

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST May 4, 2001
CASE #
CENTER # Suffolk
FH # 3513875J

In the Matter of the Appeal of :

S R :

**DECISION
AFTER
FAIR
HEARING**

from a determination by the Suffolk County
Department of Social Services :

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 May 25, 2001, in Suffolk County, before Jonathan M. Kastoff, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

S R, Appellant
Kerry Lynn Powers
Kathy Whelan, Representatives

For the Social Services Agency

Don Reed,
Jeannette O'Keefe,
Amelia Salinero, Fair Hearing Representatives

ISSUE

Was the Agency's determination to discontinue Appellant's temporary housing assistance correct?

Was the Agency's determination to discontinue Appellant's supportive services (busing) 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. Appellant is in receipt of Public Assistance as payee for three children. Appellant and two other children are ineligible for Public Assistance at this time due to their alien status.

2. On February 26, 2001 Appellant reported to the Agency as homeless. The Appellant's household has been placed in the B E Motel in E Q since that date.

3. Appellant also received busing services to enable her children to attend school in R.

4. Effective April 17, 2001 the Agency ceased paying the motel for Appellant's shelter expense without prior written notice.

5. Effective April 17, 2001 the Agency ceased paying for Appellant's busing expense without prior written notice.

6. On May 4, 2001, the Appellant requested this fair hearing.

APPLICABLE LAW

352.35 Eligibility for temporary housing assistance for homeless persons.

Regulations at 18 NYCRR 352.35 govern the provision of temporary housing assistance to persons who are homeless. The Regulations set forth the requirements with which an individual or family who applies for temporary housing must comply in order to be eligible for temporary housing assistance.

Temporary housing includes family shelters authorized by Part 900 of this Title and section 352.8(a) of this Part, room and board authorized by section 352.8(b) of this Part which is provided to a homeless person on a temporary basis, hotel/motel facilities authorized by section 352.3(e) of this Part and shelters for adults authorized by Part 491 of this Title. 18 NYCRR 352.35(b)(3).

Temporary housing assistance is a public assistance benefit provided temporarily for an eligible homeless individual or family to meet an immediate need for shelter. 18 NYCRR 352.35(b)(4)

Regulations at 352.35(e) provide that a homeless individual or family applying for or receiving temporary housing assistance, pursuant to sections 352.3(e) or 352.8 of this Part or Parts 371 or 491 of this Title, also must comply with all other applicable public assistance and care requirements including, but not limited to:

- (1) requirements for participation in employment and training programs, in accordance with part 385 of this title, including looking for work, engaging in training, accepting jobs and work assignments, and participating in rehabilitative services;
- (2) requirements for participation in rehabilitative services, as described in section 370.2(d)(7) of this Title and Part 385 of this Title;

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- (3) requirements for participation in the child support enforcement program, as described in sections 351.2(e)(2)(iv), 369.2(b) and 370.2(d) of this Title;
- (4) requirements to apply for supplemental security income benefits, as described in sections 369.2(h) and 370.2(c)(5) of this Title;
- (5) requirements for location of resources, as described in section 351.2(e) of this Title; and
- (6) requirements for acceptance of the offer of a home, as described in section 370.2(c) of this Title.

Failure to comply with any public assistance and care requirements, including, but not limited to, those described above, will subject the recipient of temporary housing assistance to the sanctions specified in the applicable sections of this Title.

Any individual or family whose application for temporary housing assistance is denied or whose temporary housing assistance is discontinued pursuant to subdivision (c) or (g) of this section, is entitled to a fair hearing, in accordance with subpart 358-3 of this Title. 18 NYCRR 352.35(h).

Regulations at 18 NYCRR 358-2.2 provide for adequate notice as follows:

- (a) Except as provided in subdivision (b) of this section, an adequate notice means a notice of action, or an adverse action notice or an action taken notice which sets forth all of the following:
 - (1) the action the social services agency proposes to take or is taking, and if a single notice is used for all affected assistance, benefits or services, the effect of such action, if any, on a recipient's other assistance, benefits or services. Otherwise the notice shall state that there will be a separate notice for other affected assistance, benefits or services. In addition, in the case of:
 - (i) a reduction of public assistance or food stamp benefits: both the dollar amount of assistance or benefits prior to the reduction and the reduced amount must be specified;

- (ii) an increase in the amount of a medical assistance spenddown: the amount of the spenddown, if any, prior to the increase and the spenddown amount after the increase must be specified. In addition, such notice must include an explanation of the procedures to be followed for meeting the spenddown;
- (iii) a recoupment: the total amount to be recouped and the rate of recoupment must be specified. In addition, in the case of a recoupment of a public assistance grant, the right to claim that the rate of recoupment will cause undue hardship must be specified;
- (iv) an acceptance of a food stamp application:
 - (a) the benefit level, including variations based on changes anticipated at the time of certification, the date of initial issuance of the authorization to participate (ATP) and the dates covering the certification/eligibility period must be specified. In addition, if the initial allotment contains benefits for both the month of application and the current month, the notice must explain that the initial allotment includes more than one month's benefits, and must indicate the monthly allotment amount for the remainder of the certification period;
 - (b) when an application is approved on an expedited basis without verification, the notice must explain that the household must provide the verification which was postponed and any special conditions applicable to the household if a normal certification period was assigned to such household;
- (v) a denial of a food stamp application: when a household is potentially categorically eligible for food stamp benefits but is denied food stamp benefits, the notice must ask the applicant to inform the social services agency if the applicant is approved to receive aid to dependent children or supplemental security income benefits;
- (vi) a notice of authorization of a public assistance grant: the amount of the grant must be specified;

- (vii) an increase in a public assistance grant or food stamp benefits: the new amount of the grant or benefits must be specified;
- (viii) a restriction of a medical assistance authorization: the date the restriction will begin, the effect and scope of the restriction, the reason for the restriction, the right of the recipient to select a primary care provider within two weeks of the date of the notice of intent to restrict, if the social services agency provides a limited choice of providers to the recipient; the right of the social services agency to select a primary provider for the recipient, if a list of primary care providers is not provided or where the recipient fails to select a primary care provider within two weeks if the recipient is given a choice; and the right of the recipient to change providers every three months, or sooner for good cause shown; the right of the recipient to explain and present documentation, either at a conference or by submission, showing the medical necessity of the services cited in the recipient information packet; the right of the recipient to examine records maintained by the social services agency which identify medical assistance services paid for on behalf of the recipient (i.e. claim detail of recipient profile information), must be specified;
- (ix) an acceptance of an application for services: the type of services to be provided, the duration of services planned, the name of the worker or unit responsible for the case and such person's telephone number, and the right of the applicant and recipient to accept or reject the services shall be specified. In addition, the notice must include a statement regarding the continuing responsibility of the recipient to report any changes in status;
- (x) a determination that an applicant is eligible for the HEAP program: if federal funds are available, the

amount of benefits must be specified. If federal funds are unavailable, a statement shall be included that HEAP benefits will be provided if sufficient federal funds become available.

- (xi) an acceptance of an application for medical assistance: the extent of coverage including what care and services are authorized as well as any limitations, must be specified. In addition, if only part of the cost of a particular service will be allowed, such limitation must be specified. If the notice of acceptance indicates a spenddown liability, such notice must include an explanation of the procedures to be followed for meeting the spenddown.
 - (xii) a disqualification of a food stamp household, or a member of such household for failure to comply with food stamp registration or work requirements: the particular act of non-compliance, the proposed period of disqualification and that the household or individual may reapply in order to resume participation in the food stamp program at the end of the disqualification period as well as information about avoiding or ending the disqualification, must be specified.
 - (xiii) a notice of action taken in the food stamp program when a member of the applicant household has without good cause failed to comply with work registration requirements: the particular act of non-compliance, the proposed period of disqualification, that the individual or household may reapply in order to participate at the end of the disqualification period as well as information about ending the disqualification, must be specified.
 - (xiv) a disqualification of a household from the food stamp program based upon the voluntary termination of employment by the head of household: the proposed period of disqualification, the household's right to reapply in order to resume participation at the end of the disqualification period as well as information about ending the disqualification, must be specified.
- (2) except in the case of a denial, the effective date of the

action;

- (3) except in the case of an acceptance of an application for a covered program or service, the specific reasons for the action;
- (4) the specific laws and/or regulations upon which the action is based;
- (5) the applicant's or recipient's right to request an agency conference and fair hearing;
- (6) the procedure for requesting an agency conference or fair hearing, including an address and telephone number where a request for a fair hearing may be made and the time limits within which the request for a fair hearing must be made;
- (7) an explanation that a request for a conference is not a request for a fair hearing and that a separate request for a fair hearing must be made. Furthermore, that a request for a conference does not entitle one to aid continuing, and that a right to aid continuing only arises pursuant to a request for a fair hearing.
- (8) when the agency action or proposed action is a reduction, discontinuance, restriction or suspension of public assistance, medical assistance, food stamp benefits or services, the circumstances under which public assistance, medical assistance, food stamp benefits or services will be continued or reinstated until the fair hearing decision is issued; that a fair hearing must be requested separately from a conference; and a statement that when only an agency conference is requested and there is no specific request for a fair hearing, there is no right to continued public assistance, medical assistance, food stamp benefits or services; and that participation in an agency conference does not affect the right to request a fair hearing and;
- (9) the right of the applicant or recipient to review the applicant's or recipient's case record and to obtain copies of documents which the agency will present into evidence at the hearing and other documents necessary for the applicant or recipient to prepare for the fair

hearing at no cost. The notice must contain an address and telephone number where the applicant or recipient can obtain additional information about: the applicant's or recipient's case; how to request a fair hearing; access to the case file; and/or obtaining copies of documents;

- (10) the right to representation by legal counsel, a relative, friend or other person or to represent oneself, and the right to bring witnesses to the fair hearing and to question witnesses at the hearing;
- (11) the right to present written and oral evidence at the hearing;
- (12) the liability, if any, to repay continued or reinstated assistance and benefits, if the recipient loses the fair hearing;
- (13) information concerning the availability of community legal services to assist an applicant or recipient at the conference and fair hearing; and
- (14) a copy of the budget or the basis for the computation, in instances where the social services agency's determination is based upon a budget computation. This subdivision does not apply to actions taken involving HEAP benefits.
- (15) when an action concerning medical assistance is based on a change in law, a statement of the circumstances under which a hearing may be obtained and assistance continued. Such statement must advise the recipient that although the recipient has the right to have a hearing scheduled, the hearing officer at the hearing may determine that the recipient did not have a right to a hearing or continuation of assistance if the sole issue is a federal or State law requiring an automatic change adversely affecting some or all medical assistance recipients.

If you are an applicant or a recipient of assistance, benefits or services you have a right to a fair hearing if your public assistance, medical assistance, food stamps or services have been discontinued, suspended or reduced, or your public assistance, medical assistance or food stamps have been increased. 18 NYCRR 358-3.1(b)(3).

DISCUSSION

The Agency contended that temporary housing assistance at a motel is

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determined daily by the Agency, and the Agency is not required to send any notice when such assistance ceases. However, there is no authority under 18 NYCRR 352 to require Appellant to report to the Agency on a daily basis and apply for temporary housing assistance. Pursuant to 18 NYCRR 352.35(b)(4) temporary housing assistance is a public assistance benefit provided temporarily for an eligible homeless individual or family to meet an immediate need for shelter. Any cessation or other change in the Public Assistance benefit requires appropriate notice. Accordingly, the Agency is required to send notice to Appellant when payment for temporary housing assistance ceases. Appellant must be considered otherwise eligible for temporary housing assistance until such a notice, sent to Appellant, becomes effective.

However, the Agency contended it has not denied or discontinued any assistance. The Agency contended that it advised Appellant to report to the Agency on April 17, 2001 so that continued temporary housing assistance could be evaluated. Appellant did not report to the Agency. The Agency contacted the motel and was advised that Appellant was permitted to remain at the motel rent free. The Agency determined that Appellant no longer needed temporary housing assistance payments since the motel was not charging Appellant rent. However, the motel operator had been accepting shelter payment for the Appellant from the Agency, and did not charge rent because he did not want Appellant to become homeless. The lack of motel payments by the Agency was the direct result of the Agency's action.

With regard to the busing, the Agency contended that once Appellant ceased receiving temporary housing assistance, the Agency ceased being responsible for the busing, and that responsibility for that using reverted to the R school district. The Agency also contended that no notice was required to be issued on the discontinuance.

When Appellant was placed in temporary housing assistance, she was provided bus service to enable her children to continue to attend school in R. This is a supportive service which requires notice before any discontinuance can be effected. Therefore, the Agency's determination to discontinue Appellant's busing cannot be affirmed at this time.

DECISION AND ORDER

The Agency's determination to discontinue Appellant's temporary housing assistance was not correct and is reversed.

1. The Agency is directed to continue Appellant's temporary housing assistance and to restore all lost benefits retroactive to April 17, 2001, the date of the Agency's action.

2. Should the Agency determine to reimplement its action, it is directed to provide Appellant with appropriate notice, in accordance with the foregoing.

The Agency's determination to discontinue Appellant's supportive services (busing) was not correct and is reversed.

1. The Agency is directed to continue Appellant's busing and to restore all lost benefits retroactive to April 17, 2001, the date of the Agency's action.

2. Should the Agency determine to reimplement its action, it is directed to provide Appellant with appropriate notice, in accordance with the foregoing.

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

DATED: Albany, New York
January 3, 2002

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee