

STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST July 1, 2002  
CASE #  
CENTER # 53  
FH # 3744382L

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In the Matter of the Appeal of :

M T

DECISION  
: STIPULATION  
AFTER  
FAIR  
HEARING  
:

from a determination by the New York City  
Department of Social Services

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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 August 13, 2002, in New York City, before Jerilyn Nicoll, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

M T , Appellant; Eugene Doyle, POOR

For the Social Services Agency

Valerie Dolvin-Joseph, Fair Hearing Representative

ISSUE

Was the Appellant's appeal of the Agency's determination to discontinue the Appellant's Public Assistance benefits timely?

If timely, has the Agency acted correctly with respect to its determination to discontinue the Appellant's Public Assistance benefits?

Was the determination of the Agency as not to provide emergency utility assistance correct?

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. The Appellant has been in receipt of Public Assistance benefits.

2. On June 19, 2002, the Appellant applied for emergency utility assistance.

3. The Agency failed to act on the Appellant's June 19, 2002 application for emergency utility assistance..

4. On December 18, 2001, the Agency sent a Notice of Intent to the Appellant setting forth its intention to discontinue Appellant's Public Assistance benefits because The Agency failed to act on the Appellant's June 19, 2002 application for emergency utility assistance..

5. The Notice was incorrectly addressed and the Appellant did not receive it.

6. On July 1, 2002, the Appellant requested a hearing to review the Agency's determination.

7. On July 11, 2002, which was more than five business days before the hearing, the Appellant requested that the Agency provide copies of documents which the Appellant specifically identified as necessary in order to prepare for the hearing but the Agency did not provide such documents to the Appellant until after three business days of such request.

#### APPLICABLE LAW

Regulations at 18 NYCRR 358-3.7(b), which summarize an Appellant's rights regarding examination of a case record before the hearing, provide as follows:

- 1 Upon request, you have a right to be provided at a reasonable time before the date of the hearing, at no charge, with copies of all documents which the social services agency will present at the fair hearing in support of its determination. If the request for copies of documents which the social services agency will present at the hearing is made less than five business days before the hearing, the social services agency must provide you with such copies no later than at the time of the hearing. If you or your representative request that such documents be mailed, such documents must be mailed within a reasonable time from the date of the request; provided however, if there is insufficient time for such documents to be mailed and received before the scheduled date of the hearing such documents may be presented at the hearing instead of being mailed;
- (2) Upon request, you have the right to be provided at a reasonable time before the date of the hearing, at no charge, with copies of any additional documents which you identify and request for purposes of preparing for your fair hearing. If the request for copies of documents is made less than five business days before the hearing, the social services agency must provide you with such copies no later than

at the time of the hearing. If you or your representative request that such documents be mailed, such documents must be mailed within a reasonable time from the date of the request; provided however, if there is insufficient time for such documents to be mailed and received before the scheduled date of the hearing such documents may be presented at the hearing instead of being mailed;

- (3) Your request for copies of documents pursuant to paragraphs (1) and (2) of this subdivision may at your option be made in writing, or orally, including by telephone;
- (4) If the social services agency fails to comply with the requirements of this subdivision the hearing officer may adjourn the case, allow a brief recess for the appellant to review the documents, preclude the introduction of the documents where a delay would be prejudicial to the appellant, or take other appropriate action to ensure that the appellant is not harmed by the agency's failure to comply with these requirements.

Pursuant to the judgment entered in the case of Rivera v. Bane and Sabol on December 22, 1995, the New York City Human Resources Administration (HRA) is required to "provide within three business days, at no charge and by first class mail, to all public assistance fair hearing appellants or their authorized representatives, upon request, either by telephone or in writing, a copy of the evidence package and copies of any other specifically identified documents from the appellant's case record that are requested to prepare for the fair hearing. If any such request for evidence packages or specifically identified documents is made less than five business days before the scheduled State administrative fair hearing, [HRA must] provide fair hearing appellants or their authorized representatives with such documents within three business days of the request or at the time of the scheduled hearing." The judgment requires that HRA withdraw its notice "whenever it fails to provide any individual or his or her representative, upon request and at no charge, with copies of documents that the HRA will present into evidence at the fair hearing, and any other specifically identified documents from an individual's case record within three business days of the request when the request is made more than five days before the fair hearing."

Section 22 of the Social Services Law provides that applicants for and recipients of Public Assistance, Emergency Assistance to Needy Families with Children, Emergency Assistance for Aged, Blind and Disabled Persons, Veteran Assistance, Medical Assistance and for any services authorized or required to be made available in the geographic area where the person resides must request a fair hearing within sixty days after the date of the action or failure to act complained of. In addition, any person aggrieved by the decision of a social services official to remove a child from an institution or family home may request a hearing within sixty days. Persons may request a fair hearing on any action of the social services district relating to food stamp benefits or the loss of food stamp benefits which occurred in the

ninety days preceding the request for a hearing. Such action may include a denial of a request for restoration of any benefits lost more than ninety days but less than one year prior to the request. In addition, at any time within the period for which a person is certified to receive food stamp benefits, such person may request a fair hearing to dispute the current level of benefits.

#### DISCUSSION

The evidence establishes that the Agency sent a Notice of Intent to the Appellant dated December 18, 2001, advising the Appellant that it had determined to discontinue the Appellant's Public Assistance benefits. The Notice was incorrectly addressed and the Appellant did not receive it. Therefore, the Appellant has established good cause for failing to request this fair hearing until July 1, 2002.

The Appellant requested a hearing to review the Agency's determination on July 1, 2002. On July 11, 2002, which was more than five days prior to the scheduled date of this fair hearing, the Appellant requested, in accordance with the above provisions of Section 358-3.7(b), that the Agency provide copies of documents which the Appellant specifically identified as necessary in order to prepare for the hearing. The Agency did not provide such documents to the Appellant until after three business days of such request.

At the hearing, the Agency did not withdraw its December 18, 2001 Notice of Intent to discontinue Appellant's Public Assistance benefits as required by the judgment in the case of Rivera v. Bane and Sabol. Accordingly, the question of the correctness of the Agency determination to discontinue Appellant's Public Assistance benefits cannot be reached in this case.

On June 19, 2002, the Appellant applied for emergency utility assistance. The Agency failed to act on the Appellant's June 19, 2002 application for emergency utility assistance..

At the hearing, the Agency agreed to investigate the Appellant's need for emergency utility assistance, notify the Appellant in writing of its determination and provide any assistance to which the Appellant may be entitled.

At the hearing, the Appellant accepted the terms of the Agency stipulation as a complete resolution of the Appellant's request for a fair hearing on this issue.

#### DECISION AND ORDER

The question of the correctness of the Agency's determination to discontinue Appellant's Public Assistance benefits, by notice dated December 18, 2001 cannot be reached in this case.

1. The Agency is directed to withdraw its Notice of Intent dated December 18, 2001 with respect to Appellant's Public Assistance benefits

2. The Agency is directed to continue to provide Public Assistance benefits to the Appellant.

3. The Agency is directed to restore Appellant's Public Assistance benefits retroactive to the date of the Agency action.

Should the Agency in the future determine to implement its previous action, it is directed to issue a new Notice of Intent and, in the event that the Appellant requests a fair hearing to review such determination, to comply with the requirements contained in 18 NYCRR 358-3.7(b) concerning the timely provision of documents.

In accordance with the Agency's agreements made at the hearing, the Agency is directed to take the following action if it has not already done so:

1. Investigate the Appellant's need for emergency utility assistance.
2. Notify the Appellant in writing of its determination.
3. Provide any assistance to which the Appellant may be entitled

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 required, the Appellant must provide it to the Agency promptly to facilitate such compliance.

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

DATED: Albany, New York  
August 27, 2002

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

  
Commissioner's Designee