

STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST June 18, 2004
CASE # Pxxxxxx
CENTER # Nassau
FH # 4140354Q

In the Matter of the Appeal of :

CW

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 September 13, 2004, in Nassau County, before Dennis D'Andrea, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

CW, Appellant
Herbert Harris, Esq., Nassau-Suffolk Law Services

For the Social Services Agency

Will Denson, Fair Hearing Representative

ISSUE

Was the Agency's determination to reduce the Appellant's Food Stamps on the grounds that Appellant refused to cooperate or participate in the assessment process 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 has been in receipt of a grant of and Food Stamps for a household of five persons.
2. Appellant is the parent or caretaker of dependent children.
3. On February 3, 2004, the Agency notified the Appellant to report on February 27, 2004, for an evaluation of her status and to refer her to suitable employment openings.
4. The Appellant did not appear for the February 27, 2004, appointment.
5. On April 3, 2004 the Agency notified the Appellant of its intent to

reduce the Appellant's Family Assistance for at least 180 days and until willing to comply and reduce the household's Food Stamp benefits for at least six months on the grounds that Appellant refused to cooperate or participate in the assessment process.

6. Only the reduction of the Food Stamp benefit is within the Statute of Limitations. The Appellant, through counsel, stated she is contesting only the Food Stamp reduction.

7. 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.

8. The Appellant responded to the notice of conciliation and had a conciliation with the Agency to give reasons for the failure to comply. After evaluating the Appellant's reasons, the Agency issued the Notice of Intent.

9. On June 18, 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 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.

Applicants and recipients are required to participate in an assessment as assigned by the social services official. Based on the assessment, the social services official will develop a written employability plan in consultation with the recipient, which shall set forth:

- (a) the services which the district will provide, including child care;
- (b) the work activities to which the recipient will be assigned;
- (c) the recipient's employment goal, which shall reflect, to the extent possible, the recipient's preferences to the extent they are consistent with the assessment.

In developing the plan, the social services official shall take into account:

- (a) the recipient's supportive services needs;
- (b) the available program opportunities;
- (c) the local employment opportunities;
- (d) if the recipient is assigned to an education program, the

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recipient's liability for student loans, grants and scholarship awards.

If a recipient's preferences cannot be accommodated in the employability plan, the plan shall record the reasons.

Notwithstanding the requirement that the employability be based on the assessment, in developing the employability plan, the social services official must consider the needs of the social services district to meet federal and state work activity participation rates before completing an individual's employability plan.

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.

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 if 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).

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.

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 contended that she did not receive the Agency's letter of February 3, 2004, instructing her to appear for an evaluation on February 27. She entered into evidence two letters from the School District stating that the Appellant had to attend a meeting there at the same time as the Agency's appointment.

The Agency representative testified as to its mailing procedure and noted that the appointment letter was not returned to the Agency. The Agency representative further testified that the letter was sent in a window envelope. The Comment Sheet runs from September 17, 2001, to April 2, 2004, but there are no entries for January nor February 2004 which could have corroborated the mailing of February 3, 2004.

The Appellant testified she did not receive the appointment letter and that she has difficulty with mail delivery which was reported to the U.S. Postal Service by her landlord.

The Appellant's testimony regarding non-receipt of the appointment notice was plausible, consistent, and credible. Therefore, the Agency's determination to reduce the Appellant's grant of Food Stamps was correct when made, but cannot be implemented at this time.

It is further noted that had the Appellant received the appointment letter she would not have been able to attend because she had a conflicting, verified, appointment with the school district in regard to recommendations for special education services for her son. As a result of that school meeting the son was accepted to the program.

DECISION AND ORDER

The Agency's determination to reduce the Appellant's Food Stamps on the grounds that Appellant refused to cooperate or participate in the assessment process was correct when made but cannot be implemented at this time.

1. The Agency is directed to allow the Appellant a reasonable opportunity to attend an appointment to evaluate her status and to refer her to suitable employment openings.

2. The Agency is directed to reinstate 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.

Should the Agency need additional information from the Appellant in order to comply with the above directives, it is directed to notify the Appellant

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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
September 21, 2004

NEW YORK STATE DEPARTMENT
OF HEALTH

By

Commissioner's Designee