

In the Matter of the Appeal of

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DECISION
AFTER
FAIR
HEARING

from a determination by the New York City
of Social Services (hereinafter called the agency)

Department

A fair hearing was held at 80 Centre Street, New York, New York, on January 23, 1984, before Ralph Erbaio, Administrative Law Judge, at which the appellant, the appellant's representative and a representative of the agency appeared. The appeal is from a determination by the agency relating to the denial of an application for a grant of Emergency Assistance to Families. An opportunity to be heard having been accorded all interested parties and the evidence having been taken and due deliberation having been had, it is hereby found:

1. On January 13, 1984, the appellant, her husband and three minor children applied for a grant of Emergency Assistance to Families to repair an improperly vented water heater and for the payment of utility arrears.

2. On January 19, 1984, the appellant requested this fair hearing to review the following determinations of the agency:

a. the refusal to issue a grant of Emergency Assistance to Families to pay for the installation of a proper venting system for a hot water heater;

b. the refusal to issue her \$758.22 for gas heating arrears for the period September, to December 25, 1983.

3. The appellant's hot water heater was locked by Brooklyn Union Gas and tagged with a violation on January 11, 1984, because it was not properly vented and improper ventilation could cause carbon monoxide poisoning.

4. A proper ventilation system consists of an aluminum chimney running through the outside wall of the house.

5. The appellant has received two estimates of \$475.00 as the cost of the installation of the chimney.

6. The appellant's husband has monthly gross income of \$1,732.00. The appellant pays a monthly mortgage payment of \$207.00. The appellant has no bank account.

7. The improper venting system is a structural defect in the house.

8. The appellant failed to establish that her need for a grant of Emergency Assistance to Families was to meet urgent needs resulting from a sudden occurrence or set of circumstances demanding immediate attention.

9. The appellant has a heating utility shut-off notice for January 28, 1984.

10. The appellant owes \$758.82 in heating fuel arrears for the period September, 1983, through December 25, 1983.

11. The appellant owes total arrears from 1980, of \$4,220.69.

12. For a period of at least two years after the appellant moved into her house in 1980, she was paying estimated heating bills of \$79.00 a month.

13. The appellant was given a bill of \$2,800.00 in 1982, and she was told by her utility company that her budget payments had been improperly calculated.

14. The appellant was on Public Assistance in 1982, and was given a special grant of \$700.00 to pay the utility arrears.

15. The appellant entered into a utility repayment agreement with her utility company in April, 1983. She paid \$600.00 toward the arrears on April 13, 1983.

16. On May 4, 1983, the appellant was sent a recomputed bill for the period September 24, 1982, to May 4, 1983, in the amount of \$1,793.12 and the utility company demanded payment in full.

17. The appellant was unable to pay the arrears and has not made any payments to her utility company since May, 1983.

18. The appellant has paid arrears on other bills such as Con Edison and New York Telephone and has brought all these bills up to date.

19. Since May, 1983, the utility company has sent the appellant numerous notices of seizure of her gas meter, but has not seized her meter.

Section 350-j(2) of the Social Services Law provides for a grant of Emergency Assistance to Families where emergency needs resulted from a catastrophic occurrence or from a situation which threatens family stability and which has caused the destitution of a child and/or household. Section 372.1 of the Regulations of the State Department of Social Services provides for Emergency Assistance to Families for families who otherwise qualify under that section, to deal with crisis situations threatening the family, and to meet urgent needs resulting from a sudden occurrence or set of circumstances demanding immediate attention.

The record in this case establishes that the appellant's need for a new venting system for her hot water heater was not caused by a fire, flood or a like catastrophe as required by the above-cited provisions. Although the defective condition of the venting system of the hot water heater was discovered subsequent to a flood in the appellant's neighborhood, the defective venting system was a defect in the structure of the house and heating system and was not caused by the flood or other like catastrophe. The record also establishes that the appellant's husband is employed and his monthly gross income of \$1,732.00 is sufficient to meet the repair needs caused by the defective venting system. Accordingly, the determination of the agency to deny the appellant's

application for a grant of Emergency Assistance to Families to repair a defective venting system for the hot water heater was correct.

Administrative Directive 82 ADM-30, dated June 4, 1982, provides that when an individual or household is without utility service or is faced with a utility shut-off and a payment is needed to prevent shut-off or restore services, and when in the judgement of a Social Services official other housing accommodations appropriate for the applicant's best interests are not available in a particular area, or when alternative payment arrangement cannot be made and the applicant has no liquid resources to make such payment, the agency must make a payment for services provided to such person during a period of up to, but not exceeding the four months immediately preceding the month of application for such assistance. After the agency has made payment, and if the individual is not placed on ongoing assistance, and there is still an outstanding balance owed to the utility company, the individual should be referred to the utility company to negotiate a repayment agreement.

The credible evidence in this case establishes that the appellant owes heating utility arrears in the amount of \$758.82 for the period September, 1983, through December 25, 1983. The appellant has been served with a notice of utility shut-off. The appellant owes a total amount of arrears of \$4,220.69 for a period of two years. The appellant was on a utility payment budget plan of \$79.00 a month until 1982. In 1982, she was given a utility bill of \$2,800.00 representing a miscalculation by her utility company of her monthly payment under the budgeting plan. The appellant was unable to pay the entire arrears even with a special grant of \$700.00 given to her by the agency in September, 1982. The appellant and her utility company negotiated a repayment

plan in April, 1983, whereby the appellant would make an initial payment of \$600.00 and then pay all current charges plus \$100.00 a month toward the arrears for twenty-six months. In April, 1983, the appellant paid her utility company \$600.00. On May 4, 1983, the utility company sent the appellant a recomputed bill for the period September 24, 1982, to May 4, 1983, in the amount of \$1,793.12, and demanded payment in full plus the \$100.00 arrears. The appellant was unable to pay the entire amount and has made no further payments on the arrears. The appellant has used her income to pay for arrears on her other bills such as Con Edison and New York Telephone and has brought all these other bills up to date. The utility company has sent several notices to the appellant that it intends to seize her meter but it has not done so. The record fails to establish that the agency has made the necessary determination in connection with the appellant's application for payment of her utility arrears. Accordingly, the agency determination was not proper.

The agency is directed to refer the appellant to Brooklyn Union Gas to attempt to work out a reasonable repayment plan whereby arrears can be paid out of the appellant's current household income. If the appellant is unable to work out a reasonable repayment plan, then the agency is directed to provide the appellant with assistance in the payment of her utility bills for the past four months and it is further directed to provide appellant with any other appropriate assistance according to the provisions of Administrative Directive 82 ADM-30.

The agency is finally directed to reimburse the appellant for the costs of child care pursuant to Section 358.10 of the Department's Regulations.


DECISION: The determination of the agency to deny the appellant's application for a grant of Emergency Assistance to Families was correct. The determination of the agency to deny the appellant's application for a special grant for the payment of utility arrears is not correct and is reversed. The agency must immediately comply with the directives set forth above as required by Section 358.22 of the Department's Regulations.

DATED: Albany, New York.

FEB 2 1984

CESAR A. PERALES,
COMMISSIONER

By


Commissioner's Designee