

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
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E___ R_____
Petitioner,

v.

COMMUNITY PARTNERSHIP FOR THE
PREVENTION OF HOMELESSNESS
Respondent

Case No.: 2012-SHEL-00034

FINAL ORDER

I. Introduction

This Order concludes that the Petitioner, E___ R_____, is entitled a total of \$4,250, the maximum amount available from the Emergency Rental Assistance Program for rental arrearages. Therefore, the Community Partnership for the Prevention of Homelessness (the “Community Partnership”) must pay an additional \$541.10 on his behalf, subject to the conditions established by this Order.

II. Procedural Background

Mr. R_____ filed a hearing request on March 1, 2012, to challenge the amount of emergency rental assistance awarded to him by the Community Partnership. The Superior Court has issued a writ authorizing his eviction from his apartment and the United States Marshals Service has informed him that his eviction is scheduled to occur on March 2, 2012. Mr. R_____

waived his right to an administrative review and, due to the exigent circumstances, I held a hearing on the afternoon of March 1, the day the hearing request was filed. Mr. R_____ represented himself at the hearing and Tiffany Payton, Prevention Specialist, represented the Community Partnership. 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

Mr. R_____ lives in an apartment at _____, NE, with his 13-year old daughter. Neither he nor his daughter is disabled. Mr. R_____ lost his job several months ago. As a result, he has fallen behind on his rent. On January 30, 2012, he applied to the Community Partnership for emergency rental assistance to help pay his back rent. As required by the Community Partnership, he brought documentation of the amount of rent that was overdue at that time. Including late charges, the total amount due was approximately \$3,525 for the months of October, November and December 2011 and for January 2012.

Ms. Payton took Mr. R_____’s application and determined that some additional information was necessary. It took a few days for Mr. R_____ to obtain the information, but the application was complete early in February. In particular, Ms. Payton needed documentation that Mr. R_____ would be able to pay his rent in future months if he received rental assistance payments for the arrearages.¹ Mr. R_____ provided Ms. Payton with a written commitment from a friend that the friend would help Mr. R_____ with his rent until Mr. R_____ gets a new job. After the application was complete, Ms. Payton needed several days to review it.

¹ Ms. Payton also needed a copy of Mr. R_____’s daughter’s Social Security card. Mr. R_____ had misplaced the card. It took several days to obtain a new one and to provide it to Ms. Payton.

While Mr. R_____ was obtaining the information that Ms. Payton needed and while she was reviewing the application, January ended and February began. This meant that Mr. R_____ owed another month's rent. He sent Ms. Payton e-mails on February 9 and February 11, with updated statements of rent due from his landlord. The total amount due had increased to \$4,734.45.

On February 14, 2012, Mr. R_____ received notice that the Community Partnership had approved his application and that emergency rental assistance benefits of \$3,708.90 would be sent to his landlord.² The Community Partnership sent a check for that amount to Mr. R_____ 's landlord on February 17, 2012.

Because Mr. R_____ 's February rent is overdue, receipt of the \$3,708.90 by the landlord is insufficient to prevent the eviction. Ms. Payton did not consider the February rent because she believed she could consider only the rent arrearage amount specified by an applicant on the application date. Mr. R_____ wants the benefit amount increased to cover the February arrearages as well. He insists that he will be able to pay his rent for March with the help of his friend, although the payment probably will be late.

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. 29 DCMR 7503.1(a). An imminent threat of eviction qualifies as an emergency. 29 DCMR 7599.

² The difference between the \$3,525 that Mr. R_____ owed as of January and the amount awarded by the Community Partnership is not explained on the record. Because the landlord obtained a writ of eviction, it is possible that the difference represents court costs, which can be paid from emergency rental assistance funds. 29 DCMR 7506.1.

Payment of rent arrearages is one form of assistance available to eligible persons. 29 DCMR 7506. Several providers, including the Community Partnership, administer the program for the Department of Human Services by evaluating applications and distributing funds to eligible applicants.

Payment of emergency rental assistance benefits is authorized only if “the provision of emergency rental assistance services will substantially, if not entirely, alleviate the emergency during the thirty (30) day period immediately following the authorization of payment. . . . Failure to demonstrate that the emergency can be resolved shall result in a denial of eligibility for emergency rental assistance.” 29 DCMR 7503.1(d). In other words, the applicant must demonstrate that, if the program pays rent arrearages, he or she will be able to remain in the home by paying the rent going forward. Subject to narrow exceptions, the program can pay up to five months back rent, not to exceed \$4,250, on behalf of eligible persons. 29 DCMR 7506(d) and (e).³

Mr. R_____’s eligibility for emergency rental assistance payments is not disputed. The only question at issue is whether he is eligible for more than the \$3,708.90 already awarded by the Community Partnership. Nothing in the rules governing the emergency rental assistance program limits rental arrearages to the amounts outstanding on the application date. In fact, it is probable that many applicants’ arrearages will increase while an application is being processed. The regulations expressly recognize that an applicant may need time to provide additional information after filing an application. 29 DCMR 7501.8 (provider may request additional information after receiving application); 29 DCMR 7501.15 (applicant has 60 days to provide

³ For households of more than seven persons or households with a disabled person, the maximum payment is \$6,000, with no limit on the numbers of months. 29 DCMR 7506.3 and .4. Mr. R_____ does not qualify for either exception.

additional information). In addition, a provider such as the Community Partnership has 10 days to act on the application after it is complete. 29 DCMR 7501.15. It is inevitable that, as happened in this case, the beginning of a month (and a due date for rent) will occur between the initial filing of many applications and the final eligibility decisions.

The rules do not directly address what should happen in such a situation. Is the applicant limited to receiving only the arrearage amounts established as of the date of application, or may the program pay arrearages that exist on the date that the application is granted? For two related reasons, I am persuaded that the program may pay arrearages that are current on the date the application is granted. First, the purpose of the program is to eliminate housing emergencies. That purpose will not be fulfilled if payments are limited to arrearages that existed on an earlier application date. This case is a good example. If Mr. R_____’s benefits are limited to \$3,807.90, he will be evicted. This will create, not resolve, a housing emergency for him and his daughter. The landlord, not Mr. R_____, will be the most immediate beneficiary of the program, as the landlord already has received a significant partial payment.⁴ Second, 29 DCMR 7503.1(d) requires the applicant to demonstrate that the rental assistance benefits “will substantially, if not entirely, alleviate the emergency *during the thirty (30) day period immediately following the authorization of payment.*” (Emphasis added.) This suggests that a provider must evaluate the applicant’s situation, including the applicant’s arrearages, as of the authorization date, not the application date. For these two reasons, the Community Partnership erred when it considered

⁴ To be sure, the partial payment reduces Mr. R_____’s debt to the landlord, but debt reduction is not a goal of the emergency rental assistance program. Debt elimination is the program’s means to a different end – the elimination of the applicant’s housing emergency.

only Mr. R_____’s arrearages through January. It also should have considered the February rent arrearage.⁵

Because Mr. R_____’s total arrearages exceed the \$4,250 limit stated in 29 DCMR 7506.1(e), the emergency rental assistance program can not pay the entire arrearage of \$4,734.45. The program already has paid \$3,708.90, which means that it can pay only an additional \$541.10. At this moment, it is unclear whether payment of that additional amount will be sufficient to prevent Mr. R_____’s eviction. He needs more money to pay the arrearages through February, and it is uncertain whether payment of his March rent also is necessary to halt the eviction. Mindful of the requirement that an applicant must show that emergency rental assistance funds are likely to resolve the emergency, 29 DCMR 7503.1(d), I will order the Community Partnership to pay an additional \$541.10 on Mr. R_____’s behalf provided that he can demonstrate that he has sufficient additional funds available to pay the landlord to avoid the eviction.

I also note, as stated at the hearing, that I have no authority to order a stay of the eviction. With the additional emergency rental assistance funds, it may be that Mr. R_____ will obtain enough money for him and his daughter to remain in their home, but I have no jurisdiction to decide whether or not that is enough to halt the eviction at this time.

⁵ Because February was the fifth month that Mr. R_____ had not paid his rent, consideration of the February amount would not violate the five-month limit specified in 29 DCMR 7506.1(d).

V. Order

Based on the findings of fact and conclusions of law, it is, this **2nd** day of **March**, 2012:

ORDERED, that the decision of the Community Partnership limiting Mr. R_____ to \$3,708.90 in emergency rental assistance benefits is **REVERSED**. Mr. R_____ is eligible for \$4,250 in emergency rental assistance benefits; and it is further

ORDERED, that the Community Partnership shall pay an additional \$541.10 to Mr. R_____’s landlord on his behalf, subject to the following conditions:

1. The Community Partnership shall make the payment only when Mr. R_____ demonstrates that he has available funds that, together with the emergency rental assistance payments that I have ordered, are sufficient to prevent the eviction authorized by the current writ of eviction that his landlord has obtained;
2. The Community Partnership shall take all necessary steps to expedite the payment required by this Order;
3. If the Community Partnership disputes a claim by Mr. R_____ that he has the available funds required by this Order, either party may ask for a hearing at the Office of Administrative Hearings to resolve the dispute. Any such hearing will be scheduled promptly.

It is further

ORDERED, that the mediation services of the Office of Administrative Hearings are available, if Mr. R____, his landlord, and/or the Community Partnership wish to make use of those services in an effort to agree upon a method for prompt payment of Mr. R____'s arrearages and his March rent; and it is further

ORDERED, that this Order shall be served by e-mail, as well as first class mail, upon both Mr. R____ and the Community Partnership. OAH Rule 2941.13, 1 DCMR 2941.13; and it is further

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