

STATE OF NEW YORK
DEPARTMENT OF LABOR

REQUEST November 19, 2004
CASE # Pxxxxxxx
CENTER # Nassau
FH # 4230521Q

In the Matter of the Appeal of :
DT : 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 Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on January 26, 2005, in Nassau County, before Thelma Lee, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant
DT, Appellant
Douglas Ruff, Esq., Nassau Suffolk Law Services

For the Social Services Agency
Joseph Hyland, Fair Hearing Representative

ISSUE

Was the Agency's determination to discontinue the Appellant's Safety Net Assistance and Food Stamps and to impose a 90 day Public Assistance sanction and a two month Food Stamp sanction on the grounds that he refused to comply with educational requirements by failing to report to the 3 STEP Training Program 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 is a twenty-eight year old man residing with his mother at the address of record.

2 The Appellant was in receipt of Safety Net Assistance and Food Stamps for a household of one person.

3 The Agency was advised that the address of record was xx P Street, H, New York xxxxx.

4 By notice dated September 1, 2004, the Agency advised the Appellant of its determination that he is capable of full-time sedentary work.

5 Through an undated letter, the Agency informed the Appellant that he must report on October 13, 2004 at 9:00 AM to the Employability Exploration Program (3 STEP).

6 The Agency mailed the above undated letter addressed to the Appellant.

7 The Appellant did not report to the 3 STEP Program on October 13, 2004.

8 On November 2, 2004, the Agency notified the Appellant of its intent to discontinue Safety Net Assistance for 90 days and until willing to comply with educational requirements and to discontinue Food Stamp benefits for two months on the grounds that he refused to comply with educational requirements by failing to report to 3 STEP on October 13, 2004.

9 Before sending the Notice of Intent, the Agency sent the Appellant a notice of conciliation advising this individual of the opportunity to take part in conciliation regarding the Agency's claim.

10 The Appellant responded to the notice of conciliation. The Appellant claimed that he never received the Agency's October 13, 2004 appointment letter. It was further contended that he was permanently disabled due to a gunshot wound.

11 The Agency advised the Appellant at conciliation that verification of this permanent disability must be submitted by October 27, 2004 or the Agency would proceed to impose a sanction based on the October 13, 2004 absence from the 3 STEP Program.

12 On October 27, 2004, the Appellant submitted an undated note, with an illegible doctor's name, stating that: "Mr. T is not permitted to return to work due to a lower gun shot wound to the abdomen".

13 The Agency concluded that the above note was unacceptable confirmation of a permanent disability or a total exemption from the work rules and issued its November 2, 2004 notice.

14 On November 19, 2004, the Appellant requested this fair hearing.

APPLICABLE LAW

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 336 of the Social Services Law and 12 NYCRR Part 1300 provides that social services districts may provide, and require applicants for and recipients of Public Assistance to engage in work which means participate in a variety of activities, including vocational educational training as time limited by federal law. "Vocational educational training" shall include but not be limited to and mean organized educational programs offering a sequence of courses which are directly related to the preparation of individuals for current or emerging occupations requiring other than a baccalaureate or advanced degree. Such programs shall include competency-based applied learning which contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupational-specific skills necessary for economic independence. Such term also includes applied technology education.

Section 335-b(5) of the Social Services Law and 12 NYCRR 1300.7 provide that each social services official shall ensure that each adult member of a household without dependents, when such household is receiving Public Assistance, is engaged in work as soon as practicable.

To the extent resources are available, the social services official shall, within a reasonable period of time not to exceed one year following application conduct an assessment of employability. Such assessment shall include a review of educational level, including literacy and English language proficiency; basic skills proficiency; supportive services needs; and the skills, prior work experience, training and vocational interests of each participant.

Based on the assessment, the social services official, in consultation with the participant, shall develop an employability plan in writing which shall set forth the services that will be provided by the social services official and the activities in which the participant will take part

Where an assessment indicates that a participant who is not subject to the education requirements of Section 336-a of the Social Services Law has not attained a basic literacy level, the social services official shall encourage and may require the participant to enter a program to achieve basic literacy or high school equivalency or to enter such educational programs in combination with other training activities consistent with the employability plan.

The Regulations at 12 NYCRR 1300.9(c) require social services districts to make vocational educational training and educational activities available in accordance with the

assessment and employability plan. Such activities may include but need not be limited to, vocational educational training, which may include but not be limited to organized educational programs offering a sequence of courses which are directly related to the preparation of individuals for current or emerging occupations requiring other than a baccalaureate or advanced degree. Such programs may include competency-based applied learning which contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupational-specific skills necessary for economic independence. It may also include applied technology education.

Regulations require that individuals in need of basic literacy programs be referred to basic and remedial education rather than to vocational proprietary schools.

Activities to which individuals may be assigned include high school education or education designed to prepare a participant for a high school equivalency certificate; basic and remedial education; education in English proficiency; no more than two years of post secondary education (or the part-time equivalent, if full-time study would constitute an undue hardship). Post-secondary education must be necessary to the attainment of the participant's employment goal, as set forth in the individual's employability plan. Such goal must relate directly to obtaining useful employment in a recognized occupation.

Enrollment is permitted in community and two-year colleges; four year colleges provided that the course of instruction for which the individual is enrolled is limited to a two-year degree granting program; licensed trade schools and registered business schools.

Except as otherwise provided in 12 NYCRR 1300.9(c) and as resources permit and pursuant to the local employment plan, individuals must be assigned to educational activities if the individual is not yet 20 years of age and has not obtained a high school diploma or its equivalent.

Department of Labor regulations at 12 NYCRR 1300.9(c)(3) provide that an individual between 16 and 18 years of age may be excused from school attendance requirements if:

(i) the decision not to require school attendance is based upon an individual assessment which indicates that further attendance is unlikely to result in the attainment of a high school diploma or its equivalent based upon consideration of aptitude and other factors such as grade completion, and

(ii) the individual participates in either another educational activity other than one which would lead to the attainment of a high school diploma or its equivalent or in job skills training appropriate to and designed for youths.

Individuals 18 and 19 years of age shall be assigned to activities other than educational and vocational educational activities if the social services official determines, based on the assessment and employability plan that such activities are not appropriate or if such individuals fail to make satisfactory progress in these activities when assigned to them.

Individuals assigned to educational activities consistent with employment goals identified in the employability plan shall not be assigned to any other activity that might interfere with class attendance.

Social services officials may periodically evaluate an individual's employment plan and having given due consideration to the individual's progress in the current, and if applicable, prior program make assignments to other activities in order to meet district participation rates imposed in accordance with 12 NYCRR 1300.8.

An adult member of a two-parent family may be required to participate in education activities consistent with employment goals contained in the employability plan.

Social services officials are required by Section 341 of the Social Services Law and 12 NYCRR 1300.11 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 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 notice of denial or 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. 12 NYCRR 1300.12(c).

Section 342 of the Social Services Law and 12 NYCRR 1300.12 provides that in the case of an individual who is a member of a household without dependent children applying for or in receipt of safety net assistance the Public Assistance benefits otherwise available to the household of which such individual is a member shall be reduced pro-rata:

(a) For the first such failure or refusal to comply, a period of ninety days and thereafter until willing to comply;

(b) For the second such failure or refusal to comply, a period of 150 days and thereafter until willing to comply; and

(c) For the third and all subsequent such failures or refusals, a period of 180 days and thereafter until willing to comply.

Willing to comply means that an individual, as required by a district, reports to an assigned work activity site or other location as assigned by the district on time and prepared to engage in the assigned activity.

Pursuant to 7 U.S.C 2015 (Section 6 of the federal Food Stamp Act of 1977), as amended by the the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), if a disqualification is imposed on a member of a household because of that member's failure to perform an action required under a federal, State or local law relating to a means-tested public assistance program, the Agency may also impose a disqualification on the household member under the Food Stamp Program.

If the Agency determines that an individual has refused or failed without good cause to comply with Food Stamp employment requirements, that individual is ineligible to receive Food Stamp benefits for two months for the first instance, four months for the second instance, and six months for the third and subsequent instance of a failure to comply. For the period prior to August 19, 2002, a subsequent failure had to be within three years of the previous such failure in order to increase the duration of the sanction. 7 CFR 273.7(g); 12 NYCRR 1300.12(e).

DISCUSSION

The Appellant, via his attorney, asserted that he could not report to the 3 STEP Program on October 13, 2004 because he never received the Agency's appointment letter.

Mr. Ruff, the Appellant's attorney, noted that the appointment letter presented in the Agency's Fair Hearing Packet was undated and lacked any address. It was contended that there was nothing in the Appellant's case record to confirm when this letter was actually mailed or what name or address was used on the mailing envelope.

Joseph Hyland, the Agency's Fair Hearing Representative, urged that it is Agency policy to send letters to the address of record. Mr. Hyland contended that it was presumed that the Appellant received this appointment letter because it was not returned by the Post Office.

The Agency's Fair Hearing Representative acknowledged that some of the comments in the Appellant's case record were not recorded by Miss Mahoney, the actual case worker, but were written by a participant in the Work Experience Program.

The Agency's decision to terminate Safety Net Assistance and Food Stamps and to impose sanctions on the grounds that the Appellant failed to report to the 3 STEP Program on October 13, 2004 is not correct and is reversed. The Agency did not establish that the Appellant was duly notified of this appointment. The Agency's method of notification was a letter containing the Appellant's name but no date or address. There was no acceptable proof to demonstrate that the Agency adhered to its policy of mailing this letter to the Appellant at xx P Street in H. Thus, the Agency's determination cannot be affirmed.

It is noted that this Fair Hearing Decision does not concern any issue of employability or the nature of the October 27, 2004 medical note submitted by the Appellant. The Agency's November 2, 2004 discontinuance notice was based strictly on the Appellant's failure to report to 3 STEP.

DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Safety Net Assistance and Food Stamps and to impose sanctions on the grounds that he refused to comply with educational requirements by failing to report to the 3 STEP Program is not correct and is reversed.

1. The Agency is directed to provide Public Assistance and Food Stamps to the Appellant.

2. The Agency is directed to restore any benefits lost to the Appellant as the result of its November 2, 2004 notice.

3. The Agency is directed to give the Appellant another reasonable opportunity to participate in work activities.

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
February 25, 2005

NEW YORK STATE DEPARTMENT
OF LABOR

By q89

Commissioner's Designee