

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: November 1, 2011

████████████████████
AGENCY: New York City
FH #: 5938103N

In the Matter of the Appeal of
████████████████████ :
 : **DECISION**
 : **AFTER**
 : **FAIR**
 : **HEARING**
from a determination by the New York City :
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 November 9, 2011, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

████████████████████

For the Social Services Agency

Dealphia Carroll, Fair Hearing Representative

ISSUES

Was the determination of the Agency not to provide the Appellant with a grant for rent arrears incurred prior to acceptance for Public Assistance and a rent advance to prevent the Appellant's eviction correct?

Was the Agency's determination of June 22, 2011 to discontinue the Appellant's Public Assistance benefits correct?

FINDINGS OF FACT

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. On or about June 1, 2011, the Appellant applied for a grant for rent arrears incurred prior to acceptance for Public Assistance and a rent advance to prevent the Appellant's eviction.
2. The Agency has failed to act on the Appellant's request for such grants.
3. The Appellant has been in receipt of Public Assistance benefits.
4. On June 22, 2011, the Agency sent a Notice of Intent to the Appellant setting forth its intention to discontinue the Appellant's Public Assistance benefits because the Appellant failed to complete the employment requirements.
5. On November 1, 2011, the Appellant requested this fair hearing.
6. At the hearing, the Appellant withdrew her request for a fair hearing regarding the Agency's determination pursuant to notice dated June 22, 2011, to discontinue the Appellant's Food Stamp benefits.

APPLICABLE LAW

Administrative Directives 02 ADM-2 provides that a request for assistance to meet an identified emergency must be acted upon on the same day on which it was requested. Where no emergency need is identified, the Agency must make a decision regarding the granting of a additional allowance within 30 days of the request.

State regulations at 18 NYCRR 352.6 and 352.7 list the special grants and allowances which may be provided to eligible Public Assistance recipients. Among the special grants which the Agency is authorized to provide to a Public Assistance recipient who is eligible therefor are grants for: household moving expenses, rent security deposits and brokers' or finders' fees (Section 352.6(a)); storage of furniture and personal belongings due to eviction, relocation or temporary shelter (Section 352.6(f)); purchase of necessary and essential furniture, furnishings, equipment and supplies (Section 352.7(a)); additional cost of meals for persons unable to prepare meals at home (Section 352.7(c)); replacement of clothing or furniture lost in a fire, flood or other catastrophe (Section 352.7(d)); rent, property taxes or mortgage arrears for the time prior to the month in which the Public Assistance case was opened (Section 352.7(g)(3)); payment of a recoupable grant to a recipient of Public Assistance who is threatened with eviction or foreclosure for nonpayment of rent or mortgage arrears incurred during a period for which a Public Assistance grant had been previously issued (Section 352.7(g)(4)); and monthly allowance of \$50 to pay for additional needs due to pregnancy (Section 352.7(k)).

Regulations at 18 NYCRR 358-3.7(a) provide that an Appellant has the right to examine the contents of the case record at the fair hearing. The Agency must provide complete copies of its documentary evidence to the hearing officer at the hearing and also to the Appellant or representative where such documents were not otherwise provided in accordance with 18 NYCRR 358-3.7. 18 NYCRR 358-4.3(a). Unless a waiver of appearance is approved by the Office of Administrative Hearings, a representative of the Agency must appear at the hearing along with the case record and a written summary of the case and be prepared to present evidence in support of its determination. If a waiver has been approved, the hearing officer may require the Agency's appearance if necessary to protect the appellant's due process rights. 18 NYCRR 358-4.3(b) and (c). In fair hearings concerning the discontinuance, reduction or suspension of Public Assistance, Medical Assistance, Food Stamp benefits or services, the Agency must establish that its actions were correct. 18 NYCRR 358-5.9(a).

DISCUSSION

The uncontroverted evidence in this case establishes that the Appellant requested that the Agency provide a grant for rent arrears incurred prior to acceptance for Public Assistance and a rent advance to prevent the Appellant's eviction. The Agency failed to present evidence at the hearing to establish that it has acted on the Appellant's request for such grants. Accordingly, its failure to provide the requested grants cannot be sustained.

The evidence establishes that the Agency sent a Notice of Intent to the Appellant on June 22, 2011 advising the Appellant that it had determined to discontinue the Appellant's Public Assistance benefits because the Appellant failed to complete the employment requirements.

The Agency was duly notified of the time and place of the hearing. However, the Agency failed to present any documentation concerning the determination June 22, 2011. Therefore, with respect to the Agency's determination to discontinue the Appellant's Public Assistance, the Agency failed to meet its obligations under 18 NYCRR 358-4.3(b), and failed to establish that its determination was correct pursuant to 18 NYCRR 358-5.9(a).

The Appellant requested this hearing on November 1, 2011. Although Section 22 of the Social Services Law provides that a request for a Fair Hearing to review an Agency's determination must be made within sixty days of the date of the Agency's action complained of, in this case, the Appellant submitted documentation to establish that she suffers from major depressive disorder and severe psychiatric disability. Consequently, the evidence establishes sufficient grounds for tolling the sixty day statute of limitations.

DECISION AND ORDER

The determination of the Agency not to provide the Appellant with a grant for rent arrears incurred prior to acceptance for Public Assistance and a rent advance to prevent the Appellant's eviction is not correct and is reversed.

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1. The Agency is directed immediately to investigate the Appellant's eligibility for a special grant for the payment of shelter arrears incurred prior to the month in which the Appellant's Public Assistance case was opened, to provide the Appellant with written notification as to the results of such investigation and to provide the Appellant with a grant for the payment of such shelter arrears to the extent permitted by 18 NYCRR 352.7(g)(3) if the Appellant is found eligible.

2. The Agency is directed immediately to investigate the Appellant's eligibility for a recoupable grant for the payment of shelter arrears incurred while the Appellant was in receipt of Public Assistance, to provide the Appellant with written notification as to the results of such investigation and to provide the Appellant with a grant for the payment of such shelter arrears to the extent permitted by 18 NYCRR 352.7(g)(4) if the Appellant is found eligible.

3. In the event that the Appellant is unable to prevent eviction and is evicted, the Appellant may apply for Temporary Housing Assistance from the Agency.

The determination of the Agency to discontinue the Appellant's Public Assistance benefits is not correct and is reversed.

1. The Agency is directed to withdraw its Notice of Intent dated June 22, 2011 with respect to the Appellant's Public Assistance benefits.
2. The Agency is directed to restore any Public Assistance benefits lost as a result of the Agency's action in accordance with the provisions of 18 NYCRR 352.31(f).

Should the Agency in the future determine to implement its previous action, it is directed to procure and review the Appellant's case record with respect to a determination relating to the Appellant's Public Assistance benefits, to issue a new Notice of Intent and to produce the required case record(s) at any subsequent fair hearing.

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

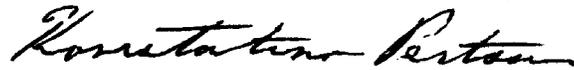
As required by 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

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DATED: Albany, New York
11/10/2011

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink, appearing to read "Rosalinda Perina". The signature is written in a cursive style with a large initial 'R'.

Commissioner's Designee