evidentiary record, issue subpoenas and/or require the attendance of witnesses and the production of books and records.

DISCUSSION

The record establishes that Appellant initially applied for Public Assistance, Medical Assistance, and Food Stamp benefits, as well as expedited Food Stamp benefits, on March 20, 1990. The Agency denied Appellant's application for expedited Food Stamp benefits on that date. Although duly notified of the time, place, and issue for the hearing, the Agency appeared but presented no evidence in support of its determination. Appellant's testimony indicated that during the month of March, 1990, she received net income, through employment, contributions, and the closing of a bank account containing \$11.84, in excess of \$100. However, the record fails to establish what liquid resources were actually available at the time of Appellant's application. Moreover, according to Appellant's testimony, her gross household income was less than \$150. In view of the Agency's lack of evidence, its determination cannot be sustained.

The record further establishes that the Agency took no action on Appellant's March 20, 1990 applications, but rather required Appellant to reapply two weeks later. This was improper. The record of the hearing, in particular, the testimony of the Appellant, supported by documentation, and

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that of her mother, indicates the Appellant could have established her eligibility for Public Assistance, Medical Assistance and Food Stamp benefits within that period had the Agency properly advised Appellant of the eligibility criteria and provided needed collateral contacts on her behalf to establish factors of eligibilty pertaining to available resources.

The record establishes that Appellant's reapplication for Public Assistance, Medical Assistance, and Food Stamp benefits was denied on April 26, 1990 on the basis that Appellant was in possession of excess resources. Appellant had informed the Agency that she did not have access to the bank account in question. The Agency did not collaterally investigate Appellant's claim prior to its denial. It is noted that, based upon the forthright, detailed, and therefore credible testimony of the witness at the hearing, the record establishes that as of February, 1990 Appellant has not had access to these funds and that she is no longer the joint owner of the funds as of April 16, 1990. The record further establishes that the transfer of the funds was not accomplished with the intent of Appellant's qualification for Public Assistance or Food Stamp benefits, but rather was the result of the poor relationship between the parties. The Agency's denial of Appellant's applications was incorrect. The record indicates that had the Agency properly and adequately acted on the March application, eligibility for assistance would have been established by April 5, 1990 when the Agency was provided with verification concerning Appellant's inability to access the joint account.

On April 5, 1990 Appellant requested a pre-investigation grant to meet her immediate needs. The Agency denied this application on the grounds that Appellant was residing in a "mixed" household, meaning that the other household member did not receive Public Assistance. However, Appellant had advised the Agency that the prime tenant did not assist her with meals or otherwise provide funds, and a denial for this reason would be incorrect

However, it is noted that since Appellant is being determined eligible for regularly recurring Public Assistance effective April 5, 1990 the issue of the Agency's denial of the April 5, 1990 application for a pre-investigation grant is moot. No issue remains to be decided with respect to this matter.

At the hearing, a subpoena was issued to compel the attendance of Appellant's mother. Service of the subpoena cost Appellant's representative \$50. Inasmuch as this was a necessary cost incidental to the hearing, the Agency's determination to deny reimbursement was improper.

DECISION AND ORDER

The Agency's denial of expedited Food Stamp benefits in March, 1990, the failure to act on Appellant's March 20, 1990 applications for Public Assistance, Medical Assistance, and Food Stamp benefits, and denial of Appellant's April, 1990 applications for Public Assistance, Medical Assistance, and Food Stamp benefits, is not correct and is reversed.

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1. The Agency is directed to accept Appellant's March 20, 1990 application for Public Assistance effective April 5, 1990, Medical Assistance in accordance with Section 360-2.4 of the Department's Regulations, and Food Stamp benefits effective March 20, 1990.

No further issue remains to be decided with regard to the of the denial of the April, 1990 application for a pre-investigation grant.

The Agency's determination to deny reimbursement for service of the subpoena is not correct and is reversed.

1. The Agency is directed to provide reimbursement to Appellant's representative in the amount of \$50.00.

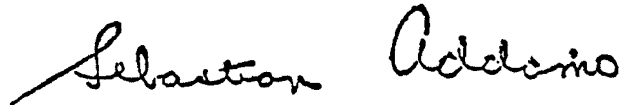
As required by Department Regulations at 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York

CESAR A. PERALES
COMMISSIONER

JUN 11 1990

By



Commissioner's Designee