

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
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A_____ W_____
Petitioner,

v.

SALVATION ARMY
Respondent

Case No.: 2012-SHEL-00014

FINAL ORDER

I. Introduction

This Order concludes that the Petitioner, A_____ W_____, satisfies the income standards for the Emergency Rental Assistance Program established by the Department of Human Services (“DHS”). The decision of the Respondent, the Salvation Army, denying her application for assistance will be reversed.

II. Procedural Background

Ms. W_____ filed a hearing request on January 27, 2012, and waived her right to an administrative review. Because Ms. W_____ applied for assistance in order to help meet her obligations under a lease that was scheduled to commence on February 1, 2012, I scheduled a hearing for January 31, 2012. Ms. W_____ represented herself at the hearing and Teresa McKillop, program director, represented the Salvation Army. Based on the testimony of the

witnesses, my evaluation of their credibility, and the exhibits admitted into evidence, I now make the following findings of fact and conclusions of law.

III. Findings of Fact

Ms. W_____ applied for emergency rental assistance on January 26, 2012. She and her two children have been living in a friend's apartment, but there is not enough room for them there. They must leave by February 1, 2012. Ms. W_____ has found a new apartment and has signed a lease that begins on February 1, 2012. The rent there is \$1,255 per month, and an additional \$1,255 is due as a security deposit at the beginning of the lease term. Petitioner's Exhibit ("PX") 101.

Ms. W_____ asked for emergency rental assistance to help her pay the first month's rent and security deposit. She is employed, and her take-home pay, after deductions for taxes, totaled \$1,865.16 in the 30 days before she applied. Respondent's Exhibit ("RX") 200.¹

Ms. W_____ is involved in ongoing child custody and support proceedings with the father of one of her children. The court has not yet issued a support order and is not likely to do so before May 2012, at the earliest. The child's father pays \$15 every two weeks for the child's day care and, from time to time, provides other funds for the child's support, although the payments have not been consistent. At the request of her caseworker at the Salvation Army, Ms. W_____ obtained a letter from the child's father about his support payments. It says:

¹ RX 200 shows the amounts received from three paychecks. Only two of them (December 30, 2011 and January 13, 2012) are within 30 days of the application date.

I[, T_____ G_____[,] am writing this letter to inform you that I pay A_____ W_____ \$250.00 biweekly child support for M_____ G_____. It does not exceed no more than \$500.00 monthly, as well as day care.

RX 201.

Based upon Ms. W_____’s credible testimony, I find that RX 201 represents Mr. G_____’s promise to pay future support benefits; it is not an accurate statement of what he has paid in the past. Although Mr. G_____ has paid the cost of the child’s day care, his other payments to Ms. W_____ have been irregular and infrequent. During the month before Ms. W_____’s application, Mr. G_____ paid her only \$200. The purpose of that payment was to help make up the difference between the amount of emergency rental assistance that Ms. W_____ expected to receive and the amount she would have to pay for her first month’s rent and security deposit.

Ms. W_____ attempted to get a \$2,500 loan from her credit union to pay for the first month’s rent and security deposit, but her application was rejected. PX 100. On January 26, 2012, her bank account was overdrawn by \$242.91. PX 102.

In denying Ms. W_____’s application, the Salvation Army’s caseworker added \$1,800, her approximate monthly income from her job, and \$500, the child support amount stated in RX 201. The caseworker concluded that the resulting amount – \$2,300 – exceeded 125% of the monthly federal poverty limit for a household of three persons. In making that calculation, the caseworker relied upon a DHS form, which showed that 125% of the federal poverty level in 2009 was \$1,907.29. RX 202. As a result, she denied Ms. W_____’s application.

IV. Conclusions of Law

As its name suggests, the Emergency Rental Assistance Program provides funds to help pay certain rental and related costs of eligible persons facing an emergency. Several private providers, including the Salvation Army, administer the program for DHS by evaluating applications and distributing funds to eligible applicants.

The parties do not dispute that Ms. W_____ faces an “emergency” due to her need to vacate her present living space. *See* 29 DCMR 7599 (defining “emergency” as a “situation in which immediate action is necessary to avoid homelessness or eviction, to re-establish a home, or prevent displacement from a home”).² The parties also agree that Ms. W_____ meets the eligibility criterion established in 29 DCMR 7503.1(b)(1), which requires her household to have at least one child under the age of 18. The only issue in dispute is whether Ms. W_____ satisfies the income standard prescribed in 29 DCMR 7503.8, which requires that her household’s income in the preceding 30 days must not exceed 125% of the monthly federal poverty level.

The caseworker used the 2009 federal poverty level when she denied Ms. W_____’s application. That was an error. The regulation states that a household’s income “must not exceed one hundred and twenty-five percent (125%) of the monthly Federal Poverty Level as defined by the U.S. Department of Health and Human Services for the specified household size.” 29 DCMR 7503.8. Nothing in that language requires use of the 2009 federal poverty level. The regulation itself was adopted in 2007, 54 D.C. Reg. 12622 (December 28, 2007), so it obviously did not require use of the 2009 poverty level when first adopted. The absence of any qualifying

² Because the emergency rental assistance program is a homelessness prevention program funded by the Department of Human Services, the Office of Administrative Hearings has jurisdiction of this case pursuant to D.C. Official Code § 4-754.41 and 29 DCMR 7510.

language in § 7503.8 means that the federal poverty level in effect on the day of the application must be used.³

Coincidentally, the United States Department of Health and Human Services (“HHS”) updated the federal poverty level on January 26, 2012, the day Ms. W_____ applied for benefits. HHS instructed that the changes were effective immediately. Annual Update of the HHS Poverty Guidelines, 77 Fed. Reg. 4034 (January 26, 2012). Ms. W_____, therefore, was entitled to the benefit of that change. For a household of three persons, the new poverty level is \$19,090 per year, *id.* at 4035, and 125% of that amount is \$23,862.50. Dividing that amount by 12 yields a monthly level of \$1,988.54. To be eligible for emergency rental assistance benefits, therefore, Ms. W_____’s monthly income must be below that amount.

The income standards for the emergency rental assistance program are backward-looking. In other words, they consider the income that the applicant received “in the thirty (30) day period immediately preceding the date of application” 29 DCMR 7503.8. They do not require a prediction of what the applicant will receive during the coming month. Based on my finding that RX 201 describes a promise to pay in the future and not an amount paid in the past, the \$500 per month in child support should not have been included in Ms. W_____’s monthly income for the preceding 30 days.

What about the \$200 that Ms. W_____ received from Mr. G_____ during January? The purpose of that payment was to help her make up the difference between the amount of

³ In calculating Ms. W_____’s eligibility, the Salvation Army used a form supplied by DHS that was printed in 2009 and apparently has not been updated by DHS. Section 7508.3, a rule validly adopted by DHS, must prevail over any contrary oral instructions from DHS. *Macouley v. District of Columbia Taxicab Comm’n*, 623 A.2d 1207, 1209 (D.C. 1993) *Seman v. District of Columbia Rental Housing Comm’n*, 552 A.2d 863, 866 (D.C. 1989); *Dankman v. District of Columbia Bd. of Elections*, 443 A.2d 507, 513 (D.C. 1981).

emergency rental assistance that she expected to receive and the amount that she needed to pay the landlord.⁴ The applicable regulations require that “money on hand which is specifically earmarked for contribution towards the resolution of the crisis” must be excluded from an applicant’s income. 29 DCMR 7503.13(h). Because Mr. G_____’s \$200 payment was intended to help resolve Ms. W_____’s housing crisis, it must be excluded from her income.

Ms. W_____’s net income from her employment during the previous 30 days was \$1,865.16, well below the standard of \$1,988.54. Even if Mr. G_____’s biweekly payments of \$15 for day care must be included in her income, an issue I do not decide, her income remains below 125% of the current poverty level for her household. As a result, she is eligible for emergency rental assistance benefits.

V. Order

Based on the findings of fact and conclusions of law, it is, this **31st** day of **January**, 2012:

ORDERED, that Ms. W_____’s income satisfies the eligibility standards of 29 DCMR 7503.8. The decision of the Salvation Army denying her application on that ground is **REVERSED**; and it is further

ORDERED, that the Salvation Army shall process Ms. W_____’s application as quickly as possible; and it is further

⁴ The maximum payments for first month’s rent and security deposit total \$1,800. 29 DCMR 7507.2 and 29 DCMR 7508.2.

ORDERED, that any party may ask for reconsideration or relief from this Order as described below, and it is further

ORDERED, that any party may appeal this Order by following the instructions below.

_____/s/_____
John P. Dean
Principal Administrative Law Judge