

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

REQUEST January 4, 1993
CASE#
CENTER# Nassau
FH# 1918944M

In the Matter of the Appeal of :

K S

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 April 8, 1993, in Nassau County, before James J. Dalton, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

K S , Appellant; Herbert Harris, Esq., Representative

For the Social Services Agency

Sonia Rankin, Fair Hearing Representative; Francis Hendricks, Esq., Representative

ISSUE

Was the Agency's determination to discontinue the Appellant's Home Relief and to discontinue the Appellant's Medical Assistance and to discontinue the Appellant's Food Stamp benefits on the grounds that Appellant willfully and without good cause failed or refused to comply with the requirements of the Job Search Program by failing to report to a scheduled appointment with the Job Search Program to demonstrate that the required number of employer contacts had been made 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 Home Relief, Medical Assistance and Food Stamps.

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2. By notice dated November 23, 1992, the Agency determined to discontinue the Appellant's Home Relief for a period of 75 days and thereafter until willing to comply with the assigned requirements of the JOBS Program and to discontinue the Appellant's Medical Assistance and to discontinue the Appellant's Food Stamp benefits for a period of two months on the grounds that Appellant willfully and without good cause failed or refused to comply with the requirements of the Job Search Program by failing to report to a scheduled appointment with the Job Search Program to demonstrate that the required number of employer contacts had been made.

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. 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 did not comply with the requirements of the Job Search Program because he did not receive the appointment letter for the October 23, 1992 job search verification interview.

7. On January 4, 1993, the Appellant requested this fair hearing.

APPLICABLE LAW

Social services districts must establish a job search program for employable, job ready applicants for and recipients of Home Relief who are not residing with their dependent children under the age of 18. Social Services Law Section 158-b, 18 NYCRR 385.8(a). Districts must require each such person to participate in a review of his/her job readiness. Social Services Law Section 158-b(1), 18 NYCRR 385.8(q)(1). Such review must be conducted for applicants of Home Relief at the time of application or as soon thereafter as possible for the social services district and for recipients of Home Relief, not later than the date of recertification for Home Relief. 18 NYCRR 385.8(e)

Individuals considered to be able to be competitive for positions and able to engage in productive employment for which there are job openings in the local economy must be determined to be job ready. Social Services Law Section 158-b(1), 18 NYCRR 385.8(e)(4). An individual determined to be job ready must be assigned to a program of job search, unless and for so long as that individual is currently participating in other activities assigned or approved by the social services official which are designed to lead the individual to total self sufficiency. Social Services Law Section 158-b(2), 18 NYCRR 385.8(i). An individual must participate in the program for 90

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days unless the social services official determines prior to the end of the 90 day period that the individual is not job ready due to an inability to compete for job openings in the local economy. Social Services Law Section 158-b(2), 18 NYCRR 385.8(1).

Social services districts are required to review the job readiness of an individual who has participated in assigned jobs search activities for a period of 60 days and who has not obtained employment.. Additionally, each social services official will conduct a minimum of 30 days of supervised job search activities for those individuals determined to remain job ready pursuant to a job readiness review. Such 30 day supervised job search activities must include, but need not be limited to, at least one of the following:

- (1) job clubs;
- (2) job placement activities, including referral to on-the-job-training opportunities;
- (3) job readiness instruction; or
- (4) other structured job search activities that require a minimum of two meetings with social services employment staff or employment and training staff of the provider designated by the social services official in accordance with the requirements of 18 NYCRR 385.8 to conduct job search activities.

Social Services Law Section 158-b(4); 18 NYCRR 385.8(m).

A social services official may, at the end of each individual's participation in an initial 90-day period of job search activities, assign each individual to a second 90-day period of job search conducted in accordance with the requirements of this section. Such additional assignment may be made only after the social services official has considered the available job opportunities in the district and each individual's ability to compete for those opportunities, and has made a determination that additional job search activities are appropriate. When a determination is made to assign an individual to a second 90 day period of job search activities, the social services official must enter the determination in the individual's case record. If the social services official determines that an additional 90-day period of job search activities is not appropriate, the official must assign the individual to other appropriate employment, training, or educational activities in accordance with the requirements of this 18 NYCRR Part 385. Social Services Law Section 158-b(5), 18 NYCRR 385.8(n).

Individuals assigned to a job search program must make a minimum of three employer contacts each week. Additional contacts may be required pursuant to a plan approved by the Commissioner of the New York State Department of Social Services in accordance with Section 385.8(o) of the Regulations. A contact with the same employer more than once in a four week period cannot be counted unless such contact is initiated or requested by the employer. Social Services Law Section 158-b(2), 18 NYCRR 385.8(k).

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Individuals who are participating in job search may be required to report to the social services district or the public employment and training agency no more often than once every 14 days to demonstrate active participation in job search. Social Services Law Section 158-b(3), 18 NYCRR 385.8(j).

Recipients who are required to participate in a job search program who refuse or fail to participate must be disqualified from receiving Home Relief in accordance with Section 385.19.

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.

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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.

The sanctions for recipients of Home Relief who willfully and without good cause fail to comply with requirements of the Job Search Program are found in Section 385.19(e) (3) of the Department's Regulations and are as follows:

- (1) For the first instance of willful failure to comply without good cause, a period of 75 days beginning with the effective date of the discontinuance or reduction and thereafter until such person is willing to comply with such requirements.

Social Services Law Section 158-b(6), 18 NYCRR 385.19(e) (3).

Under Section 366 of the Social Services Law a person who requires Medical Assistance is eligible for such assistance where such person:

- (a) is receiving or is eligible for Home Relief or Aid to Dependent Children or Supplemental Security Income;
- (b) although not receiving or in need of public assistance or care, has not sufficient income and resources to meet all the costs of medical care and services available under the Medical Assistance Program and such person is:
 - (i) under the age of 21; or
 - (ii) 65 years of age or older; or
 - (iii) the spouse of a cash Public Assistance recipient living with him/her and essential or necessary to his/her welfare and whose needs are taken into account in determining his/her cash payments; or
 - (iv) for reasons other than income or resources, is eligible for Aid to Dependent Children or Supplemental Security Income and/or additional state payments.
- (c) is at least 21 years of age but under the age of 65 and is not receiving or eligible to receive Home Relief or aid to dependent children and:
 - (i) who is the parent of a dependent child under the age of 21; and
 - (ii) who lives with such child; and

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- (iii) whose net income, without deducting the amount of any incurred medical expenses, does not exceed the net income exemption set forth in Section 366.2(a)(8) of the Social Services Law.

Department Regulations at 18 NYCRR 360-2.2(d) provide that for a person who does not meet the criteria set forth above, other than financial, eligibility for Medical Assistance must be determined on the basis of that person's eligibility for Home Relief in accordance with the requirements of 18 NYCRR Part 352 and Part 370.

Pursuant to the provisions of Administrative Directive 90 ADM-27, dated August 29, 1990, a failure to comply with the Job Readiness Review or with Home Relief Job Search activities which are comparable to Food Stamp employment requirements is sanctionable for Food Stamp recipients.

For Food Stamp purposes, persons required to register for work and who are not exempt from placement may be required to participate in the following employment and training programs:

- (1) independent job search
- (2) job search training program.

7 CFR 273.7(f).

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

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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. The Appellant's representative testified that the appointment letter for the September 23, 1992 job search interview was mailed to the Appellant.

The Appellant, on the other hand, testified that he did not receive the appointment letter, the conciliation notification, or the Notice of Intent. The Appellant did admit that he was at a job search interview on September 9, 1992. He further admits that he was told that he would have to return to the Agency for another job search interview. The Appellant contended that he returned to the Agency on September 24, 1992 for that interview, believing that the interview was scheduled for that date. According to the Appellant, he was advised that he was "too late" for his scheduled interview, and that the interview could not be rescheduled.

The Agency's copy of the September 23, 1992 appointment does not contain an address of record for the Appellant. Accordingly, the Agency has not established its claim that the appointment letter was correctly addressed to the Appellant's address of record. Appellant's claim of non-receipt was credible. Therefore, the substantial evidence fails to support the Agency's conclusion that the Appellant wilfully, and without good cause, failed to comply with the requirements of the JOBS program. Its determination to discontinue the Appellant's assistance is not correct.

DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Home Relief and to discontinue the Appellant's Medical Assistance and to discontinue the Appellant's Food Stamp benefits on the grounds that Appellant willfully and without good cause failed or refused to comply with the requirements of the Job Search Program by failing to report to a scheduled appointment with the Job Search Program to demonstrate that the required number of employer contacts had been made was not correct and is reversed.

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1. The Agency is directed to continue Appellant's Home Relief, Medical Assistance and Food Stamps 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

MAY 17 1993

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

By


Commissioner's Designee