OSS-3399 (9/81)
STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

CEN. # 79
FH # 0625659Z
0625653N

In the Matter of the Appeal of

E P

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

AMENDED DECISION AFTER FAIR HEARING

A fair hearing was held at 80 Centre Street, New York, New York, on October 18, 1984, before Clyte Willis, 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 adequacy of a grant of Aid to Dependent Children and the adequacy of a Home Energy Assistance Program 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, aged forty-nine, is in receipt of a grant of Aid to Dependent Children for herself and two children, aged fifteen and nine.

2. On October 1, 1984, the appellant requested a fair hearing to review the following:

a) the agency's determination on September 23, 1984, to recoup a utility advance of $687.00;

b) the adequacy of the appellant's grant of Aid to Dependent Children from December, 1983, through May, 1984, due to the failure of the agency to provide the appellant a regular recurring fuel for heating allowance;

c) the failure of the agency to act upon the appellant's September 14, 1984, request for an additional fuel allowance for the period since December, 1983;

d) the inadequacy of the appellant's 1983-1984 Home Energy Assistance Program grant;

e) the failure of the agency to act upon the appellant's July 30, 1984, and September 14, 1984, requests to classify her case as homebound;

and f) the failure of the agency to act upon the appellant's March 9, 1984, July 30, 1984, and September 14, 1984, requests for Emergency Assistance to prevent an electricity shut-off.

3. On September 23, 1984, the agency determined to reduce the appellant's grant due to a recoupment for a utility advance for gas arrears of $687.00.

4. The agency has taken no action to reduce the appellant's assistance for the reason given in the September 23, 1984, 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 has lived at the same address for over ten years. The appellant rents a house that has gas heat. When the appellant leased the house the landlord agreed to pay all utility costs, including gas, electricity and heat. Prior to May, 1984, the appellant had no lease. The landlord had the appellant put all utilities in her name.

6. In February, 1984, the landlord informed the appellant that he would no longer pay any utility bills, retroactive to the fall of 1983. The landlord had not paid the electric utilities since June, 1983, or the gas utilities since November 30, 1983.

7. At the appellant's face-to-face recertification appointment on March 9, 1984, the appellant submitted verification that she was now responsible for gas, electric, and heat, and requested a recurring fuel for heating allowance retroactive to December,1983.

8. The appellant's monthly rent is $300.00 effective May, 1984, prior it was $225.00 monthly.

9. Since January, 1984, the appellant has received a shelter allowance of $112.00 semimonthly. In December, 1983, the appellant received a full shelter allowance for three people including heat.

10) On March 9, 1984, the appellant submitted a shut-off notice from her electric utility company and a breakdown of the bill and requested Emergency Assistance to prevent an electricity shut-off.

11) The agency failed to provide the appellant any assistance to prevent an electricity shut-off.

12) On September 14, 1984, the appellant requested an additional allowance for fuel for the period since December, 1983, due to the exceptionally severe weather,

the appellant's poor health and the location of the appellant's house.

13) The agency failed to act upon the appellant's request for an additional allowance for fuel for the period of December, 1983, through September, 1984.

14) The appellant received 1983-84 Home Energy Assistance Program benefits of $155.00.

15) On July 30, 1984, and September 14, 1984, the appellant submitted medical verification of her illness and requested the agency to classify her case as homebound. The agency has failed to act upon the appellant's request to classify her case as homebound.

16) A fair hearing decision was previously rendered on January 3, 1985. However that decision has been reviewed and it has been determined that the decision was erroneous since it relied upon the months fuel allowance for fuel other than natural gas whereas the appellant heats with natural gas. Accordingly, the January 3, 1985, decision is vacated and this decision issued in lieu thereof.

Inasmuch as the agency stipulated, at the hearing, that it had determined not to take any action on the notice of proposed deduction of Public Assistance, dated September 23, 1984, in effect nullifying such notice and is continuing to provide full assistance to the appellant, there is no issue to be decided at present, concerning the agency's determination to recoup a utility advance of $687.00. 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. In addition, the agency would have to comply with the procedures contained in 82 ADM-30.

Section 352.3 of the Regulations of the State Department of Social Services provides that each Social Services district shall provide a monthly allowance for rent in the amount actually paid, but not in excess of the appropriate maximum of such district for each family size. The Section provides schedules for the maximum monthly rent when it includes heat and when it does not include heat.

The credible evidence in the instant case establishes that at a face-to-face recertification appointment on March 9, 1984, the appellant submitted verification that she was now responsible for the heat and requested a recurring fuel allowance retroactive to December, 1983. The credible evidence further establishes that in December, 1983, the appellant received a full shelter allowance for three people including heat. Effective January, 1984, the appellant has received a shelter allowance of $112.00 semi-monthly. The appellant's rent was $225.00 through April, 1984, effective May, 1984, the appellant's rent is $300.00 monthly. The appellant received full shelter allowance for rent including heat, in the amount actually paid, from December, 1983, through March 9, 1984, the date that the appellant verified that she was responsible for the costs of fuel and the agency correctly determined the adequacy of the appellant's grant from December, 1983, through March 9, 1984. However, the credible evidence establishes that the agency has incorrectly determined the amount of the appellant's shelter and fuel allowances since March 9, 1984. The agency is therefore directed to recompute the appellant's shelter allowance from March 9, 1984, to the present, pursuant to the provisions of Section 352.3 of the Regulations, to correct the appellant's budget and to restore any assistance lost pursuant to Section 352.31(f) of the Regulations. On September 14, 1984, the appellant requested an additional allowance for fuel for the period since December, 1983, due to the exceptionally severe weather, the appellant's poor health and the location of the appellant's house. The agency failed to act upon the appellant's request for an additional allowance for fuel for the period of December, 1983, through September, 1984. On September 18, 1984, the agency determined to add a fuel allowance to the appellant's budget from October, 1984, through May, 1985.

Section 352.5(b) of the Regulations of the State Department of Social Services provides that an additional allowance for fuel should 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. Administrative Directive 83 ADM-31

provides that additional fuel allowances are deemed necessary for the 1983-84 heating season and local districts 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.

Where the case evaluation does not substantiate that extenuating circumstances exists, the recipient must agree to a recoupment of the additional amount exceeding the 165 percent or 90 percent limit. Where the case evaluation warrants authorization of an additional amount which exceeds the established limits, the reason for such authorization must be fully documented in the case record. Also, the authorization must be approved by the supervisor higher in authority than the supervisor who usually signs authorizations.

The failure of the agency to act upon the appellant's request for an additional allowance for fuel for the period of December, 1983, through September, 1984, was not correct. However, since the appellant was not eligible for a fuel allowance until March 9, 1984, she cannot be eligible for an additional fuel allowance prior to that dated.

The agency is directed to immediately provide the appellant with all fuel allowances and additional allowances to which she was entitled to receive, retroactively to March 9, 1984, in accordance with her verified degree of need, and the Regulations. If the appellant requests to be placed on direct vendor payment for future heating costs, the agency is directed to take such action.

The Low Income Energy Assistance Program (PL-35) is a federal program for the purpose of providing low income households with assistance in meeting energy needs.

The New York State Department of Social Services has been designated to administer the program entitled Home Energy Assistance Program, and the State plan for the program has been filed with the United States Department of Health and Human Services.

Pursuant to this plan Public Assistance recipients received automatic 1983-84 Home Energy Assistance Program benefits. If the recipient household paid for

utilities, but did not pay for heating fuel, they were eligible for 1984 Home Energy Assistance Program benefits of $155.00. If the recipient household paid for heating fuel separate from the rent, and heated their homes with gas, they were eligible for 1984 Home Energy Assistance Program benefits of $200.00. If the recipient household paid for heating fuel separate from the rent and heated their homes with oil or electricity, they were eligible for 1984 Home Energy Assistance Program benefits of $230.00.

In the instant case, the credible evidence establishes that the appellant received 1983 - 1984 Home Energy Assistance Program benefits of $155.00. The credible evidence further establishes that the appellant pays separately for, gas heat. Accordingly, the agency's determination to provide the appellant with 1984 Home Energy Assistance Program benefits of $155.00 was not correct. The appellant is eligible to receive 1984 Home Energy Assistance Program benefits of $200.00. The agency is therefore directed to provide the appellant with supplemental 1984 Home Energy Assistance Program benefits of $45.00 pursuant to the provisions of the Home Energy Assistance Program Manual and the Regulations. The credible evidence further establishes that on July 30, 1984, and September 14, 1984, the appellant submitted medical verification of her illness and requested the agency to classify her case as homebound. The agency has failed to act upon the appellant's request to classify her case as homebound. The failure of the agency to act upon the appellant's request to classify her case as homebound was not correct. The agency is directed to immediately act upon the appellant's request, to determine the extent of the appellant's illness, and to make a determination regarding the classification of the appellant's case as homebound and to provide the appellant written notification of such determination.

Pursuant to Administrative Directive 82 ADM-30 of the New York State Department of Social Services dated June 4, 1982, the agency is required to make payments, under certain circumstances, for utility services provided to Public Assistance recipients when needed to restore services.

82 ADM-30 provides that when a Public Assistance recipient is without utility service or is faced with a utility shut-off and a payment is needed to prevent shut-off or restore service, and when, in the judgment of a Social Services official, other housing accommodations appropriate for the recipient's best interests are not available in a particular area, or when alternative payment arrangements cannot be made and the recipient has no liquid resources to make such payment, the local district must make a payment for services provided to such person for the most recent four (4) months in which services were rendered prior to the application/request for such utility payment, provided that no such payment shall be made for services rendered more than ten (10) months prior to the application/request for payment.

82 ADM-30 further provides that before a payment is made for utility services previously provided to a Public Assistance recipient, the district must determine if the recipient has fully applied his monthly grant to recurring grants in one of the following ways:

a. The recipient documents that he/she has:

   1. paid an amount at least equal to the household's monthly Home Energy Allowance to the monthly utility bill for domestic use,

   2. applied his/her monthly fuel for heating allowance to fuel bills if such payment of arrearages is requested for a period in which a heating allowance was provided,

   3. Applied his/her monthly shelter allowance to monthly shelter costs, and

   4. there is no other evidence of mismanagement, or

b. The recipient presents receipts for items included in the standard of need in an amount at least equal to the household's Public Assistance standard of need.

If the conditions in (a) or (b) above are met, then the local district payment to the utility company for services previously provided shall be considered an additional allowance and shall not be subject to recoupment.

If the local district determines that the recipient has not fully used his/her grant in accordance with (1a) or (1b) above, then the local district must treat the payment as an advance allowance and recoup in accordance with Department Regulations.

In the instant case, the credible evidence establishes that the appellant submitted a shut-off notice from her electric utility company to the agency on March 9, 1984, with a breakdown of the bill, and requested Emergency Assistance to prevent an electricity shut-off. The agency has failed to provide the appellant any assistance to prevent an electricity shut-off. The appellant was informed by her landlord in February, 1984, that he would no longer pay the utilities as previously agreed. The credible evidence establishes that the appellant's landlord had not paid the electric utilities since June, 1983. Accordingly, the failure of the agency to provide the appellant with assistance to prevent an electricity shut-off was not correct. The agency is directed to reevaluate the appellant's circumstances pursuant to the provisions of 82 ADM-30 and take action to insure that the appellant has utility service.

As far as the denial of Emergency Assistance to Families is concerned, the agency may or may not, as a matter of administrative discretion, use Emergency Assistance to Families as a funding mechanism to the extent that payments are necessary in accordance with 82 ADM-3 to avoid a utility shut-off. However, payment of four months' arrearages is all that is authorized since pursuant to Social Services Law 131-s, four months' payment is sufficient to maintain utility service, and, therefore avoid the destitution which would result from the termination of service. Furthermore, pursuant to Section 131-s of the Social Services Law, the agency has the option of making direct payment of the utility bills rather than issuing a quarantee of payment to prevent the accumulation of additional arrearages.

It is noted that pursuant to Section 358.10 of the Department's Regulations that the appellant is entitled to reimbursement of the reasonable costs of transportation which is $44.00 and that the agency only reimbursed $40.00. The agency is directed to provide appellant the additional four dollars.

DECISION: There is no issue to be decided concerning the agency's determination on September 23, 1984, to recoup a utility advance of $687.00. The agency's determination of the adequacy of the appellant's grant from December, 1983, through March 9, 1984, is correct. The agency's determination of the adequacy of the appellant's grant since March 9, 1984, is not correct and is reversed. The failure of the agency to act upon the appellant's request for an additional fuel allowance for the period form March 9, 1984, through September,1984, and the failure of the agency to act upon the appellant's request to classify the appellant's case as homebound are not correct and are reversed. The agency's determination to provide the appellant with 1983-1984 Home Energy Assistance Program benefits of $155.00 is not correct and is reversed. The failure of the agency to provide the appellant appropriate assistance to prevent an electricity shut-off 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 MAR 22 1985

CESAR A. PERALES,
COMMISSIONER

BY _____
Commissioner's Designee