

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST April 26, 2001
CASE #
CENTER # Suffolk
FH # 3512116K

In the Matter of the Appeal of :

Appellant/Payee : **DECISION**
On Behalf of : **AFTER**
Anonymous and her children : **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 June 27, 2001, in Suffolk County, before Susan Grimes, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Appellant/Payee
Antonia Ezechi, Esq., Appellant's Representative
Anonymous, Witness

For the Social Services Agency

Eileen Alheidt, Fair Hearing Representative

ISSUE

Was the determination of the Agency to reduce the Appellant's Public Assistance grant by the removal of from the grant due to a failure of to attend an alcohol or substance abuse assessment 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. The Appellant has been in receipt of Public Assistance benefits as payee for her daughter, and 's three minor children.
2. The Agency scheduled a formal alcohol/substance abuse assessment of for April 13, 2001, at 9:30 A.M.
3. did not attend the Agency's formal alcohol/substance abuse assessment.
4. By notice dated April 21, 2001, the Agency determined to reduce the Appellant's assistance by removing from the Public Assistance grant

because failed to attend an alcohol/substance abuse assessment.

5. On April 26, 2001, the Appellant requested this hearing to review the Agency's determination to reduce the Appellant's Public Assistance grant by removing from the grant due to a failure of to attend an alcohol/substance abuse assessment.

6. On April 26, 2001, the Appellant requested this fair hearing.

APPLICABLE LAW

Section 132(4) of the Social Services Law and 18 NYCRR 351.2(i) provides for a screening for alcohol and/or substance abuse for heads of households and adult applicants and recipients using a standardized screening. Such screening shall be performed by a social services district at the time of application and periodically thereafter unless the recipient is actively participating in alcoholism and/or substance abuse treatment, but not more frequently than every six months, unless the district has reason to believe that an applicant or recipient is abusing or dependent on alcohol or drugs.

Regulations at 18 NYCRR 351.2(i) provide that an adult is any individual in the household who is age 18 or over who is applying for or in receipt of Public Assistance, except an individual 18 years of age who is a full time student regularly attending a secondary school, or in the equivalent level of vocational or technical training.

When the screening process indicates that there is reason to believe that an applicant or recipient is abusing or dependent on alcohol or drugs, or there is other evidence that an applicant or recipient is abusing or dependent on alcohol or drugs, the social services district must require the applicant or recipient to undergo a formal alcohol or substance abuse assessment, which may include drug testing, to be performed by an alcohol and/or substance abuse professional credentialed by the Office of Alcoholism and Substance Abuse Services. The assessment may be performed directly by the district or pursuant to contract with the district.

If the formal assessment determines that the applicant or recipient is unable to work by reason of his or her need for treatment for alcohol or substance abuse, or, for determinations prior to April 27, 1998, the applicant or recipient has been ordered to participate in alcoholism or substance abuse treatment by a court of competent jurisdiction, the social services official must refer the individual to an appropriate alcoholism and/or substance abuse treatment program.

Regulations at 18 NYCRR 351.2(i) provide that to be considered an appropriate treatment program, the treatment program must:

- (a) be licensed or certified by the Office of Alcoholism and Substance Abuse Services or operated by the United States Department of Veterans Affairs and be determined by the social services official to meet the rehabilitation needs of the individual, in accordance with standards developed by the Office of Alcoholism and Substance Abuse Services;
- (b) develop a treatment plan for the individual which includes an expected date of availability for work related activities and

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provide a copy of such plan to the local district responsible for payment, in a manner consistent with 41 CFR Part 2;

- (c) provide at a minimum of every three months, a treatment progress report for each recipient of public assistance to the local district responsible for payment of public assistance benefits; and
- (d) request approval by the local district responsible for payment of public assistance benefits prior to changing an individual's level of treatment care.

If the local district is responsible for payment of treatment, the district can require in-district treatment, provided an appropriate treatment program is available. When residential treatment is appropriate for a single custodial parent, the social services official must make diligent efforts to refer the parent to a program that would allow the family to remain intact for the duration of the treatment.

A person who fails to participate in the screening or in the assessment is ineligible for Public Assistance and Medical Assistance. Other members of a household which includes a person who has failed to participate in the screening or assessment shall, if otherwise eligible, receive Medical Assistance and shall receive Public Assistance only through non-cash Safety Net Assistance if they are otherwise eligible for Public Assistance and Medical Assistance. The Public Assistance benefits otherwise available to the household of which the sanctioned individual is a member will be reduced pro-rata. 18 NYCRR 352.30(d).

Section 132(4) of the Social Services Law provides that provisions regarding screening and rehabilitation for alcohol and substance abuse apply to Medical Assistance only to the extent that they are not inconsistent with applicable federal law. Therefore, singles, childless couples and parents in intact households who are between 21 and 64 years old and who are ineligible for ADC-U will need to comply with alcohol and substance abuse screening and treatment in order to receive or continue to receive Medical Assistance unless they are certified blind or disabled.

DISCUSSION

The Appellant did not attend the assessment on April 13, 2001, but contended that she never received the appointment notice.

The Agency testified as to its mailing procedure, and noted that the notice was not returned to the Agency. However, the notice was put into a hand-addressed envelope, not a window envelope. While a copy of the notice which included the Appellant's correct address was in the Agency records submitted at the hearing, the Agency did not produce the envelope. Thus it is not possible to discern whether the envelope was addressed to the correct address.

The Appellant testified that she gives all mail from DSS unopened to her daughter, and that she did not recall receiving the notice in issue. She testified that she did not receive the appointment notice. She also stated that she also did not receive the notice of appointment for this hearing, and was only aware of the hearing because she received a call from

her attorney. The Appellant's daughter also stated that she was in an internship program at the time of the scheduled assessment appointment, but she would have called the Agency to reschedule the assessment, since she has never missed an appointment with the Agency before and takes her obligations to the Agency seriously.

The Agency did not present adequate proof of mailing, and the Appellant and her daughter's testimony regarding non-receipt of the appointment notice was plausible, consistent, and credible. Therefore, the Agency's determination to reduce the Appellant's grant of assistance was correct when made, but cannot be implemented at this time.

DECISION AND ORDER

The determination of the Agency to reduce the Appellant's Public Assistance grant by removing from the Public Assistance grant due to a failure of to attend an alcohol or substance abuse assessment was correct when made.

1. The Agency is directed to continue the Appellant's Public Assistance benefits and to restore any assistance withheld as a result of the Agency's action retroactive to the date such benefits were reduced.

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

DATED: Albany, New York
July 3, 2001

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee