

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

REQUEST October 28, 1994
CASE#
CENTER# Nassau
FH# 2196421Y

In the Matter of the Appeal of :

R G

DECISION

: AFTER

FAIR

HEARING

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

received
1/27/95

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 14, 1994, in Nassau County, before James J. Dalton, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

R G Appellant; Herbert Harris, Esq., Representative

For the Social Services Agency

Joan Meyer, Fair Hearing Representative

ISSUE

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 the development of an employability plan 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, age 34 years, has been in receipt of Aid to Dependent Children and Food Stamp benefits for herself and two minor children, ages eighteen and twelve years.

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2. By notice dated October 20, 1994, the Agency determined to remove the needs of Appellant from the Appellant's Aid to Dependent Children grant for a period of three 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 the development of an employability plan on September 8, 1994.

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 responded to the notice of conciliation and attended a conference with the Agency to give reasons for the failure to comply. After evaluating Appellant's reasons, the Agency issued the Notice of Intent.

5. Appellant had not been sanctioned previously within a three year period for willfully and without good cause failing to comply with the assigned requirements of the JOBS Program.

6. The Appellant was scheduled to report to an interview for an update of her employment plan on August 11, 1994, between 11:00 AM and 2:30 PM. The Appellant did not report at the appointed time.

7. The appointment was rescheduled for September 8, 1994. The Appellant did not report to the rescheduled interview.

8. The Appellant did not receive the appointment letter for the rescheduled interview.

9. On October 28, 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 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.

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.

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 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 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).

DISCUSSION

The Agency, in making its determination, stated that the Appellant willfully, and without good cause failed to comply with the requirements of the JOBS Program. According to the Agency, the Appellant failed to report to a scheduled interview on August 11, 1994, for an update of her employment plan. The Agency presented evidence to show that the Appellant missed a rescheduled interview on September 8, 1994. The Agency did not accept the explanation offered by the Appellant at the October 5, 1994 conciliation conference.

The Appellant admitted that she did not attend either scheduled interview. She contended, however, that she reported late on August 11, 1994, and was promised a new appointment letter. The Appellant further testified that she did not receive the appointment letter for the rescheduled September 8, 1994 interview.

The Appellant's testimony about her reporting late on August 11, 1994 is credible. Her credibility is supported by the evidence of the Agency's rescheduling her interview. Therefore, the Appellant's absence on August 11, 1994 could not be considered to be willful and without good cause. Similarly, the Appellant's testimony about her missing the rescheduled interview on September 8, 1994 is credible. The appointment letter for the September 8, 1994 interview does not contain an address of record. Therefore, the Agency has not established that the appointment letter was correctly mailed.

Accordingly, the Agency's determination to reduce the Appellant's grant of Aid to Dependent Children, and to discontinue her household's Food Stamps benefits, was not correct. The Agency should continue the Appellant's assistance, in accordance with verified degree of need.

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 the development of an employability plan was not correct and is reversed.

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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
January 24, 1995

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

By


Commissioner's Designee