

STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST April 14, 2004  
CASE # P  
CENTER # Nassau  
FH # 4101031H

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In the Matter of the Appeal of :

I C

**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 July 26, 2004, in Nassau County, before Susan Lerner, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

I C, Appellant  
H. Harris, Esq., Nassau Suffolk Law Services

For the Social Services Agency

W. Denson, Fair Hearing Representative

ISSUE

Was the Agency's determination to deny the Appellant's application for Public Assistance and Food Stamp benefits for failure to provide documentation necessary to determine the Appellant's 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, age forty, applied for Public Assistance and Food Stamp benefits on December 22, 2003.
2. The Appellant was given expedited Food Stamps and one month's rent.
3. The Appellant is receiving ongoing Medical Assistance.
4. The Agency required that he submit a Medical Form #279 for the Determination of Disability, to the Agency, by January 30, 2004. That form was to be completed by a doctor of Internal Medicine, after the Agency was informed by a physician at the N U M C that the Appellant suffers from

hypertension.

5. The Appellant did not receive the #279 form from the Agency. It therefore was neither completed nor returned.

6. On March 31, 2004, the Agency sent a Denial Notice setting forth its determination to deny the Appellant's application for Public Assistance and Food Stamp benefits because the Appellant had failed to return to the Agency with certain documentation necessary to determine Appellant's eligibility for Public Assistance and Food Stamp benefits.

7. On April 14, 2004, the Appellant requested this fair hearing.

#### APPLICABLE LAW

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 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.

The Food Stamp application process includes filing and completing the application form, being interviewed and having certain information verified. If the household refuses to cooperate with the Agency in completing this process, the application shall be denied. In order for a determination of refusal to be made, the household must be able to cooperate but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. 7 CFR 273.2(d); 18 NYCRR 387.5, 387.6, 387.7.

For households initially applying for Food Stamp benefits mandatory verification shall be completed regarding: gross nonexempt income, alien status, shelter expenses, medical expenses, residency, household size, Social Security number, identity, date of birth, utility expenses, resources, disability and, if questionable, household composition and citizenship and any other questionable information that has an effect on the household's eligibility and benefit level. 7 CFR 273.2(f); 18 NYCRR 387.8(b).

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To be considered questionable, the information on the application must be inconsistent with statements made by the applicant, or inconsistent with other information on the application or previous applications. The local department shall determine if information is questionable based on the household's individual circumstances. 7 CFR 273.2(f); 18 NYCRR 387.8(b).

Written documentary evidence is to be used as the primary source of verification of all items except residency and household size. Residency and household size may be verified either through readily available documentary evidence or through a collateral contact. Residency is to be verified except where verification cannot reasonably be accomplished such as in homeless cases. 7 CFR 273.2(f); 18 NYCRR 387.8(b).

The household has the primary responsibility for providing documentary evidence to support its application and to resolve any questionable information. The local Agency, however, is obligated to offer assistance in situations where the household cannot obtain the documentation in a timely manner. Such assistance may include using a collateral contact or home visit unless otherwise required by Federal or State Regulations. 7 CFR 273.2(f); 18 NYCRR 387.8(b).

If the Agency determines to verify a deductible expense and such verification has not been obtained and obtaining the verification may delay the household's certification, then the Agency may determine eligibility and benefit level without providing a deduction for the claimed but unverified expense, including medical expense. If the household subsequently provides verification, benefits shall be redetermined. 7 CFR 273.2(f).

When a household's eligibility cannot be determined within thirty days of filing of the application, the Agency must determine the cause of the delay. If the delay is the fault of the household, then the application must be denied. However, if the household takes the required action within sixty days of the filing of the application, the case must be processed without requiring a new application. Prorated benefits must then be provided to the household from the date the necessary verification was provided. If the delay is the fault of the Agency, then the Agency must notify the household as to what action it must take to complete the application. The cause of the delay in failing to complete verification shall be considered the household's fault only if the Agency has assisted the household in trying to obtain the verification and allowed the household at least ten days to obtain the missing verification. If the household is found to be eligible during the second thirty-day period, prorated benefits must be provided from the date of application. 7 CFR 273.2(h); 18 NYCRR 387.14(a)(4).

If, due to the Agency's fault, the application process is not completed by the end of the second thirty-day period, the Agency must continue to process the application until an eligibility decision is reached. If the household is found eligible and the Agency was at fault for the delay in the initial thirty days, the household must receive benefits retroactive to the day of application. However, if the initial thirty-day delay was the household's fault, the household must receive benefits retroactively to the date final verification of all required eligibility factors was received. If the household was at fault for not completing the application process by the end of the second thirty-day period, the application must be denied and the household will not be entitled to any lost benefits, even if the delay in the initial thirty days was the fault of the Agency. 18 NYCRR 387.14(a)(4).

An applicant for or recipient of public assistance is exempt from complying with any requirement concerning eligibility for public assistance if the applicant or recipient establishes that good cause exists for failing to comply with the requirement. Except where otherwise specifically set forth in regulations, good cause exists when the applicant or recipient has a physical or mental condition which prevents compliance; the applicant's or recipient's failure to comply is directly attributable to Agency error; or other extenuating circumstances, beyond the control of the applicant or recipient, exist which prevent the applicant or recipient from being reasonably expected to comply with an eligibility requirement. 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 351.26.

#### DISCUSSION

The Appellant has established good cause for his noncompliance. He testified credibly and persuasively that he did not receive the #279 form in issue. He stated that he does not usually have a problem receiving his mail, but that he lives in a house with several residents and the mail is delivered to a central depository. He established that he was diligent in having a Medical form #280 completed and returned to the Agency, and testified that he would have exhibited the same degree of diligence regarding the Form #279, had he received it.

Furthermore, the Agency's presentation failed to establish mailing. The Agency submitted a printout screen indicating that the form was generated and a due date established. They did not establish how or when papers were sent, nor did they establish exactly what papers, if any, were sent. It is noted, however, that even if mailing were established, the Appellant's testimony would serve to establish non-receipt.

Therefore, the Agency is to reprocess the application in issue, affording the Appellant the opportunity to submit the required form.

#### DECISION AND ORDER

The Agency's determination to deny the Appellant's application for Public Assistance and Food Stamp benefits is not correct and is reversed.

1. The Agency is directed to continue to process the Appellant's application and afford the applicant the opportunity to submit any documents necessary to establish eligibility.

2. The Agency is directed to advise the Appellant in writing of its determination.

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

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the directives set forth above.

DATED: Albany, New York  
July 30, 2004

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee