

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: September 5, 2006
CASE #: PXXXXXX
AGENCY: Nassau
FH #: 4635101Q

In the Matter of the Appeal of
RB
from a determination by the Nassau County
Department of Social Services

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

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 November 9, 2006, in Nassau County, before Gail Rowan, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

RB, Appellant
Herb Harris, Esq., Nassau/Suffolk Law Services, Inc., Appellant's Attorney

For the Social Services Agency

Will Denson, Jr., Fair Hearing Representative

ISSUE

Was the Agency's determination to discontinue the Appellant's Public Assistance on the grounds that the Appellant refused to comply with work experience requirements 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, a twenty-nine year old male, has been in receipt of Public Assistance for a household of one person.
2. The Appellant is not the parent or caretaker of a dependent child.

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3. By letter dated April 28, 2006, the Appellant was directed to report on May 1, 2006, at 10:00 a.m. to the Nassau County Department of Social Services for an interview for enrollment in work experience.

4. The Appellant failed to report to the interview, as scheduled.

5. By letter dated May 11, 2006, the Appellant was notified of the opportunity to participate in the conciliation process on or before May 18, 2006.

6. The Appellant failed to respond to the conciliation letter.

7. On June 6, 2006, the Agency notified the Appellant of its intent to discontinue the Appellant's Public Assistance grant for 90 days and until the Appellant is willing to comply with work experience requirements on the grounds that the Appellant refused to cooperate with work experience requirements.

8. On July 17, 2006, the Appellant requested a fair hearing.

9. After a hearing was held on August 10, 2006, Decision After Fair Hearing #4592120M was issued on August 18, 2006. In this Decision, the Commissioner determined that the Agency's determination to discontinue the Appellant's Public Assistance on the grounds that the Appellant refused to comply with work experience requirements was correct.

10. By letter dated August 24, 2006, the Appellant's attorney requested a reversal of the Decision After Fair Hearing #459212M.

11. In the August 24, 2006, letter, the Appellant's attorney noted the testimony offered and evidence presented at the August 10th hearing to explain the Appellant's absence from a scheduled interview at the Agency on that date.

12. By letter dated September 6, 2006, the Office of Administrative Hearing (OAH) provided the Agency with a reasonable opportunity to respond to the Appellant's August 24, 2006 letter.

13. By amended letter dated September 8, 2006, the Appellant's attorney again noted the testimony offered and evidence presented at the August 10th hearing to explain the Appellant's absence from a scheduled interview at the Agency on that date.

14. By letter dated September 21, 2006, OAH advised the Appellant and the Agency that Fair Hearing #4592120M would be reopened as Fair Hearing #4635101Q for the purpose of the submission of the additional documentation from _____ Medical Center and any addition testimony from the Appellant to clarify his presence at the hospital on May 11, 2006.

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15. On November 9, 2006, Fair Hearing #4635101Q was reopened to give the Appellant an opportunity to offer testimony and provide evidence to support his position that he appeared at the _____ Medical Center on May 11, 2006, for a medical procedure. The Appellant appeared without verification. This matter was adjourned for a date general to allow the Appellant an opportunity to obtain verification documentation.

16. By letter dated November 27, 2006, to the Administrative Law Judge, the Appellant's attorney stated that "[u]pon further investigation, it does not appear that the document that were submitted are accurate and should not be relied on to support a claim that [the Appellant] appeared at a scheduled appointment on May 11th. Consequently, I am withdrawing that claim as a defense to the Agency's action to discontinue his public assistance benefits for failing to keep his work experience appointment on May 11, 2006. Further, the Appellant's attorney stated that, "[s]ince [the Appellant] is no longer pursuing the claim of a conflicting medical appointment, I am requesting that the record be closed and that a decision be rendered based upon his remaining claim."

17. After due consideration and review of the complete record, prior Decision After Fair Hearing #4592120M is hereby vacated and superseded by this Decision, which also concludes that the Appellant willfully and without good cause, failed to appear at the May 11th interview, as scheduled.

18. On January 12, 2007, a prior Decision After Fair Hearing (#4635101Q) was issued which affirmed the Agency's June 6, 2006 determination to discontinue the Appellant's Public Assistance on the grounds that the Appellant refused to comply with work experience requirements. Subsequently, the Appellant's attorney requested reconsideration of the Decision regarding the absence of an explanation of the Agency's mailing procedure to support the finding that the Appellant willfully and without good cause failed to appear at the May 11, 2006 interview. Thereafter, the Agency was afforded the opportunity to respond. Based on our review of the entire fair hearing record, it was determined that the record supports the Appellant's attorney's position. Accordingly, the January 12, 2007 Decision has been vacated and this Amended Decision is being issued which finds that the Agency failed to meet its burden in establishing that the May 11, 2006 notice of appointment was properly mailed, and therefore, the Agency's determination cannot be sustained.

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 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.

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Pursuant to Section 336-c of the Social Services Law and 18 NYCRR 385.9, 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 18 NYCRR 385.11 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 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 must establish a conciliation procedure for the resolution of grievances initiated by individuals assigned to work activities to give individuals an opportunity to dispute an assignment to a work activity. No sanction related to the participant's failure to comply may be imposed during this conciliation period. If the individual's grievance is not resolved, the individual shall be informed of the right to a fair hearing. Individuals shall be required to participate in work activities as assigned during the fair hearing process.

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. 18 NYCRR 385.12(c).

Section 342 of the Social Services Law and 18 NYCRR 385.12 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.

DISCUSSION

The record indicates that on June 6, 2006, the Agency notified the Appellant of its intent to discontinue the Appellant's Public Assistance grant for 90 days and until the Appellant is willing to comply with work experience requirements on the grounds that the Appellant failed to report on May 11, 2006, for an interview for enrollment in work experience. On June 22, 2006, the Appellant requested a Fair Hearing. Fair Hearing #4577030Y was scheduled for July 13, 2006; the Appellant failed to appear for the hearing. Subsequently, on July 17, 2006, the Appellant requested this fair hearing.

The weight of the credible testimony offered and evidence presented by the Appellant at the hearing established that, after receiving the Agency's letter of conciliation, the Appellant requested a fair hearing on June 22, 2006. Fair Hearing #4577030Y was scheduled for July 13, 2006. The Appellant failed to appear for the hearing as scheduled. When questioned about his

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default, the Appellant admitted that he failed to report to the scheduled hearing but instead reported on July 17th. The Appellant offered as an explanation that this was because he “misunderstood” the date; that he had received but was no longer in possession of a letter that he believed indicated the 17th as the hearing date. On the 17th, the Appellant requested that the Fair Hearing request be reopened.

As the Agency’s notice dated June 6, 2006, states that the Appellant has until August 5, 2006 to request a Fair Hearing to give the State an opportunity to review the Agency’s action, and the Appellant’s request was made well in advance of the August 5th deadline, the Commissioner has jurisdiction to hear this matter and render a decision.

As for the merits of this matter, the Appellant admits that failed to report to the Nassau County Department of Social Services at 10:00 a.m. on May 11, 2006, for an interview for enrollment in work experience, and initially offered two reasons for his absence. First, the Appellant posited that he failed to receive notice of the appointment. Second, the Appellant posited that he had a conflicting medical appointment. Subsequently, the Appellant withdrew his second defense; it will not be addressed in this decision.

At the hearing, the Agency’s mailing procedure was raised, but not discussed thoroughly. The Agency representative described the procedure, but could not state what kind of envelope the notice was mailed in, and could not establish with certainty that the approved mailing procedure had been followed in this instance. Thus, the burden of proof of mailing was not met by the Agency.

Inasmuch as the Agency failed to establish that it followed the correct mailing procedures, the Appellant’s claim of non-receipt of the notice is found to be credible. Therefore, the Appellant’s claim that he did not receive the notice for the May 11th appointment is deemed credible. The Agency’s determination to discontinue the Appellant’s Public Assistance because he failed to comply with work requirements was correct when made, but cannot be implemented at this time.

DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Public Assistance on the grounds that the Appellant refused to comply with work experience requirements was correct when made.

1. The Agency is directed to restore any benefits lost to the Appellant pursuant to this notice, and to continue to provide him with Public Assistance, subject to verified degree of need.

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DATED: Albany, New York
June 8, 2007

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee