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

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**DECISION
AFTER
FAIR
HEARING**

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 25, 2006, in New York City, before Lilian I. Agbalaka, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

M S, Appellant; Abdus-Salaam Wahid

For the Social Services Agency

Obadare Ayeni, Fair Hearing Representative

ISSUE

Was the Appellant's request for a fair hearing to review the Agency determination to reduce the Appellant's Public Assistance benefits timely?

Assuming the request was timely, was the Agency's determination to reduce the Appellant's Public Assistance benefits 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 benefits.

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2. By notice dated December 13, 2005, the Agency advised the Appellant of its determination to reduce the Appellant's Public Assistance benefits because the Appellant failed to comply with employment requirements.
3. The notice advised the Appellant that a fair hearing must be requested within sixty days of the Agency's action concerning Public Assistance.
4. The Agency mailed the notice to the Appellant's address as contained in the Appellant's case record.
5. On July 5, 2006, the Appellant requested this fair hearing.

APPLICABLE LAW

Section 22 of the Social Services Law provides that applicants for and recipients of Public Assistance, Emergency Assistance to Needy Families with Children, Emergency Assistance for Aged, Blind and Disabled Persons, Veteran Assistance, Medical Assistance and for any services authorized or required to be made available in the geographic area where the person resides must request a fair hearing within sixty days after the date of the action or failure to act complained of. In addition, any person aggrieved by the decision of a social services official to remove a child from an institution or family home may request a hearing within sixty days. Persons may request a fair hearing on any action of the social services district relating to food stamp benefits or the loss of food stamp benefits which occurred in the ninety days preceding the request for a hearing. Such action may include a denial of a request for restoration of any benefits lost more than ninety days but less than one year prior to the request. In addition, at any time within the period for which a person is certified to receive food stamp benefits, such person may request a fair hearing to dispute the current level of benefits.

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 persons 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.

Section 335 of the Social Services Law and 18 NYCRR 385.6 require that each recipient of Public Assistance who is a member of a household with dependent children and is eighteen years of age or older, or who is sixteen or seventeen years of age and is not attending secondary school and has not completed high school or a high school equivalency program, receives an assessment of employability based on his or her educational level, including literacy and English language proficiency, basic skills proficiency, child care and other supportive services needs; and the skills, prior work experience, training and vocational interests. The assessment must include a review of family circumstances including a review of any special needs of a child. The assessment must be completed within 90 days of the date on which such person is determined

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eligible for Public Assistance. An applicant for or recipient of Public Assistance may be assigned to work activities prior to completion of such assessment. Applicants and recipients are required to participate in an assessment as assigned by the social services official.

Based on the assessment, the social services official will develop a written employability plan in consultation with the recipient, which shall set forth:

- (a) the services which the district will provide, including child care;
- (b) the work activities to which the recipient will be assigned;
- (c) the recipient's employment goal, which shall reflect, to the extent possible, the recipient's preferences to the extent they are consistent with the assessment.

In developing the plan, the social services official shall take into account:

- (a) the recipient's supportive services needs;
- (b) the available program opportunities;
- (c) the local employment opportunities;
- (d) if the recipient is assigned to an education program, the recipient's liability for student loans, grants and scholarship awards.

If a recipient's preferences cannot be accommodated in the employability plan, the plan shall record the reasons.

Notwithstanding the requirement that the employability be based on the assessment, in developing the employability plan, the social services official must consider the needs of the social services district to meet federal and state work activity participation rates before completing an individual's employability plan.

The entire household of an applicant who fails or refuses to participate with the requirements for assessments shall be ineligible for Public Assistance. Recipients who fail or refuse to participate with the requirements of this section shall be subject to the sanctions set forth in section 342 of the Social Services Law and 18 NYCRR 385.12.

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

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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 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. 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:

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- (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.

DISCUSSION

On December 13, 2005, the Agency notified the Appellant that it had determined to reduce the Appellant's Public Assistance and Food Stamp benefits on the grounds that the Appellant failed to comply with employment requirements.

Although the Agency's notice advises the Appellant that a fair hearing must be requested within sixty days of its action concerning Public Assistance or Medical Assistance and within ninety days of its action concerning Food Stamp benefits, the Appellant failed to request this fair hearing until July 5, 2006, which was more than ninety days after the Agency's determination interview.

At the hearing, the Appellant testified that he did not receive the notice. The Agency failed to establish that the notice was mailed, inasmuch as it failed to present any credible evidence that it mailed the notice in the regular course of business. Thus, the record does establish a sufficient basis for tolling the statute of limitations.

The evidence establishes that by notice dated December 13, 2005 the Agency determined to reduce the Appellant's Public Assistance benefits on the grounds that Appellant failed to keep an employment appointment on November 21, 2005.

At the hearing, the Appellant testified that he did not receive the appointment notice. The Agency failed to establish that the notice was mailed, inasmuch as it failed to provide credible evidence that the Agency's mailing procedure was followed in this case and that the Appellant did timely receive the appointment notice. Thus the Appellant established good cause for the failure to comply with employment requirements.

DECISION AND ORDER

The determination of the Agency to reduce the Appellant's Public Assistance is not correct and is reversed.

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

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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 required, 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
September 6, 2006

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee