

**STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE**

**REQUEST:** March 7, 2006  
**CASE #:** PXXXXXX  
**AGENCY:** Nassau  
**FH #:** 4506894Y

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In the Matter of the Appeal of  
C C  
from a determination by the Nassau County  
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 July 31, 2006, in Nassau County, before Jonathan Kastoff, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

C C, Appellant  
Herb Harris, Representative

For the Social Services Agency

William Denson, Fair Hearing Representative

**ISSUE**

Was the determination of the Agency to discontinue the Appellant's Public Assistance grant due to a failure of the Appellant to verify participation in an out-patient rehabilitation program for alcohol and substance abuse 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 a grant of Public Assistance for a household of one person.

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2. By notice dated March 2, 2006, the Agency determined to discontinue the Appellant's Public Assistance because the Appellant failed to verify participation in an out-patient rehabilitation program for alcohol and substance abuse.

3. Appellant had not been sanctioned previously for failure to participate in or complete an out-patient rehabilitation program for alcohol abuse or substance abuse or because of noncompliance with the requirements of the federal Social Security Administration regarding treatment of alcohol abuse or substance abuse.

4. On March 7, 2006, the Appellant requested this fair hearing.

### **APPLICABLE LAW**

Section 132(4) of the Social Services Law and 18 NYCRR 351.2(i) provides for a screening for alcohol and/or substance abuse for heads of households and adult applicants and recipients using a standardized screening. Such screening shall be performed by a social services district at the time of application and periodically thereafter unless the recipient is actively participating in alcoholism and/or substance abuse treatment, but not more frequently than every six months, unless the district has reason to believe that an applicant or recipient is abusing or dependent on alcohol or drugs.

Regulations at 18 NYCRR 351.2(i) provide that an adult is any individual in the household who is age 18 or over who is applying for or in receipt of Public Assistance, except an individual 18 years of age who is a full time student regularly attending a secondary school, or in the equivalent level of vocational or technical training.

When the screening process indicates that there is reason to believe that an applicant or recipient is abusing or dependent on alcohol or drugs, or there is other evidence that an applicant or recipient is abusing or dependent on alcohol or drugs, the social services district must require the applicant or recipient to undergo a formal alcohol or substance abuse assessment, which may include drug testing, to be performed by an alcohol and/or substance abuse professional credentialed by the Office of Alcoholism and Substance Abuse Services. The assessment may be performed directly by the district or pursuant to contract with the district.

If the formal assessment determines that the applicant or recipient is unable to work by reason of his or her need for treatment for alcohol or substance abuse, the social services official must refer the individual to an appropriate alcoholism and/or substance abuse treatment program.

Regulations at 18 NYCRR 351.2(i) provide that to be considered an appropriate treatment program, the treatment program must:

- (a) be licensed or certified by the Office of Alcoholism and Substance Abuse Services or operated by the United States Department of Veterans Affairs and be determined by the social services official to meet the rehabilitation needs of the individual, in

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accordance with standards developed by the Office of Alcoholism and Substance Abuse Services;

- (b) develop a treatment plan for the individual which includes an expected date of availability for work related activities and provide a copy of such plan to the local district responsible for payment, in a manner consistent with 41 CFR Part 2;
- (c) provide at a minimum of every three months, a treatment progress report for each recipient of public assistance to the local district responsible for payment of public assistance benefits; and
- (d) request approval by the local district responsible for payment of public assistance benefits prior to changing an individual's level of treatment care.

If the local district is responsible for payment of treatment, the district can require in-district treatment, provided an appropriate treatment program is available. When residential treatment is appropriate for a single custodial parent, the social services official must make diligent efforts to refer the parent to a program that would allow the family to remain intact for the duration of the treatment.

A person who fails to participate in the screening or in the assessment is ineligible for Public Assistance and Medical Assistance. Other members of a household which includes a person who has failed to participate in the screening or assessment shall, if otherwise eligible, receive Medical Assistance and shall receive Public Assistance only through non-cash Safety Net Assistance if they are otherwise eligible for Public Assistance and Medical Assistance. The Public Assistance benefits otherwise available to the household of which the sanctioned individual is a member will be reduced prorata. 18 NYCRR 352.30(d).

Regulations at 18 NYCRR 351.2(i) provide that if a person required to participate in treatment pursuant to that subdivision fails to consent to disclosure of necessary treatment information by the treatment program to the social services district, or subsequently revokes such consent, such person will be ineligible for public assistance. Other members of the household which includes such person will, if otherwise eligible, receive public assistance only through non-cash safety net assistance.

A person referred to a treatment program and the household with which he or she resides shall receive non cash Safety Net Assistance and Medical Assistance while the person is participating in such treatment, if the household is otherwise eligible for Public Assistance and Medical Assistance. If a person referred to treatment cannot participate in that treatment because treatment is not presently available, that person and the household with which he or she resides shall receive non-cash Safety Net Assistance and Medical Assistance if the household is otherwise eligible for Public Assistance and Medical Assistance.

If an applicant or recipient is required to participate in an appropriate rehabilitation program and fails to participate in such program without good cause or leaves such program prior to

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completion of the program without good cause, provided that program completion shall be solely determined by the guidelines and rules of such rehabilitation program, or if an applicant or recipient has been suspended from the receipt of Social Security Disability benefits or Supplemental Security Income benefits because of noncompliance with requirements of the federal Social Security Administration for treatment for substance abuse or alcohol abuse, the person will be disqualified from receiving Public Assistance and Medical Assistance as set forth below. Failure to participate in such program is defined as failure to comply with the established treatment plan including scheduling treatment sessions. The disqualifications are as follows:

- (i) for the first failure to participate in or complete the program, or to comply with the requirements of the Federal Social Security Administration, until the failure ceases or for 45 days, whichever period of time is longer;
- (ii) for the second such failure, until the failure ceases or for 120 days, whichever period of time is longer; and
- (iii) for the third and subsequent failures, until the failure ceases or for 180 days, whichever period is longer.

The household with which the person resides shall continue to receive safety net assistance and medical assistance if otherwise eligible.

The applicant or recipient must be considered to have good cause for failing to participate or failing to complete a rehabilitation program when:

- (a) the local district, the facility and the applicant or recipient agree that the applicant or recipient is in need of a different program than the one to which he or she was referred or which he or she is attending and the applicant or recipient has enrolled in a rehabilitation program which the local district has determined appropriate; or
- (b) a verified unforeseen circumstance occurs that is beyond the applicant's or recipient's control such as illness or a death in the family.

18 NYCRR 351.2(i)(2)(iv)

A person who has been disqualified from receiving Public Assistance or Medical Assistance because of a refusal to participate in or complete a required rehabilitation program or who has been suspended from the receipt of Social Security Disability benefits or Supplemental Security Income benefits because of noncompliance with requirements of the federal Social Security Administration for treatment for substance abuse or alcohol abuse and who is otherwise eligible for Public Assistance and Medical Assistance shall be eligible for non-cash safety net assistance if such person returns to required treatment prior to the end of the disqualification period and is receiving care in an Office of Alcoholism and Substance Abuse certified congregate care Level II facility as defined in 18 NYCRR 352.8 or United States Veterans Hospital residential treatment program.

Section 132(4) of the Social Services Law provides that provisions regarding screening and rehabilitation for alcohol and substance abuse apply to Medical Assistance only to the extent that they are not inconsistent with applicable federal law. Therefore, singles, childless couples and parents in intact households who are between 21 and 64 years old and who are ineligible for ADC-U will need to comply with alcohol and substance abuse screening and treatment in order to receive or continue to receive Medical Assistance unless they are certified blind or disabled.

### **DISCUSSION**

Appellant was asked to have a medical form 4526 completed by his rehabilitation program. The form was neither completed nor submitted to the Agency. However, the Agency failed to present evidence to establish that the form was properly sent to Appellant, with appropriate instructions for completion. The only evidence presented by the Agency was an entry in Appellant's case record to indicate that the form was due back to the Agency on November 5, 2006. Therefore, the Agency's determination to discontinue Appellant's Public Assistance cannot be sustained at this time.

It is noted that Appellant's representative contended that the Agency's notice of intent was defective in that it failed to properly state the reason for the Agency's action. The notice stated that the action was taken because Appellant "failed to go to drug and alcohol program at F and C A." The notice also advised the Appellant that verification of what had been requested had been due prior to the date of the notice. The agency's notice, while vague, did provide Appellant with appropriate information to ascertain the reason for the Agency's action: Appellant was to participate in an appropriate treatment program, and was to verify that participation with the Agency by December 1, 2005. Appellant's representative's contention is not supported by the record and without merit.

It is further noted that Appellant presented evidence at the hearing to establish that he commenced an intake at a rehabilitation program, but that after a psychiatric evaluation on November 1, 2005, Appellant was referred to a hospital for medical detoxification due to acute opiate withdrawal.

### **DECISION AND ORDER**

The determination of the Agency to discontinue the Appellant's Public Assistance grant due to a failure of the Appellant to verify participation in an out-patient rehabilitation program for alcohol and substance abuse was not correct and is reversed.

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

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

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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  
August 2, 2006

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee