

STATE OF NEW YORK  
DEPARTMENT OF LABOR

REQUEST October 14, 2004  
CASE # PAXXXXXX  
CENTER # Chemung  
FH # 4208584N

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In the Matter of the Appeal of :  
AG :

**DECISION**  
: **AFTER**  
**FAIR**  
**HEARING**

from determinations by Chemung County :  
Department of Social Services :

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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 November 9, 2004, in the City of Elmira, Chemung County, New York, before George W. Howard, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Phillip J. Barton, Esquire, of counsel to the Mid-York Legal Aid, Appellant's representative; AG, Appellant

For the Social Services Agency

James VanGalder, Agency's representative

ISSUES

Was the Agency's determination to reduce the Appellant's Family Assistance, for a period of 180 days and until willing to comply with the Work Program requirements, and to reduce the Appellant's Food Stamp benefits for six months, on the grounds that the Appellant refused to cooperate and participate in the assigned job search by failing to report to a job search follow-up appointment on August 13, 2004, correct?

Was the Agency's determination to reduce the Appellant's Family Assistance, for a period of 180 days and until willing to comply with the Work Program requirements, and to reduce the Appellant's Food Stamp benefits for six months, on the grounds that the Appellant refused to cooperate and participate in the assigned job search by failing to have 80 job contacts as directed, 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 is in receipt of Family Assistance and Food Stamp benefits for a household of four persons including the Appellant and three

minor dependent children.

2. The Appellant is the parent or caretaker of a dependent child.

3. On July 15, 2004, the Appellant entered into an employment plan whereby the Appellant was assigned to a job search, and was advised to make 20 different employer contacts weekly during the period from July 15, 2004 through August 12, 2004, for a total of 80 job contacts, and to return to the Agency's offices on August 12, 2004, at 3:00 p.m., for a follow-up appointment with the SAGE office.

4. The Appellant reported to the Agency's offices on August 12, 2004 at 3:00 p.m. but was advised that the SAGE worker whom she was going to see had taken the day off.

5. The Appellant left her job search handbook at the Agency's offices for audit, as required. The Appellant had only 52 out of the required 80 job contacts.

6. On September 1, 2004, the Agency mailed a conciliation notice to the Appellant, advising her of the opportunity to show good cause for her failure to report to the job search follow-up appointment "on 8/13/04 at 3:00 p.m. No call, no show."

7. The Appellant responded to the September 1st conciliation notice, and advised the Agency that the SAGE worker was not there when she arrived for her appointment. The Agency rejected the Appellant's good cause claim on the grounds that the SAGE worker had mailed a letter to the Appellant rescheduling the appointment from the 12th to the 13th, and the Appellant did not report on the 13th as directed.

8. On September 1, 2004, the Agency mailed a conciliation notice to the Appellant, advising her of the opportunity to show good cause for her failure to have a full 80 job contacts during the assigned period.

9. The Appellant did not respond to the second of two conciliation notices mailed on September 1st.

10. The Appellant has been sanctioned at least twice before for having failed to cooperate with the requirements of the Work Program.

11. By notice dated September 21, 2004, the Agency advised the Appellant that it had determined to reduce the Appellant's Family Assistance, for a period of 180 days and until willing to comply with the Work Program requirements, and to reduce the Appellant's Food Stamp benefits for six months, on the grounds that the Appellant refused to cooperate and participate in the assigned job search by failing to report to a job search follow-up appointment on August 13, 2004.

12. By notice dated October 15, 2004, the Agency advised the Appellant that it had determined to reduce the Appellant's Family Assistance, for a period of 180 days and until willing to comply with the Work Program requirements, and to reduce the Appellant's Food Stamp benefits for six months, on the grounds that the Appellant refused to cooperate and participate in the assigned job search by failing to have 80 job contacts as directed.

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13. On October 14, 2004, the Appellant requested a fair hearing to review the Agency's September 21st determination. The Appellant subsequently requested that the October 15th determination be added as an issue.

APPLICABLE LAW

Reduction of Family Assistance:

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 336 of the Social Services Law and 12 NYCRR 1300.9 provide that social services districts may provide, and require applicants for and recipients of Public Assistance to participate in a variety of activities including job search and job readiness.

Section 336-d of the Social Services Law requires that each applicant for or recipient of Public Assistance is required upon request of the social services official, to demonstrate that he or she is engaged in an active and continuing effort to achieve self-sufficiency. Such effort shall include, but not be limited to, an active and continuing search for employment, or for persons otherwise exempt from work activities, and where deemed appropriate by the social services official, activities that foster preparation for employment. The failure of a social services district to assign applicants and recipients to activities shall not relieve such persons from the requirements of this section. An individual who fails to comply with the requirements of the section shall be subject to the provisions set forth in Section 131(5) and 341 and 342 of the Social Services Law. The conciliation and sanction provisions of sections 341 and 342 of the Social Services Law have been implemented by the Department of Labor in 12 NYCRR 1300.11 and 1300.12. Job Search has been implemented by 12 NYCRR 1300.9. 12 NYCRR 1300.9(e)(5)(i) provides that when an applicant fails to comply with the requirement to accept employment, the entire household shall be ineligible for public assistance. A recipient who fails is subject to sanctions in 12 NYCRR 1300.12.

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 of 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 information and evidence provided and make a determination of whether the information and evidence supports a finding of good cause. 12 NYCRR 1300.12(c).

Section 342 of the Social Services Law and 12 NYCRR 1300.12 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.

Reduction of Food Stamp benefits:

Pursuant to 7 U.S.C 2015 (Section 6 of the federal Food Stamp Act of 1977), as amended by the the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), if a disqualification is imposed on a member of a household because of that member's failure to perform an action required under a federal, State or local law relating to a means-tested public assistance program, the Agency may also impose a disqualification on the household member under the Food Stamp Program.

If the Agency determines that an individual has refused or failed without good cause to comply with Food Stamp employment requirements, that individual is ineligible to receive Food Stamp benefits for two months for the first instance, four months for the second instance, and six months for the third and subsequent instance of a failure to comply. For the period prior to August 19, 2002, a subsequent failure had to be within three years of the previous such failure in order to increase the duration of the sanction. 7 CFR 273.7(g); 12 NYCRR 1300.12(e).

DISCUSSION

The August 12th/13th appointment:

The fair hearing record establishes that the Agency advised the Appellant to report to the Agency's SAGE office for a job search follow-up appointment on August 12th. The Appellant testified that she went to her appointment on the 12th and was told that the worker was not in that day.

In response, in the Agency's summary, the Agency stated that a letter had been mailed to the Appellant changing the appointment from the 12th to the 13th, and that the Agency's negative action was being taken because the Appellant did not report on the 13th.

The Appellant denied any knowledge of a change to her appointment.

The Agency failed to furnish a copy of the alleged letter to the Appellant advising of the change to the date of her appointment. Without that letter in the fair hearing record, coupled with testimony concerning its mailing to the Appellant, the Agency has failed to establish that the

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Appellant missed an appointment.

The Agency had the burden of proof to establish, by substantial evidence on the fair hearing record, that its determination was correct. (See, section 358-5.9[a] of the Department's Regulations.) The Agency failed to meet its burden of proof. Therefore, the Agency's determination can not be sustained.

80 job contacts:

The record establishes that the Appellant had dropped-off her job search handbook, and that it contained 52 out of the required 80 job contacts. The Appellant claimed good cause for having failed to make 80 job contacts. She testified that she needed a bus pass for August, that she had telephoned the SAGE worker to secure the bus pass, that the SAGE worker told her she could pick-up the bus pass at the reception desk, but when she got to the reception desk no bus pass had been left for her; that she telephoned the SAGE worker about the bus pass and the response she received was "rude" and that the worker had hung-up on her.

A review of the employment plan dated July 15, 2004 shows that the Agency was going to provide bus passes to the Appellant to facilitate her job search. The Agency offered no proof that it had indeed furnished a bus pass to the Appellant for the month of August.

The Agency had the burden of proof to establish, by substantial evidence on the fair hearing record, that its determination was correct. (See, section 358-5.9[a] of the Department's Regulations.) The Agency failed to meet its burden of proof. Therefore, the Agency's determination can not be sustained.

DECISION AND ORDER

The Agency's determination to reduce the Appellant's Family Assistance, for a period of 180 days and until willing to comply with the Work Program requirements, and to reduce the Appellant's Food Stamp benefits for six months, on the grounds that the Appellant refused to cooperate and participate in the assigned job search by failing to report to a job search follow-up appointment on August 13, 2004, was not correct and is reversed.

1. The Agency is directed to continue to furnish Family Assistance and Food Stamp benefits to the Appellant pursuant to verified degree of need.

The Agency's determination to reduce the Appellant's Family Assistance, for a period of 180 days and until willing to comply with the Work Program requirements, and to reduce the Appellant's Food Stamp benefits for six months, on the grounds that the Appellant refused to cooperate and participate in the assigned job search by failing to have 80 job contacts as directed, was not correct and is reversed.

2. The Agency is directed to continue to furnish Family Assistance and Food Stamp benefits to the Appellant pursuant to verified degree of need.

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.

DATED: Albany, New York  
November 17, 2004

NEW YORK STATE DEPARTMENT  
OF LABOR

By

Commissioner's Designee