

STATE OF NEW YORK  
DEPARTMENT OF SOCIAL SERVICES

REQUEST November 6, 1989  
CASE #  
CENTER # Suffolk  
FH # 1455431R

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In the Matter of the Appeal of :

E B

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

DECISION  
: AFTER  
FAIR  
HEARING

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JURISDICTION

This appeal is from a determination by the local Social Services Agency to deny Appellant's application for Public Assistance, Medical Assistance and Food Stamp benefits based on a failure to submit documentation which is necessary to determine Appellant's eligibility.

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on December 6, 1989 and December 12, 1989, in Suffolk County, before Benedict Schiraldi, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

E B Appellant  
Michael Marrin, Attorney

For the Local Social Services Agency

Margaret Mason, Representative

FACT FINDINGS

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 applied for a grant of Public Assistance benefits, Medical Assistance and Food Stamp benefits on March 29, 1989.
2. On April 24, 1989, the Agency determined to deny Appellant's application for Public Assistance, Medical Assistance and Food Stamp benefits.

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3. On June 30, 1989, at a fair hearing held to review the Agency's determination of April 24, 1989, to deny Appellant's application for Public Assistance, Medical Assistance and Food Stamp benefits, the Agency agreed to cancel its determination of April 24, 1989, to deny Appellant's application for assistance, to re-evaluate Appellant's application for assistance dated March 29, 1989, and to provide Appellant with assistance pursuant to this application, if she is found to be otherwise eligible.

4. In compliance with the Decision on Stipulation After Fair Hearing issued on July 18, 1989, the Appellant was advised by the Agency on July 12, 1989, to submit the following documentation to the Agency by July 24, 1989:

- (A) Auto registration.
- (B) Auto title.
- (C) Latest Citibank statement.

5. On July 26, 1989, the Appellant submitted all documentation except the bank statement. The Appellant requested and received an extension of time to July 27, 1989, to submit a letter from the bank.

6. On July 27, 1989, the Appellant submitted the bank letter.

7. On July 27, 1989, the Agency sent a Denial Notice setting forth its determination to deny Appellant application for Public Assistance, Medical Assistance and Food Stamp benefits because Appellant failed to submit requested documentation.

8. On August 2, 1989, the Appellant appeared at the Agency regarding a pending eviction and outstanding medical bills. The Agency directed the Appellant to report back on August 3, 1989, to file a new application.

9. On August 3, 1989, the Appellant submitted a new application for assistance, and the Agency accepted the application on August 3, 1989, and provided assistance effective August 3, 1989.

10. On November 6, 1989, the Appellant requested a hearing to review the Agency's determination that the Appellant was ineligible for Public Assistance, Medical Assistance and Food Stamp benefits because the Appellant had failed to return to the Agency certain documentation which is necessary to determine Appellant's eligibility for such benefits, and the failure of the Agency to provide benefits retroactive to the fifth day after the March 29, 1989 application. The Appellant is also seeking a directive from the New York State Department of Social Services Commissioner, to the Agency, that the Agency is required to schedule interviews for applicants of Public Assistance within five business days of the date of application.

#### ISSUES

Was the Appellant's request for a fair hearing to review the Agency determination to deny Appellant's application for Public Assistance benefits and Food Stamp benefits timely?

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Assuming the request was timely, was the Agency's determination to deny Appellant's application for Public Assistance benefits and Food Stamp benefits for failure to provide requested documentation necessary to determine Appellant's eligibility for such benefits correct?

Was the Agency's determination not to provide benefits retroactive to five days after the March 29, 1989 application for assistance correct?

Was the Agency's failure to schedule an interview within five working days of Appellant's application for assistance correct?

#### APPLICABLE LAW

Federal regulations at 45 CFR 205.10(a)(5)(iii) governing requirements for fair hearings for applicant/recipients of Aid to Families with Dependent Children provide that an appellant must be provided with a reasonable time not to exceed 90 days in which to appeal an agency action. In New York State, "a reasonable time" has been determined to be 60 days as set forth in Section 22 of the Social Services Law which provides that a request by such an applicant/recipient for a fair hearing to review an Agency's determination must be made within sixty days of the date of the Agency's action or failure to act.

Sections 351.1 and 351.2 of Department Regulations require that to demonstrate eligibility, applicants for and recipients of Public Assistance must present appropriate documentation of such factors as identity, residence, family composition, rent payment or cost of shelter, income, savings or other resources and, for aliens, of lawful residence in the United States. Section 351.6 of the Regulations provides that verification of data is an essential element of the eligibility investigation process. The recipient is the primary source of the required information. However, the Agency must make collateral investigation when the recipient is unable to provide verification. 18 NYCRR 351.5 and 351.6. The applicant's or recipient's failure or refusal to cooperate in providing necessary information is a ground for denying or discontinuing Public Assistance.

Section 360-2.2(f) of the Regulations requires that a personal interview be conducted with all applicants for Medical Assistance. Such personal interview shall be conducted before a decision on Medical Assistance eligibility is authorized or reauthorized. Section 360-2.3 of the Regulations provides that the Medical Assistance applicant and recipient has a continuing obligation to provide accurate and complete information on income, resources and other factors which affect eligibility. An applicant or recipient is the primary source of eligibility information. However, the Agency must make collateral investigation when the recipient is unable to provide verification. The applicant's or recipient's failure or refusal to cooperate in providing necessary information is a ground for denying an application for a Medical Assistance Authorization or for discontinuing such benefits.

Department Regulations at 18 NYCRR 360-7.5(a)(1) provide that payment for services or care under the Medical Assistance Program may be made to a

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recipient or the recipient's representative at the Medical Assistance rate or fee in effect at the time such care or services were provided when an erroneous determination by the Agency of ineligibility is reversed. Such erroneous decision must have caused the recipient or the recipient's representative to pay for medical services which should have been paid for under the Medical Assistance Program.

Department Regulations at 18 NYCRR 360-7.5(a)(5) provide that payment for services or care under the Medical Assistance Program may be made to a recipient or the recipient's representative at the Medical Assistance rate or fee in effect at the time such services or care were provided for paid medical bills for medical expenses incurred during the period beginning three months prior to the month of application for Medical Assistance and ending with the recipient's receipt of a Medical Assistance identification card, provided that the recipient was eligible in the month in which the medical care and services were received and that the medical care and services were furnished by a provider enrolled in the Medical Assistance Program.

Section 360-2.4(c) of the Regulations provides that an initial authorization for Medical Assistance will be made effective back to the first day of the first month for which eligibility is established. A retroactive authorization may be issued for medical expenses incurred during the three month period preceding the month of application for Medical Assistance, if the applicant was eligible for Medical Assistance in the month such care or services were received.

The Food Stamp application process includes filing and completing the application form, being interviewed and having certain information verified. If the household refuses to cooperate with the Agency in completing this process, the application shall be denied. In order for a determination of refusal to be made, the household must be able to cooperate but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. 7 CFR 273.2(d); 18 NYCRR 387.5, 387.6, 387.7.

For households initially applying for Food Stamp benefits mandatory verification shall be completed regarding: gross nonexempt income, alien status, shelter expenses, medical expenses, residency, household size, Social Security number, identity, date of birth, utility expenses, resources, disability and, if questionable, household composition and citizenship and any other questionable information that has an effect on the household's eligibility and benefit level. 7 CFR 273.2(f); 18 NYCRR 387.8(c).

To be considered questionable, the information on the application must be inconsistent with statements made by the applicant, or inconsistent with other information on the application or previous applications. The local department shall determine if information is questionable based on the household's individual circumstances. 7 CFR 273.2(f); 18 NYCRR 387.8(c).

Written documentary evidence is to be used as the primary source of verification of all items except residency and household size. Residency

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and household size may be verified either through readily available documentary evidence or through a collateral contact. Residency is to be verified except where verification cannot reasonably be accomplished such as in homeless cases. 7 CFR 273.2(f); 18 NYCRR 387.8(c).

The household has the primary responsibility for providing documentary evidence to support its application and to resolve any questionable information. The local Agency, however, is obligated to offer assistance in situations where the household cannot obtain the documentation in a timely manner. Such assistance may include using a collateral contact or home visit unless otherwise required by Federal or State Regulations. 7 CFR 273.2(f); 18 NYCRR 297.8(c).

If the Agency determines to verify a deductible expense and such verification has not been obtained and obtaining the verification may delay the household's certification, then the Agency may determine eligibility and benefit level without providing a deduction for the claimed but unverified expense, including medical expense. If the household subsequently provides verification, benefits shall be redetermined. 7 CFR 273.2(f).

When a household's eligibility cannot be determined within thirty days of filing of the application, the Agency must determine the cause of the delay. If the delay is the fault of the household, then the application must be denied. If the delay is the fault of the Agency, then the Agency must notify the household as to what action it must take to complete the application. The cause of the delay in failing to complete verification shall be considered the household's fault only if the Agency has assisted the household in trying to obtain the verification and allowed the household at least ten days to obtain the missing verification. 7 CFR 273.2(h); 18 NYCRR 384.14(a)(3).

Section 350.3 of the Regulations provides that any person has the right to make application for that form of Public Assistance or care that he believes will meet his needs. The applicant himself, any adult member of his family, or any person acting in his behalf, including relative, friend, other agency or institution, shall have the right to make application. All applications shall be processed promptly. The date of application shall be the date of receipt by the Social Services official of a signed, completed application on the state prescribed form. While documentation is required for the determination of eligibility, it shall not be a prerequisite to filing an application. A personal interview with the applicant or a designated representative is required in all cases to establish eligibility for Public Assistance. Interviews shall ordinarily be scheduled within five working days, except when there is indication of emergency need, in which case the interview shall be held at once.

Section 358-6.3 of the Regulations provides:

When a fair hearing decision indicates that a social services agency has misapplied provisions of law, Department regulations, or such agency's own State-approved policy, the

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Commissioner's letter transmitting such decision to such agency may contain a direction to the agency to review other cases with similar facts for conformity with the principles and findings in the decision.

Section 351.8(b) of the Regulations provides:

The decision to accept or deny the application shall be made as soon as the facts to support it have been established by investigation, but no later than thirty days from the date of application, except where the applicant requests additional time or where difficulties in verification lead to unusual delay, or for other reasons beyond the Social Services official's control. The applicant shall be notified in writing of the decision in accordance with Department Regulations. The reason for delay shall be recorded in the case record and communicated to the Appellant.

#### DISCUSSION

On July 27, 1989, the Agency notified the Appellant that it had determined to deny Appellant's application for Public Assistance benefits, a Medical Assistance Authorization and Food Stamp benefits.

Although the Agency's notice advised the Appellant that a fair hearing must be requested within sixty days of its action, the Appellant failed to request this hearing until November 6, 1989, which was more than sixty days after the Agency's determination to deny Appellant's Public Assistance and medical Assistance application, and ninety days with respect to Food Stamp benefits.

The Appellant testified credibly that she did not receive the Agency's Notice of denial dated July 27, 1989. The Appellant stated that she was present at the Agency on July 27, 1989, with requested documentation, and no reference to a Denial Notice was made by the Agency. The Agency failed to present any evidence that the notice in question was in fact mailed to the Appellant.

The record establishes a sufficient basis for tolling the sixty day Statute of Limitations with respect to Public Assistance and Medical Assistance, and the ninety day Statute of Limitations with respect to Food Stamp benefits.

At the hearing, the Agency agreed to nullify its determination of July 27, 1989, to deny the Appellant's application for assistance, with respect to Medical Assistance only, and to authorize Medical Assistance to the Appellant retroactive to three months prior to the month of application (March, 1989), subject to verified degree of need.

Based on the Agency's agreements made at the hearing, there is no issue to be decided relative to the Agency's determination to deny Appellant's application for Medical Assistance.

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The evidence establishes that the Appellant submitted all documentation requested by the Agency in its letter of July 12, 1989, on July 27, 1989. The Appellant testified credibly that she reported to the Agency on July 26, 1989, and was granted an extension to July 27, 1989, to submit one item of documentation, a bank letter. The bank letter was submitted on July 27, 1989, and the letter in question bears the Agency's stamp as being received "7/27/89". The Agency's determination to deny Appellant's March 29, 1989 application for Public Assistance and Food Stamp benefits was not proper.

The Appellant's representative contends that the Agency should provide Public Assistance benefits retroactive to five business days of the March 29, 1989 application, and cites Section 350.3 of the Regulations as his authority. However, the aforementioned Section 350.3 of the Regulations provides that interviews shall ordinarily be scheduled within five working days of application. The aforementioned Section 351.8(b) of the Regulations provides that the decision to accept or deny the application shall be made as soon as the facts to support it have been established by investigation, but not later than thirty days from the date of application.

In this case, the Appellant applied for Public Assistance on March 29, 1989, and the initial interview was scheduled on April 7, 1989, which was seven working days after application. However, the Appellant failed to establish that she could have established her eligibility on the fifth working day. Therefore, the Agency, pursuant to the aforementioned Section 351.8(b) of the Regulations, is required to provide assistance retroactive to the earliest of thirty days or the date eligibility was established. In this case, the thirtieth day is April 28, 1989.

The Appellant's representative further contends that a directive be issued from the New York State Department of Social Services Commissioner to the Agency, that the Agency is required to schedule interviews within five business days of the date of application.

In this case, the Agency failed to schedule the interview within five business days, as noted above. The Appellant's representative submitted a copy of a letter dated October 20, 1989, from the Agency's Commissioner, wherein statistics were provided that eligibility appointments in Suffolk County during the nine month period from January, 1989 through September, 1989 averaged 5.5 days after application. During the months of January and February, 1989, it was six days for each month; March through May, 1989, it was approximately four days. However, starting in June, 1989, it rose to 5.3 days, in July, 1989 to 6.5 days, to 6.9 days in August, 1989, and seven days in September, 1989. It is clear that the interview appointments are not being scheduled within the five day period as required in the aforementioned Section 350.3 of the Regulations. In fact, each month since June, 1989, the delay in scheduling the interview appointments has grown progressively from four days to seven days. It is noted that the days cited above are the average days. Some interviews, therefore, are being scheduled much later than the averages indicate.

The Agency contends "that due to the complexity of current requirements, and based on this Agency's long experience with applicants for Public Assistance, our conclusion is that an extremely small number, if any, are

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able to provide sufficient documentation to establish ongoing eligibility at the first Agency contact, and therefore there is no class of applicants for whom a directive may be given". The Agency's contention is without merit. The issue is not whether the applicants can establish eligibility at the first Agency contact; the issue is the Agency's failure to schedule the interviews within five business days as mandated by Section 350.3 of the Regulations.

Section 358-6.3 of the Regulations provides for the issuance of a direction relative to all similar cases, when a fair hearing decision indicates that a Social Services Agency has misapplied provisions of the law or Department Regulations.

#### DECISION AND ORDER

The Agency's determination to deny Appellant's application for Public Assistance and Food Stamp benefits is not correct and is reversed.

1. The Agency is directed to accept the Appellant's application for Public Assistance benefits effective April 28, 1989, the thirtieth day subsequent to the receipt of a signed and completed application in accordance with verified degree of need, and provide benefits retroactive to such date.

2. The Agency is directed to accept the Appellant's application for Food Stamp benefits effective March 29, 1989, the date of application, in accordance with verified degree of need, and provide benefits retroactive to such date.

The Agency's determination not to provide retroactive Public Assistance benefits to the fifth working day after application is correct.

The Agency's failure to schedule an interview within five working days after application for Public Assistance, in this case and others, is not correct.

1. The Agency is directed to schedule interviews within five working days after applications for Public Assistance applicants, in accordance with the provisions of Section 350.3 of the Regulations. This direction is made for all similar cases, as required by Section 358-6.3 of the Regulations.

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

DATED: Albany, New York

CESAR A. PERALES  
COMMISSIONER

MAR 29 1990

By *[Signature]*  
Commissioner's Designee