

**STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE**

**REQUEST:** September 23, 2005  
**CASE #:** XXXXX  
**AGENCY:** Nassau  
**FH #:** 4408924K  
**FH#:** 4376094P

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	<b>FH #</b>
	:
In the Matter of the Appeal of	:
P F	<b>DECISION AFTER FAIR HEARING</b>
	:
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 September 21, 2005 and on November 17, 2005, in Nassau County, before Susan Lerner, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

P F, Appellant  
J. Kaslow, Esq., Nassau Suffolk Law Services

For the Social Services Agency

W. Denson, Fair Hearing Representative; on September 21, 2005  
J. Hyland, Supervisor, Employment Unit; on November 17, 2005  
M. Krohn, Supervisor, Public Assistance Unit, on November 17, 2005

**ISSUE**

Was the Agency's determination to discontinue the Appellant's Public Assistance on the grounds that the Appellant failed to report to a Work Experience assignment correct?

Was the Agency's determination to reduce the Appellant's Public Assistance following the Appellant's failure to appear at a scheduled Fair Hearing, in order to recoup assistance paid pursuant to an Aid to Continue directive 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, age fifty-two, is in receipt of a grant of Public Assistance for a household of one person.
2. The Agency prepared a February 7, 2005 appointment notice instructing her to report to an interview for Enrollment in Work Experience on February 17, 2005.
3. The Appellant did not receive the appointment notice. The Appellant did not report on February 17, 2005.
4. By notice dated April 19, 2005 the Agency determined to discontinue the Appellant's Public Assistance for a period of 150 days based upon her failure to report on February 17, 2005. The Agency has reduced the proposed sanction to 90 days.
5. Prior to issuing the above notice, the Agency issued a conciliation notice. A conciliation conference was scheduled for April 8, 2005. The Appellant did not appear at that conference.
6. On April 22, 2005 the Appellant requested a Fair Hearing. A Fair Hearing was scheduled for June 23, 2005. On June 10, 2005 the Appellant phoned the State Hearings Unit in an attempt to reschedule her Fair Hearing, as she was ill. On June 20, 2005 the State Hearings Unit received documentation regarding the Appellant's medical condition. The Unit determined that additional verification would be required. The Appellant's call with the Unit was disconnected. There was no further contact between the Unit and the Appellant regarding a rescheduled hearing date and the need for additional documentation.
7. By notice dated July 22, 2005 the Agency determined to reduce the Appellant's Public Assistance to reflect a recoupment of the Aid Continuing assistance provided.
8. The Appellant requested this Fair Hearing on September 23, 2005.

**APPLICABLE LAW**

Agencies are required to take all necessary steps to correct any overpayment or underpayment of assistance to a Public Assistance recipient. Overpayments shall include payments made to an eligible person in excess of his/her needs and payments made to an ineligible person. In addition, overpayments shall include aid-continuing payments made to such person pending a fair hearing decision. Social Services Law Section 106-b; 18 NYCRR 352.31(d).

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The Agency must recover the overpayment from:

- (1) the assistance unit which was overpaid;
- (2) any assistance unit of which a member of the overpaid assistance unit subsequently has become a member; or
- (3) any individual members of the overpaid assistance unit, whether or not currently a recipient.

The proportion of the current assistance grant that must be deducted for recoupment is ten percent of the household's needs (15 percent for Safety Net Assistance recipients prior to December 1, 2001). If undue hardship is claimed and substantiated, the recoupment must not be less than five percent of the household's needs. For purposes of determining the amount to be deducted from a Public Assistance grant, the household's needs include an allowance for recurring needs, the home energy and supplemental home energy allowances, the shelter allowance, any fuel for heating allowance, any personal needs allowance, any restaurant allowance, any allowances for chattel mortgages or conditional sales contracts, any pregnancy allowance and any water allowance. When the grant amount is less than the appropriate recoupment rate, the full grant must be recouped. 18 NYCRR 352.11; 18 NYCRR 352.31(d).

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 person 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.

Pursuant to Section 336-c of the Social Services Law and 12 NYCRR 1300.9, work experience programs meeting State and federal requirements may be established by social services districts. Work experience programs may include the performance of work for a federal office or agency, county, city, village or town or for the State or in the operation of or in an activity of a nonprofit agency or institution.

Work experience opportunities are limited to projects which serve a useful public purpose in fields such as health, social services, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, operation of public facilities, public safety, and child day care.

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.

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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 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

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- (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.

## **DISCUSSION**

The Appellant has testified credibly as to the non-receipt of the February 17, 2005 appointment notice. Additionally, the Agency has not established that the notice was sent to her. After submitting a notice created after the fact as proof of the appointment notice sent, the Agency submitted what appeared to be a copy of the notice as actually sent in February, 2005. The Agency testified that that copy was found in Mr. H's records as well as in a file kept under the Appellant's previous name. The testimony presented on that point was not logical or persuasive, however, as the appointment notice presented was addressed to "P F" in 2005, but was purportedly found in a folder labeled "P H"; a name not used by the Appellant since 2000. Additionally, the Agency did not establish the mailing of the notice. There was testimony presented by the Agency that such notices are always sent in window envelopes. As the type of envelope often used was shown by the Appellant's representative to be an addressed envelope, the evidence failed to establish how the notice was addressed and how, or if, it was mailed.

The evidence presented by the Agency does not support their proposed action. Further, the Appellant was credible in viewing the notice and stating that she did not receive it. While she did not state that she has problems receiving her mail, in general, she was nonetheless credible in her testimony as to non-receipt. In view of the above, the Agency's determination was correct when made, as she did not report on February 17, 2005, but the proposed sanction cannot be implemented. Similarly, the proposed recoupment of Aid Continuing granted, cannot be implemented.

It is further noted that the Statute of Limitations is not a bar to this action as the record establishes that there was a gap in communication between the Appellant and the State's Hearings Unit, despite her having called that unit; requested an adjournment due to illness; and submitted medical documentation in support of her claim.

## **DECISION AND ORDER**

The Agency's determination to discontinue the Appellant's Public Assistance on the grounds that Appellant failed to report to a Work Experience assignment was correct when made.

The Agency's determination to reduce the Appellant's Public Assistance following the Appellant's failure to appear at a scheduled Fair Hearing, in order to recoup assistance paid pursuant to an Aid to Continue directive was correct when made.

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

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 requested, 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  
December, 9, 2006

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee