

STATE OF NEW YORK  
DEPARTMENT OF SOCIAL SERVICES

REQUEST July 1, 1992  
CASE No.  
CENTER No. Nassau  
FH No. 1846752N

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In the Matter of the Appeal of

R E

from a determination by the Nassau County  
Department of Social Services

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: DECISION  
: AFTER  
: FAIR  
: HEARING  
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**received**  
10/12/92

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JURISDICTION

This appeal is from a determination by the local Social Services Agency to discontinue the Appellant's grant of Home Relief and Medical Assistance and to discontinue the household's Food Stamp benefits on the grounds that Appellant willfully and without good cause failed or refused to comply with the requirements of the Job Opportunities and Basic Skills Training (JOBS) Program.

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 August 20, 1992, in Nassau County, before James J. Dalton, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

R E , Appellant, and John McGeehan, Esq., Appellant's Representative

For the Local Social Services Agency

Francis Hendricks, Esq., and Ellen Raim, Agency Representatives

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. The Appellant, age 34 years, has been in receipt of a grant of Home Relief and Medical Assistance and Food Stamp benefits for a household of one person.

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2. By notice dated April 17, 1992, the Agency determined to discontinue the Appellant's grant of Home Relief and Medical Assistance for at least 30 days and until willing to comply with the assigned requirements of the JOBS Program and to discontinue the household's Food Stamp benefits on the grounds that Appellant willfully and without good cause failed or refused to participate in an initial assessment of employability.

3. The Appellant was scheduled to report to an intake and assessment interview on March 5, 1992 for the JOBS program. The Appellant did not report to that interview.

4. Before sending the Notice of Intent, the Agency mailed a 14-day notice of conciliation advising the Appellant of the opportunity to contest the Agency's claim of failure to comply with the requirements of the JOBS Program.

5. Appellant did not respond to the notice of conciliation and the agency subsequently issued the Notice of Intent.

6. Appellant had not been sanctioned previously for willfully and without good cause failing to comply with the assigned requirements of the JOBS Program.

7. The Appellant was not provided with the appointment letter for the March 5, 1992 intake and assessment interview.

8. In May, 1992, the Appellant was advised that his assistance had been discontinued.

9. The Appellant reapplied for a grant of Public Assistance benefits, Medical Assistance and Food Stamp benefits on May 8, 1992.

10. The Appellant was advised by the Agency on May 8, 1992 to submit the following documentation to the Agency by May 18, 1992:

a letter from the Appellant's retirement/pension plan of Local 854, Local 812, and two other locals, indicating what benefits are available (include date filed if available, and status of claim; if receiving benefits, verification should state amount and type of benefits received; total amount in pension plan should also be indicated; name and phone number of contact person should also be included).

copies of federal and state tax returns for 1991 (also all W-2's, 1099's, interest/other income statements).

11. The Appellant did not provide the Agency with the requested documents.

12. On June 9, 1992, the Agency sent a Denial Notice setting forth its determination to deny the Appellant's application for Public Assistance, Medical Assistance and Food Stamp benefits because the Appellant failed to provide the Agency with requested documents.

13. On July 1, 1992, the Appellant requested this hearing to review the Agency's determinations.

#### ISSUE

Was the determination of the Agency to discontinue the Appellant's grant of Home Relief and Medical Assistance and to discontinue the household's Food Stamp benefits due to a willful failure or refusal, without good cause, to participate in an initial assessment of employability correct?

Was the Appellant's request for a fair hearing to review the Agency determination to discontinue the Appellant's Public Assistance and Medical Assistance timely?

Was the Agency's determination to deny the Appellant's application for Public Assistance, Medical Assistance and Food Stamp benefits for failure to provide documentation necessary to determine the Appellant's eligibility for such benefits correct?

#### APPLICABLE LAW

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 or failure to act.

Section 131.5 of the Social Services Law provides that no assistance or care shall be given to an employable applicant for or recipient of home relief who has failed to comply with the requirements of the Job Opportunities and Basic Skills Training Program (JOBS) which is found in Title 9-B of the Social Services Law, who has failed to comply with work relief requirements under section 164 of the Social Services Law or who has refused to accept employment in which he or she is able to engage.

All applicants for and recipients of Aid to Dependent Children, Home Relief or Veteran's Assistance must participate in JOBS as required by the agency unless they are exempt under section 385.2(b) of the Department's Regulations. 18 NYCRR 385.2, 18 NYCRR 385.4(b).

Within a reasonable period of time not to exceed one year after a participant's application for assistance, the social services district must conduct an assessment of employability for each recipient of Home Relief participating in the JOBS program based on the educational level, child day care and other supportive services needs, skills, prior work experience, training and vocational interests of such participant. In addition, the assessment must include a review of family circumstances including review of any special needs of a child. Based on the assessment, the social services official, in consultation with the participant, must develop an employability plan in writing which must set forth the services that will be

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provided by the social services official and the activities in which the participant will take part under the JOBS program and which sets forth an employment goal for the participant. Social Services Law Section 335-a, 18 NYCRR 385.4(a).

An employable applicant for or recipient of Home Relief must, as required by the Agency, participate in the initial assessment and in the preparation of an employability plan. 18 NYCRR 385.4(b)(1).

Social services officials are required by Section 341 of the Social Services Law and Section 385.18 of the Department's Regulations to establish a conciliation procedure to assist in resolving participant grievances and instances in which participants have failed to comply with program requirements.

The conciliation procedure must provide for at least one conference between the participant, appropriate social services district staff and a mediator. The process may last no longer than 30 days unless by mutual agreement of the social services district and the participant.

JOBS participants must be afforded an opportunity for conciliation to dispute a JOBS assignment or any action taken by the social services district in accordance with the provisions of Part 385 of the Department's Regulations.

If the dispute is resolved to the satisfaction of the participant and the district through the conciliation process, a written document memorializing such resolution must be sent to the social services official and the participant within ten days of such resolution. Such resolution is binding on the social services district and the participant.

If the district and the participant cannot, with the assistance of the mediator, resolve the issues related to the participant's refusal or failure to comply, a written document summarizing the conciliation must be given or sent to the participant by the district within 10 days of the termination of conciliation. The social services official must incorporate such document into the participant's case record and, in the event of a fair hearing, present it as required in accordance with 18 NYCRR 358-4.3.

A social services official must issue a notice to each applicant or recipient who refuses or fails to comply with the requirements of Part 385 of the Department's Regulations. Such notice must advise the participant of his or her refusal or failure to comply and that he or she has 14 days to request conciliation with the social services district regarding any dispute related to such refusal or failure to comply.

If the participant does not respond to the 14 day conciliation letter issued by the social services official, or if the social services official determines that the participant's refusal or failure to comply was willful and without good cause, then the social services official must issue an adequate notice to deny public assistance or a timely and adequate notice of intent to discontinue or reduce public assistance.

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The needs of an employable Aid to Dependent Children or Home Relief recipient who has willfully failed without good cause to comply with the requirements of the JOBS program will not be taken into account in determining the needs of his or her family for assistance or the amount of assistance during the sanction period. 18 NYCRR 385.19(e).

The sanctions for recipients of Home Relief who willfully failed without good cause to comply with JOBS requirements are found in Section 385.19(e)(2) of the Department's Regulations and are as follows:

- (1) for the first instance of willful failure to comply without good cause within any three year period, a period of 30 days and thereafter until the recipient is willing to comply with requirements assigned in accordance with Part 385 of the Department's Regulations.

Under section 366 of the Social Services Law a person who requires Medical Assistance is eligible for such assistance where such person:

- (a) is receiving or is eligible for Home Relief or Aid to Dependent Children or Supplemental Security Income;
- (b) although not receiving or in need of public assistance or care, has not sufficient income and resources to meet all the costs of medical care and services available under the Medical Assistance Program and such person is:
  - (i) under the age of 21; or
  - (ii) 65 years of age or older; or
  - (iii) the spouse of a cash Public Assistance recipient living with him/her and essential or necessary to his/her welfare and whose needs are taken into account in determining his/her cash payments; or
  - (iv) for reasons other than income or resources, is eligible for Aid to Dependent Children or Supplemental Security Income and/or additional state payments.
- (c) is at least 21 years of age but under the age of 65 and is not receiving or eligible to receive home relief or aid to dependent children and:
  - (i) who is the parent of a dependent child under the age of 21; and
  - (ii) who lives with such child; and
  - (iii) whose net income, without deducting the amount of any incurred medical expenses, does not exceed the net income exemption set forth in section 366.2(a)(8) of the Social Services Law.

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Department Regulations at 18 NYCRR 360-2.2(d) provide that for a person who does not meet the criteria set forth above, other than financial, eligibility for Medical Assistance must be determined on the basis of that person's eligibility for Home Relief in accordance with the requirements of 18 NYCRR Part 352 and Part 370.

Food Stamp work registrants must participate in an employment and training program when so assigned by the agency, respond to a request from the agency for supplemental information regarding employment status or availability for work, report to an employer to whom referred by the agency if the potential employment is suitable, and accept a bona fide offer of suitable employment. 7 CFR 273.7(e), 18 NYCRR 387.13(d).

Persons required to register for work and not exempted by the agency from placement in an employment and training program who fail to comply, without good cause, with the requirements imposed by the agency will be disqualified as specified in 7 CFR 273.7(g). 7 CFR 273.7(f), 18 NYCRR 387.13(a).

A Food Stamp employment and training program offered by the agency must offer one or more of the following components:

- (i) A job search program comparable to that required for the AFDC program under Title IV of the Social Security Act.
- (ii) A job search training program that includes reasonable job search training and support activities. Such a program may consist of job skills assessments, job finding clubs, training in techniques for employability, job placement services, or other direct training or support activities.
- (iii) A workfare program.
- (iv) A program designed to improve the employability of household members through actual work experience or training, or both, and to enable individuals employed or trained under such programs to move promptly into regular public or private employment.
- (v) A project, program or experiment such as a supported work program, or a JTPA or State or local program aimed at accomplishing the purpose of the employment and training program.

7 CFR 273.7(f)(1).

A household containing a member who was exempt from work registration because he or she was registered for work under a Title IV or unemployment compensation who fails to comply with a Title IV or unemployment compensation requirement comparable to a food stamp work registration or employment and training program requirement must be treated as though the member had failed to comply with the corresponding food stamp requirements.

Household members who fail to comply with a noncomparable Title IV or unemployment compensation requirement will lose their exemption and must register for work if required. 7 CFR 273.7(g)(2), 18 NYCRR 387.13(e)(2)(ii).

A public assistance, Title IV or unemployment compensation work requirement is comparable to food stamp work requirements if it does not place responsibilities on the household which exceed those imposed by the food stamp work requirements. 7 CFR 273.7(g)(2)(i), 18 NYCRR 387.13(e)(2)(iii).

If the Agency determines that an individual other than the head of household (principal wage earner) has refused or failed without good cause to comply with work registration requirements, including employment and training programs, that individual is ineligible to receive Food Stamp benefits for two months. If the head of household fails to comply, the entire household is ineligible for Food Stamp benefits for the two month period. 7 CFR 273.7(g); 18 NYCRR 387.13(e)(1).

Eligibility may be re-established if the household member who caused the disqualification leaves the household, becomes exempt other than by registering in a Title IV or unemployment compensation employment program, or complies with the requirements as follows:

for refusal to register - register;

for refusal to respond to a request for supplemental information regarding employment status or availability for work - complies with the request;

for refusal to report to an employer - reports to this employer if work still available or another employer if referred;

for refusal to accept offer of suitable employment - accepts the employment if available or secures other employment yielding equivalent earnings; and

for refusal to comply with assignment as part of an approved employment and training program - complies with the assignment or an alternative assignment made by the agency.

7 CFR 273.7(h); 18 NYCRR 387.13(f)(2).

Prior to sending a notice of adverse action, the Agency must determine whether good cause for non-compliance with work registration requirements exists. In determining whether good cause exists, the Agency must consider the facts and circumstances, including information submitted by the household member involved and the employer. Good cause shall include circumstances beyond the member's control such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, the unavailability of transportation, or the lack of adequate child care for children who have reached age six but are under age 12. 7 CFR 273.7(m); 18 NYCRR 387.13(g).

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DISCUSSION

On April 7, 1992, the Agency mailed to the Appellant's address of record a Notice of Intent that it had determined to discontinue his assistance.

Although the Agency's notice stated that a fair hearing to review the discontinuance of Public Assistance and Medical Assistance must be requested within sixty days of its action, the Appellant failed to request this hearing until July 1, 1992, which was more than sixty days after the Agency's determination to discontinue the Appellant's Public Assistance and Medical Assistance.

The Agency contended that the Appellant's request for a hearing to review the April 7, 1992 determination to discontinue the Appellant's Public Assistance and Medical Assistance was not timely. According to the Agency, the Notice of Intent was not returned to the Agency as undelivered. The Appellant contends that the statute of limitations should be tolled.

According to the Appellant, he did not receive either the Agency's conciliation letter, or the April 7, 1992 Notice of Intent. The Appellant testified that he has problems with the zip code for his residence. The Appellant resides in Massapequa Park. However, the Appellant admitted that since he moved into Nassau County from Florida in early 1992, he often advised the Agency that he resided in Massapequa. The two towns have different zip codes.

The Appellant's testimony is credible. The evidence shows that the Appellant's April, 1992 Public Assistance check was correctly addressed to Massapequa Park; but was returned to the Agency as undelivered. Therefore, the statute of limitations should be tolled in this instance.

The Agency determined that the Appellant failed to report to his scheduled intake and assessment interview on March 5, 1992. According to the Agency, this was evidence of a willful failure, without good cause, to comply with the JOBS program. The Agency proposed to sanction the Appellant for 30 days from Public Assistance and Medical Assistance, and 60 days from Food Stamps. The Appellant contends that he did not receive the appointment letter.

The Appellant's contention is credible. The Agency did not produce a copy of the appointment letter at the hearing in order to show that the appointment letter was correctly mailed, and that the Appellant was advised of the appointment. Therefore, the substantial evidence fails to support the Agency's determination to discontinue the Appellant's assistance. Since the Agency's determination to discontinue the Appellant's assistance was not correct, the question of the subsequent reapplication for assistance, and the denial of that application, is moot and need not be decided.



DECISION AND ORDER

The Agency's determination to discontinue the Appellant's grant of Home Relief and Medical Assistance and to discontinue the household's Food Stamp benefits due to a willful failure or refusal, without good cause, to participate in an initial assessment of employability was not correct and is reversed.

1. The Agency is directed to continue the Appellant's grant of Home Relief and Medical Assistance and Food Stamp benefits and to restore any assistance withheld as a result of the Agency's action retroactive to the date such benefits were discontinued.

There are no issues to be decided about the Agency's subsequent determination, dated June 9, 1992, to deny the Appellant's May 8, 1992 reapplication for Public Assistance, Medical Assistance, and Food Stamps.

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

NEW YORK STATE DEPARTMENT  
OF SOCIAL SERVICES

SEP 28 1992

By



Commissioner's Designee