

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

REQUEST: April 8, 2008
CASE #: XXXXXXXXXXXXX
CENTER #: 18
FH #: 5012431N

In the Matter of the Appeal of
CP
from a determination by the New York City
Department of Social Services

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**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 June 11, 2008, in New York City, before Glenn Harris, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

CP, Appellant
KG, Appellant's Husband
Susan C. Bahn, Esq., Appellant's Representative
Craig Carson, Appellant's Representative

For the Social Services Agency

A. Ukoli, Fair Hearing Representative

ISSUE

Was the Agency's determination to reduce the Appellant's Public Assistance and Food Stamps on the grounds that Appellant refused to comply with work experience requirements by 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 has been in receipt of Public Assistance and Food Stamps for a household of five persons.

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2. Appellant is the parent or caretaker of a dependent child.

3. On April 1, 2008, the Agency notified the Appellant of its intent to reduce the Appellant's Public Assistance grant for 180 days and until Appellant is willing to comply with work experience requirements and to reduce the household's Food Stamp benefits for six months and thereafter until Appellant complies on the grounds that Appellant refused to cooperate with work experience requirements by failing to report to an employment program appointment on March 13, 2008.

4. On April 8, 2008, 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 131(7)(b) of the Social Services Law provides that where a persons 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 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.

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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).

The parent or care taker relative of a child under thirteen years of age shall not be subject to the ineligibility provisions of Section 342 of the Social Services Law if the individual can demonstrate, in accordance with the regulations of the Office of Children and Family Services, that lack of available child care prevents such individual from complying with the work requirements. The parent or caretaker relative shall be responsible for locating the child care needed to meet the work requirements; provided, however, that the relevant social services district shall provide a parent or caretaker relative who demonstrates an inability to obtain needed child care with a choice of two providers, at least one of which will be a regulated provider.

Section 342 of the Social Services Law and 18 NYCRR 385.12 provides that in the case of an applicant for or recipient of Public Assistance who is a parent or caretaker of a dependent

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child 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 instance of failure to comply without good cause until the individual is willing to comply;
- (b) For the second instance of failure to comply without good cause, for a period of three months and thereafter until the individual is willing to comply;
- (c) For the third and all subsequent instances of failure to comply without good cause, for a period of six months and thereafter until the individual is 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, and thereafter until the individual complies, for the first instance; four months, and thereafter until the individual complies, for the second instance, and six months, and thereafter until the individual complies, 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); 18 NYCRR 385.12(e).

DISCUSSION

The evidence of record establishes that the Appellant has been in receipt of Public Assistance and Food Stamps for a household of five persons, including dependent children. On April 1, 2008, the Agency notified the Appellant of its intent to reduce the Appellant's Public Assistance grant for 180 days and until Appellant is willing to comply with work experience requirements and to reduce the household's Food Stamp benefits for six months and thereafter until Appellant complies on the grounds that Appellant refused to cooperate with work experience requirements by failing to report to an employment program appointment on March 13, 2008.

The Appellant testified that she did not receive an appointment notice for March 13, 2008.

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The Agency initially contended that an appointment notice was mailed to the Appellant. The Agency presented two affidavits, signed by Monica Johnson and Meyer Elbaz, in an effort to establish that the appointment notice was mailed to the Appellant in accordance with the Agency's business practices. However, the affidavits are both dated June 4, 2007. Since the affidavits are over one year old, they are stale, and do not constitute valid evidence concerning the Agency's current mailing practices.

The Agency Representative subsequently argued that he did not think that the notice was mailed to the Appellant, but handed to her at an appointment. There is no evidence that the Appellant had an appointment between March 3, 2008, the date of the appointment notice, and March 13, 2008, the date of the appointment.

The Agency has failed to establish that the appointment notice was either mailed to the Appellant or provided to the Appellant by hand. The Agency has failed to meet its burden of proof and its determination to reduce the Appellant's benefits Public Assistance and Food Stamp benefits cannot be sustained.

DECISION AND ORDER

The Agency's determination to reduce the Appellant's Public Assistance and Food Stamps on the grounds that Appellant refused to comply with work experience requirements was not correct and is reversed.

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

2. The Agency is directed to continue the Appellant's Food Stamp benefits and to restore benefits withheld as a result of the Agency's action retroactive to the date of reduction.

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As required by 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York
June 11, 2008

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee