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In the Matter of the Appeal of  
A A  
from a determination by the New York City  
Department of Social Services

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**DECISION  
AFTER  
FAIR  
HEARING**

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**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 April 10, 2008, in New York City, before C. Gamble, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

A A, Appellant  
Lisa Pearlstein, Appellant's Representative  
J R , Appellant's Witness  
Mary Asby Brown, Appellant's Representative

For the Social Services Agency

M. Harney, Fair Hearing Representative

**ISSUES**

Was the Agency's determination to reduce the Appellant's Public Assistance on the grounds that the Appellant refused to comply with work experience requirements by failing to keep an appointment correct?

Was the determination of the Agency not to provide a shelter allowance correct?

Was the Agency's computation of Appellant's entitlement to Public Assistance benefits for January 29, 2008 to the present correct?

**FINDINGS OF FACT**

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 for a household of three persons.
2. The Appellant is the parent or caretaker of a dependent child.
3. On January 31, 2008, the Agency notified the Appellant about an appointment on February 13, 2008 at R A.
4. On March 7, 2008, the Agency notified the Appellant of its intent to reduce the Appellant's Public Assistance grant for 180 days and until the Appellant is willing to comply with work experience requirements on the grounds that the Appellant refused to cooperate with work experience requirements by failing to keep an appointment.
5. The Appellant did not receive a shelter allowance from January 2008 to the second semi-monthly period in February 2008.
6. The Appellant seeks review of the Agency's determination regarding the adequacy of Public Assistance benefits for January 29, 2008 to the present.
7. On March 13, 2008, the Appellant requested this fair hearing.

**APPLICABLE LAW**

Section 131.5 of the Social Services Law provides that no Public Assistance shall be given to an applicant for or recipient of Public Assistance who has failed to comply with the requirements of the Social Services Law, or has refused to accept employment in which he or she is able to engage. Section 131(7)(b) of the Social Services Law provides that where a person is judged employable or potentially employable, a social services official may require such person to receive suitable medical care and/or undergo suitable instruction and/or work training. A person who refuses to accept such care or undergo such instruction or training is ineligible for Public Assistance and care.

Pursuant to Section 336-c of the Social Services Law and 18 NYCRR 385.9, work experience programs meeting State and federal requirements may be established by social services districts. Work experience programs may include the performance of work for a federal office or agency, county, city, village or town or for the State or in the operation of or in an activity of a nonprofit agency or institution.

Work experience opportunities are limited to projects which serve a useful public purpose in fields such as health, social services, environmental protection, education, urban and rural

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development and redevelopment, welfare, recreation, operation of public facilities, public safety, and child day care.

Social services officials are required by Section 341 of the Social Services Law and 18 NYCRR 385.11 to establish a conciliation procedure for applicants and recipients of Public Assistance.

A social services official must issue a notice to each applicant or recipient who refuses or fails to comply with public assistance employment program requirements of Article 9-B of the Social Services Law (Sections 330 - 342). Such notice must advise the individual of his or her refusal or failure to comply, that the individual has the right to provide reasons for such failure or refusal to participate and that he or she has a specified number of days to request conciliation. Applicants and recipients for Safety Net Assistance have seven days to request conciliation and applicants and recipients for Family Assistance have 10 days to request conciliation.

If the individual requests conciliation within the specified number of days, conciliation shall not last longer than 14 days from the date of the conciliation request in the case of an applicant or recipient of Safety Net, and 30 days from the date of the conciliation notice in the case of a Family Assistance applicant/recipient and it will be the individual's responsibility to provide reasons for such refusal or failure to comply.

If the district determines that the individual's refusal or failure to comply was willful and without good cause, then the social services official must issue a 10 day notice of intent to reduce or discontinue assistance.

If the participant does not respond to the conciliation letter issued by the social services official within the specified number of days then the social services official must issue a notice to deny Public Assistance or a ten day notice of intent to discontinue or reduce Public Assistance.

Social services officials must establish a conciliation procedure for the resolution of grievances initiated by individuals assigned to work activities to give individuals an opportunity to dispute an assignment to a work activity. No sanction related to the participant's failure to comply may be imposed during this conciliation period. If the individual's grievance is not resolved, the individual shall be informed of the right to a fair hearing. Individuals shall be required to participate in work activities as assigned during the fair hearing process.

Social services officials are responsible for determining good cause. The official must consider the facts and circumstances, including information submitted by the individual subject to such requirements. Good cause includes circumstances beyond the individual's control, such as but not limited to, illness of the member, illness if another household member requiring the presence of the member, a household emergency, or the lack of adequate child care for children who have reached the age of six but are under age 13. The applicant or recipient is responsible for notifying the Agency of the reasons for failing to comply with an eligibility requirement and for furnishing evidence to support any claim of good cause. The Agency must review the

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information and evidence provided and make a determination of whether the information and evidence supports a finding of good cause. 18 NYCRR 385.12(c).

The parent or care taker relative of a child under thirteen years of age shall not be subject to the ineligibility provisions of Section 342 of the Social Services Law if the individual can demonstrate, in accordance with the regulations of the Office of Children and Family Services, that lack of available child care prevents such individual from complying with the work requirements. The parent or caretaker relative shall be responsible for locating the child care needed to meet the work requirements; provided, however, that the relevant social services district shall provide a parent or caretaker relative who demonstrates an inability to obtain needed child care with a choice of two providers, at least one of which will be a regulated provider.

Section 342 of the Social Services Law and 18 NYCRR 385.12 provides that in the case of an applicant for or recipient of Public Assistance who is a parent or caretaker of a dependent child the Public Assistance benefits otherwise available to the household of which such individual is a member shall be reduced pro-rata:

- (a) For the first instance of failure to comply without good cause until the individual is willing to comply;
- (b) For the second instance of failure to comply without good cause, for a period of three months and thereafter until the individual is willing to comply;
- (c) For the third and all subsequent instances of failure to comply without good cause, for a period of six months and thereafter until the individual is willing to comply.

Willing to comply means that an individual, as required by a district, reports to an assigned work activity site or other location as assigned by the district on time and prepared to engage in the assigned activity.

Section 131-a.2 of the Social Services Law establishes the standards of monthly need for Public Assistance households depending upon size of household. The standard of monthly need, when not a whole dollar amount, shall be rounded to the next lower whole dollar amount. When the estimate of regularly recurring monthly need as set forth in Section 131-a.2 exceeds available income and/or resources, the difference is known as a budget deficit. In any month in which a budget deficit of \$10.00 or more exists, a household is entitled to Public Assistance. Where the budget deficit is less than \$10.00, the household is not considered to be in need of or entitled to any cash assistance; however, household members are considered recipients of Public Assistance for other purposes. Social Services Law 131-a.2; 18 NYCRR 352.29.

Households determined to be in need receive a monthly grant equal to the standard of need based on household size minus any income to the household. This monthly grant includes a basic allowance, an amount for shelter, an amount for fuel for heating when heat is not included

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in the cost of shelter, a home energy allowance, a supplemental home energy allowance, an amount for the additional costs of meals for persons who are unable to prepare meals at home, and an amount for other special items of need.

## **DISCUSSION**

The Appellant has been in receipt of Public Assistance for a household of three persons. The Appellant is the parent or caretaker of a dependent child. On January 31, 2008, the Agency notified the Appellant about an appointment on February 13, 2008 at R A. On March 7, 2008, the Agency notified the Appellant of its intent to reduce the Appellant's Public Assistance grant for 180 days and until the Appellant is willing to comply with work experience requirements on the grounds that the Appellant refused to cooperate with work experience requirements by failing to keep an appointment.

The Appellant testified that she did not receive the appointment notice. The Appellant testified that the address on the appointment notice was correct. At the hearing, the Agency presented a Production of Automated NYCWAY Appointment and Conciliation Notices (hereinafter "Production") affidavit sworn to on June 4, 2007 and a Mailing of Automated NYCWAY Appointment and Conciliation Notices ( hereinafter "Mailing") affidavit sworn to on June 4, 2007. The affidavits reference a "barcode". Specifically, Production in paragraph 11 states in part "[w]hen the notices ...are ready for mailing, NYCWAY will generate a file for the NEARSTAR application to print and place a 'barcode' on each notice. The barcode that is imprinted on the notice evidences that the notice was printed in preparation for mailing. The bar code appears on the original notice received by the applicant/recipient, and on the imaged copy of the notice that is retained by the agency." Mailing in paragraph 5 states in part that "[n]otices that contain a barcode on the left side of each relevant page use this barcode for purposes of indicating that the notice was produced for mailing." Further, Mailing states in paragraph 10 "[o]n extremely rare occurrences, such as total system failure a vendor mails notices."

The Agency's documentation fails to establish that the Agency followed the Agency's procedures as stated in Paragraph. Specifically, the appointment notice submitted into evidence by the Agency does not contain a bar code. Therefore, the Agency has failed to establish that the appointment notice was produced for mailing. Secondly, the Agency failed to present documentation that the notice was not mailed by a vendor. The Agency has failed to establish it's production and mailing procedures regarding the January 31, 2008 appointment notice. The Agency's determination is not sustained.

The Agency agreed to review the Appellant's eligibility to receive a shelter allowance from January 2008 to the second semi-monthly period in February 2008.

At the hearing, the Appellant accepted the terms of the Agency stipulation.

The Appellant contended at the hearing that the Agency's computation of the Appellant's entitlement to Public Assistance benefits was not correct because the Agency continued to budget income after she was no longer employed. The Appellant testified that she notified the

Agency at the end of December 2007 that she would no longer be employed. The Appellant testified that she presented proof of her unemployment in January 2008. In support of her contention, the Appellant presented a letter from her employer dated April 7, 2008. According to the letter the Appellant's last day of work was January 29, 2008. The Appellant also, presented a document, App. 6 which has a start date 9/24/2007 and an end date 1/29/2008. App 6 is dated January 23, 2008. App.1 states that the Appellant was at the Agency on January 31, 2008 and "she provided documentation that she is working as a child care provider part -time." The Appellant failed to establish that the Appellant notified the Agency of her last day of work timely. Therefore, the Agency's determination was correct when made.

### **DECISION AND ORDER**

The Agency's determination to reduce the Appellant's Public Assistance on the grounds that the Appellant refused to comply with work experience requirements was not correct and is reversed.

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

In accordance with the Agency's agreements made at the hearing, the Agency is directed to take the following action if it has not already done so:

1. Review the Appellant's eligibility to receive a shelter allowance from January 2008 to the second semi-monthly period in February 2008, notify the Appellant in writing of the Agency's determination and issue retroactive shelter allowance, if appropriate.

The Agency's computations as to the Appellant's entitlement to Public Assistance benefits for January 29, 2008 to the present was correct when made.

1. The Agency is directed to recompute the Appellant's Public Assistance benefits immediately.

2. The Agency is directed to advise the Appellant in writing of its computations.

3. The Agency is directed to restore any lost Public Assistance benefits retroactive to January 29, 2008.

Should the Agency need additional information from the Appellant in order to comply with the above directives, it is directed to notify the Appellant promptly in writing as to what documentation is needed. If such information is requested, the Appellant must provide it to the Agency promptly to facilitate such compliance.

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

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DATED: Albany, New York  
May 13, 2008

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee