

STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST October 14, 2003  
CASE # Pxxxxxx  
CENTER # Nassau  
FH # 3998021M

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In the Matter of the Appeal of :  
YS :

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

from a determination by the Nassau 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 April 22, 2004, in Nassau County, before Dennis D'Andrea, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

YS, Appellant  
Herbert Harris, Esq., Nassau-Suffolk Law Services

For the Social Services Agency

Russell Forbes, Fair Hearing Representative

ISSUE

Was the Agency's determination to include J L as part of the Appellant's Food Stamp household correct?

Was the Agency's determination to discontinue the Appellant's Public Assistance, Medical Assistance and Food Stamp benefits for failure to comply with an interview necessary to determine the Appellant's continuing eligibility for such benefits 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 Food Stamp benefits for a household of five persons, for herself and four children. At recertification on August 25, 2003, the Appellant stated that a sixth person, her husband, had moved back into the household. The husband did not agree to apply for Food Stamps.

2. By notice dated October 8, 2003, the Agency determined to discontinue the household's Food Stamp benefits on the grounds that everyone

in her food unit did not agree to apply for Food Stamps.

3. The Appellant has been in receipt of Public Assistance, Medical Assistance and Food Stamp benefits.

4. The Appellant was advised by the Agency on August 25 that her husband must do the following by September 5, 2003:

Make an appointment to be interviewed by the Agency.

5. The husband did not telephone to make an appointment to be interviewed by the Agency.

6. On October 8, 2003, the Agency sent a Notice of Intent setting forth its determination to discontinue the Appellant's Public Assistance, Medical Assistance and Food Stamp benefits because the Appellant's husband had failed to go to the Agency to be interviewed, a step necessary to determine Appellant's continuing eligibility for Public Assistance, Medical Assistance and Food Stamp benefits.

7. On October 14, 2003, the Appellant requested this fair hearing.

#### APPLICABLE LAW

For purposes of determining Food Stamp eligibility and entitlement, a household is composed of any of the following individuals or groups of individuals:

- (a) An individual living alone; or
- (b) An individual living with others but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
- (c) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

7 CFR 273.1(a); 18 NYCRR 387.1.

The following individuals living with others or groups of individuals living together must be considered as customarily purchasing food and preparing meals together, even if they do not do so:

- (a) a spouse of a member of the household.

Regulations at 18 NYCRR 351.1 and 351.2 require that to demonstrate eligibility, applicants for and recipients of Public Assistance must present appropriate documentation of such factors as identity, residence, family composition, rent payment or cost of shelter, income, savings or other resources and, for aliens, of lawful residence in the United States. These obligations also apply to non-legally responsible caretaker relatives of children receiving public assistance, as well as minor siblings of such children residing in the same household. Section 351.5 of the Regulations provides that if the applicant or recipient has previously verified necessary information which is not subject to change and the Agency possesses documentation of such verification in its files, the applicant or recipient is not required to resubmit verification of such information. Section 351.6

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of the Regulations provides that verification of data is an essential element of the eligibility investigation process. The applicant or recipient is the primary source of the required information. However, when the applicant or recipient is unable to provide the required verification, the Agency must assist the applicant or recipient in obtaining the verification or make collateral investigation. 18 NYCRR 351.5 and 351.6. If a third party seeks to impose a charge or fee for providing required information to the applicant or recipient, the Agency must pay such fee or must assist the applicant or recipient in obtaining the information by other means. 18 NYCRR 351.5. The applicant's or recipient's failure or refusal to cooperate in providing necessary information is a ground for denying or discontinuing Public Assistance.

Section 351.21(a) of 18 NYCRR provides that contacts with recipients and collateral sources shall include face-to-face contacts, correspondence, reports on resources, eligibility mailouts and other documentation. Contacts with or concerning recipients shall be made as frequently as individual need, change in circumstances or the proper administration of assistance or care may require.

Section 360-2.2(f) of the Regulations requires that a personal interview be conducted with all applicants for Medical Assistance. Such personal interview shall be conducted before a decision on Medical Assistance eligibility is authorized or reauthorized. The State may grant a waiver of the personal interview requirement for recertification of aged, certified blind or certified disabled recipients when the Agency demonstrates that alternative procedures have been established to verify that recipients continue to meet all eligibility requirements for Medical Assistance. Section 360-2.3 of the Regulations provides that the Medical Assistance applicant and recipient has a continuing obligation to provide accurate and complete information on income, resources and other factors which affect eligibility. An applicant or recipient is the primary source of eligibility information. However, the Agency must make collateral investigation when the recipient is unable to provide verification. The applicant's or recipient's failure or refusal to cooperate in providing necessary information is a ground for denying an application for a Medical Assistance Authorization or for discontinuing such benefits.

Regulations at 18 NYCRR 360-7.5(a)(1) provide that payment for services or care under the Medical Assistance Program may be made to a recipient or the recipient's representative at the Medical Assistance rate or fee in effect at the time such care or services were provided when an erroneous determination by the Agency of ineligibility is reversed. Such erroneous decision must have caused the recipient or the recipient's representative to pay for medical services which should have been paid for under the Medical Assistance Program. Note: the policy contained in the regulation limiting corrective payment to the Medical Assistance rate or fee at the time such care or services were provided has been enjoined by Greenstein et al. v. Dowling et al. (S.D.N.Y.).

Changes reported during a Food Stamp certification period shall be subject to the same verification procedures which apply at initial certification. However, the local Agency is not required to verify income, medical expenses, or actual utility expenses if the source has not changed and the amount has changed by \$25.00 or less since the last verification.

7 CFR 273.2(f)(8); 18 NYCRR 387.8(b)(5).

At recertification the local Agency shall verify a change in income or actual utility expenses if the source has changed or the amount has changed by more than \$25.00. Previously unreported medical expenses and total recurring medical expenses which have changed by more than \$25.00 shall also be verified at recertification. The local Agency shall not verify income, total medical expenses, or actual utility expenses claimed by households which are unchanged or have changed by \$25.00 or less, unless the information is incomplete, inaccurate, inconsistent or outdated. Other information which has changed may be verified at recertification. Unchanged information shall not be verified unless the information is incomplete, inaccurate, inconsistent or outdated. 7 CFR 273.2(f)(8); 18 NYCRR 387.8(b)(6).

#### DISCUSSION

The Appellant stated at her recertification on August 25, 2003, that her husband had moved back into the household and the Appellant did not dispute this at the fair hearing. Therefore, the Agency's determination to include JL, husband, as part of the Appellant's Food Stamp household was correct.

As to the issue of the husband failing to cooperate with an eligibility interview, the Appellant contended that she never received the Document Requirements that instructed her such an interview was necessary. Her legal counsel, Mr. Harris, contended that there is no address on the Documentation Requirements form and it could not have been sent in a window envelope. He noted the Agency does not have a copy of the addressed envelope. He cited fair hearing decision 3512116K which reported that ". . . the Agency did not produce the envelope," and ruled, "The Agency did not present adequate proof of mailing, . . ." The Appellant contended that she has lived at her current address for a year but has difficulty with mail delivery which she reported to the Agency in June 2003.

The Agency described its routine mailing practice when the address is not on the notice: the address is written on a white envelope, the address is written as it is reported on the application, the Documentation Requirements are placed in the envelope, it is placed in the unit mail box, is picked up by the Agency mail delivery person and taken to the central mailroom where it is stamped and placed in outgoing mail. The U.S. Postal Service picks up the outgoing mail. The Agency contended that the Documentation Requirements were not returned to the Agency marked undeliverable by the U.S. Postal Service nor is there any record of the Appellant reporting her mail difficulty to the Agency.

There is no address on the Documentation Requirements, there is no copy of the addressed envelope, and the Appellant has testified that she did not receive the Documentation Requirements. As such, the Agency has not established mailing. The Appellant's husband did not appear for an interview and consequently the Agency's determination was correct when made. At the fair hearing the Agency failed to establish mailing of the interview requirement. Therefore, the Agency's determination, although correct when made, cannot be implemented at this time.

#### DECISION AND ORDER

The Agency's determination to include J L as part of the Appellant's Food stamp household is correct.

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The Agency's determination to discontinue the Appellant's Public Assistance, Medical Assistance and Food Stamp benefits, although correct when made, cannot be implemented at this time.

1. The Agency is directed to continue the Appellant's Public Assistance, Medical Assistance and Food Stamp benefits pending a reasonable opportunity for the Appellant's husband to cooperate with the eligibility interview.

2. The Agency is further directed to restore lost benefits retroactively to October 18, 2003, the date of discontinuance.

3. The Agency is directed to issue a new determination in writing.

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  
May 13, 2004

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee