

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

REQUEST October 17, 1994
CASE# P395534
CENTER# Nassau
FH# 2191623M

In the Matter of the Appeal of :
A M

DECISION
: AFTER
FAIR
HEARING

from a determination by the Nassau 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 the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on December 6, 1994, in Nassau County, before Jonathan M. Kastoff, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

A M Appellant; John McGeehan, Representative

For the Social Services Agency

Sharon Wallach, Fair Hearing Representative

ISSUE

Was Appellant's request for this fair hearing to review the determination of the Agency to remove the needs of Appellant from the Appellant's Aid to Dependent Children grant and to discontinue the household's Food Stamp benefits on the grounds that Appellant willfully and without good cause refused to participate in an initial assessment of employability correct?

Assuming that the request was timely, was the determination of the Agency to remove the needs of Appellant from the Appellant's Aid to Dependent Children grant and to discontinue the household's Food Stamp benefits on the grounds that Appellant willfully and without good cause refused to participate in an initial assessment of employability 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 Aid to Dependent Children and Food Stamp benefits.
2. By notice dated August 8, 1994, the Agency determined to remove the needs of Appellant from the Appellant's Aid to Dependent Children grant for a period of six months and thereafter until willing to comply with the requirements of the JOBS Program and to discontinue the household's Food Stamp benefits for two months on the grounds that Appellant willfully and without good cause refused to participate in an initial assessment of employability.
3. Before sending the Notice of Intent, the Agency sent Appellant a 14-day notice of conciliation advising this individual of the opportunity to contest the Agency's claim of failure to comply with the requirements of the JOBS Program.
4. Appellant did not respond to the notice of conciliation and the Agency subsequently issued the Notice of Intent.
5. On May 16, 1994 Appellant was requested to contact a worker at the Town of Oyster Bay by May 27, 1994 in order to schedule an initial assessment of employability appointment.
6. Appellant failed to contact the worker as requested.
7. Appellant had been sanctioned previously 2 times within a three year period for willfully and without good cause failing to comply with the assigned requirements of the JOBS Program.
8. On October 17, 1994, the Appellant requested this fair hearing.

APPLICABLE LAW

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).

Social services districts must conduct an assessment of employability for each applicant for or recipient of Aid to Dependent Children 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 provided by the social services official and the activities in which the

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participant will take part under the JOBS program and which sets forth an employment goal for the participant. Social Services Law Section 335, 18 NYCRR 385.4(a).

An employable applicant for or recipient of Aid to Dependent Children 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 requests conciliation within 14 days, conciliation will be commenced promptly and it will be the participant's responsibility to provide reasons for such refusal or failure to comply.

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, and if the district determines that the 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 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.

No sanction related to the participant's failure to comply may be imposed during the conciliation period.

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 household for assistance or the amount of assistance during the sanction period. 18 NYCRR 385.19(e).

The sanctions for recipients of Aid to Dependent Children who willfully failed without good cause to comply with JOBS requirements are found in Section 385.19(e)(1) of the Department's Regulations and are as follows:

- (i) for the first instance of willful failure to comply without good cause within any three year period commencing on or after October 1, 1990, a period beginning with the effective date of the discontinuance or reduction of public assistance and thereafter until willing to comply with requirements assigned in accordance with Part 385 of the Department's Regulations.
- (ii) for the second instance of willful failure to comply without good cause within a three year period beginning with the effective date of the discontinuance or reduction of assistance in the first instance of willful failure to comply without good cause, a period of three months and thereafter until willing to comply with requirements assigned in accordance with Part 385 of the Department's Regulations.
- (iii) for the third instance of willful failure to comply without good cause within a three year period beginning with the effective date of the discontinuance or reduction of assistance in the second instance of willful failure to comply without good cause, a period of six months and thereafter until willing to comply with requirements assigned in accordance with Part 385 of the Department's Regulations.
- (iv) for all subsequent instances of willful failure to comply without good cause within a three year period beginning with the effective date of the discontinuance or reduction in assistance in the last instance of willful failure to comply without good cause, a period of six months and thereafter until willing to comply with requirements assigned in accordance with Part 385 of the Department's Regulations.

Food Stamp work registrants must participate in an employment and training program when so assigned by the agency, respond to a request from

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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).

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If the Agency determines that an individual other than the head of household 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).

In addition, a sanctioned household may reestablish eligibility if a new and eligible person joins the household as its head of household. 7 CFR 273.7(g)(1); 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).

DISCUSSION

On August 8, 1994, the Agency notified the Appellant that it had determined to reduce Appellant's Public Assistance. 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 October 11, 1994, which was more than sixty days after the Agency's

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determination. However, the Agency's Notice of Intent sent to Appellant was defective because it failed to provide telephone numbers to contact the Agency for an Agency Conference and for record access and failed to notify Appellant of the starting date of the proposed sanction and the recommended date for Appellant to reapply for Public Assistance. Since a defective notice effectively tolls the applicable Statute of Limitations, Appellant's request for this hearing must be deemed timely.

Appellant testified that she did not contact the worker to schedule the appointment because she failed to receive the notice requesting her to contact the worker. The letter was allegedly mailed by an agency of the Town of _____ and did not contain any address for Appellant on the letter. The Agency presented no evidence to establish that the letter was properly addressed to Appellant and mailed pursuant to normal procedures at the Town of _____ agency. New York case law requires that proof of mailing be established before the question of receipt can be addressed. The record supports a finding that the Agency failed to establish that it properly mailed the appointment notice in question to Appellant. Since there was insufficient proof of mailing of the appointment notice, the record also supports a finding that Appellant had good cause for her failure to contact the Town of _____ worker. Therefore, the Agency's determination to reduce Appellant's Public Assistance and to discontinue Appellant's Food Stamps cannot be sustained.

DECISION AND ORDER

The determination of the Agency to remove the needs of Appellant from the Appellant's Aid to Dependent Children grant 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 was not correct and is reversed.

1. The Agency is directed to continue Appellant's Aid to Dependent Children and Food Stamp benefits and to restore any assistance withheld as a result of the Agency's action retroactive to the date the Agency took action on such benefits.

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

DEC 21 1994

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

By

Susan M. Grimes

Commissioner's Designee