

In the Matter of the Appeal of :  
F T : DECISION  
: AFTER  
from a determination by the New York City Department : FAIR  
of Social Services (hereinafter called the agency) : HEARING

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A fair hearing was held at 80 Centre Street, New York, New York, on July 24, 1984, before Mark Schwartz, Administrative Law Judge, at which the appellant, appellant's representative, and a representative of the agency appeared. The appeal is from a determination by the agency relating to the adequacy of a Public Assistance grant. 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) The appellant, his wife and their two minor children receive a grant of Aid to Dependent Children.

(2) On June 26, 1984, the appellant requested a fair hearing to review the following agency determinations:

a) the reduction of a Public Assistance grant to recover a utility advance;

b) the adequacy of reimbursement for child care fees necessitated by the appellant's attendance at fair hearings;

c) the agency's failure to provide an additional fuel allowance for the 1983 through 1984 heating season.

(3) On May 18, 1984, effective May 28, 1984, the agency determined to reduce appellant's assistance because he received a utility advance.

(4) The agency has taken no action to reduce appellant's assistance for the reason given in the notice of proposed action and does not intend to take any action on this notice as a result of the case of Rodriguez v. Blum.

(5) The appellant attended fair hearings which he requested on November 1, 1983, November 18, 1983, November 22, 1983, and December 15, 1983. As a

result of said attendance, he incurred child care fees in the total amount of \$60.00 which he properly documented for the agency. The agency reimbursed the appellant for said child care fees in the total amount of \$44.00.

(6) The appellant pays the gas company for home heating fuel. For the 1983 through 1984 heating season, the appellant's total gas bill for heating was \$945.42 which he properly documented for the agency. The agency reimbursed the appellant a total of \$416.00 provided as a regularly recurring semi-monthly fuel for heating allowance for sixteen semi-monthly periods.

(7) The agency failed to inquire into the circumstances of the appellant's heating fuel bill for the 1983 through 1984 heating season, or make any determination for eligibility as to additional fuel allowances.

Inasmuch as the agency stipulated concerning the reduction of a Public Assistance grant, at the hearing, that it had determined not to take any action on the notice of proposed reduction of Public Assistance, in effect nullifying such notice, and is continuing to provide full assistance to the appellant, there is no issue to be decided at present. It is noted that if, in the future, the agency should determine to implement its previously contemplated action, a new Notice of Intent is required, and the procedures contained in the case of Rodriguez v. Blum must be followed.

Section 358.10 of the Regulations of the State Department of Social Services provides, in part, that the agency shall provide the appellant with child care expenses reasonably related to the hearing.

In this case, the credible evidence clearly establishes that, by reason of appearances at four fair hearings, the appellant incurred child care fees in the total amount of \$60.00 which he properly documented for the agency. Therefore, the agency's determination to supplement the appellant for only \$44.00 was not proper. The agency is directed to provide the appellant with

an additional allowance of \$16.00 for the remaining child care expenses yet to have been reimbursed.

Section 352.5(a) of the Regulations provide that the agency shall grant an allowance for fuel for heating when it is not included in the cost of shelter in accordance the appropriate accompanying schedule in SA-5a or SA-6b.

Department Regulation 352.5(b) provides that additional allowances for fuel shall be granted when made necessary by exceptionally severe weather, overly exposed location or unusually poor construction of a dwelling, poor health, or when the Department deems that additional fuel allowances are necessary as a result of increased fuel prices. The Department by Administrative Directive 83 ADM-31, has deemed that additional fuel allowances are necessary. Thus, in accordance with existing regulations, when a recipient's actual heating fuel costs exceed the current fuel schedules SA-6a and SA-6b the local district shall authorize an additional allowance of:

\* up to 165 percent of the current SA-6a schedule for Other than Natural Gas;

\* up to 90 percent of the current SA-6b schedule for Natural Gas.

For households whose fuel bills exceed these established limits, there must be an individual, case-by-case evaluation to determine the reasons (exceptionally severe weather, overly exposed location, unusually poor construction of a dwelling, poor health, or reduced energy supplies coupled with rising cost) for such excessive bills. The evaluation may include but is not limited to field investigations, contacts with landlords, fuel/utility suppliers, and/or building code enforcement agencies.

In this case, the credible evidence clearly establishes that the appellant was provided with a total \$416.00 as a recurring semi-monthly allowance for heating fuel for the 1983 through 1984 heating season, leaving the appellant with a balance of arrears of \$529.42.

However, the record fails to establish that the agency made an inquiry pursuant to 83 ADM-31 to determine if the circumstances of the appellant's home heating expenses warrant that the agency pay the balance of the appellant's heating costs for the 1983 through 1984 heating season. Also, 83 ADM-31 deems additional fuel allowances necessary for said season. Accordingly, the agency's

determination was not proper. The agency is directed to issue an additional fuel allowance for the 1983 through 1984 heating season and to take appropriate action pursuant to 83 ADM-31 and the aforesaid Regulations to determine the appellant's eligibility for additional fuel allowances and to inform appellant accordingly.

DECISION: There is no issue to be decided concerning the reduction of a Public Assistance grant, at the present time. However, the agency, if it has not already done so, is directed to take action in accordance with its stipulation made at the hearing and to immediately comply with the directives set forth above as required by Section 358.22 of the Regulations of the State Department of Social Services. The agency's determination concerning the adequacy of a child care allowance and a home energy allowance are reversed. The agency is directed to immediately comply with the directives set forth above as required by Section 358.22 of the Department's Regulations.

DATED: Albany, New York

SEP 5 1984

CESAR A. PERALES,  
COMMISSIONER

BY   
Commissioner's Designee