

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

**REQUEST:** August 4, 2006  
**CASE #:** P0xxxxxxx  
**AGENCY:** Suffolk  
**FH #:** 4604458Z

---

In the Matter of the Appeal of  
J B  
from a determination by the Suffolk County  
Department of Social Services

:  
:  
:  
:  
:  
:  
:

**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 3, 2006, in Suffolk County, before Richard Levchuck, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

J B, Appellant; Nora Gonzalez, Appellant's Representative; R B, Sr., Witness; W T, Witness

For the Social Services Agency

Randi Delirod, Fair Hearing Representative

**ISSUE**

Was the Agency's determination to discontinue the Appellant's Public Assistance on the grounds that W T refused to cooperate and participate in the assessment process 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 for a household of three, including W T, her eighteen year-old son.
2. W T is not the parent or caretaker of a dependent child.

FH# 4604458Z

3. On July 12, 2006, the Agency mailed a letter to W T advising him to report to the Agency on July 24, 2006 for an employability unit assessment review.
4. Neither the Appellant nor W T received the Agency's letter dated July 12, 2006 which advised W T of the appointment for July 24, 2006.
5. W T failed to report to the Agency on July 24, 2006.
6. On July 27, 2006 the Agency notified the Appellant of its intent to discontinue the Appellant's Public Assistance grant on the grounds that W T refused to cooperate and participate in an assessment.
7. On August 4, 2006, 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.

Section 335-a of the Social Services Law and 18 NYCRR 385.7 requires that to the extent resources are available, social services official shall, within a reasonable period of time not to exceed one year following application for safety net assistance conduct an assessment of employability of applicants and recipients in households without dependent children who are not exempt from assignment to work activities. Such assessment shall include, but not be limited to a review of the individual's 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. This assessment shall include a review of family circumstances.

An applicant or recipient may be assigned to work activities prior to the completion of the assessment.

Based on the assessment, the social services official will develop an employability plan in consultation with the recipient, which shall set forth:

- (a) services that will be provided, including supportive services;
- (b) work activities to which the individual will be assigned;

FH# 4604458Z

- (c) the individual's employment goal.

The plan shall take into account the individual's:

- (a) supportive service needs;
- (b) available program resources;
- (c) local employment opportunities;
- (d) liability for student loans, grants and scholarship awards if the recipient is assigned to an education program.

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 state work activity participation rates before completing an individual's employability plan.

Each applicant for or recipient of Public Assistance must participate in an assessment as required by the social services district. Entire households of applicants who fail or refuse to participate with the requirements of this section shall be ineligible for Public Assistance. Recipients who fail or refuse to participate with the requirements of this section have the right to a conciliation pursuant to Section 341 of the Social Services Law and 18 NYCRR 385.11 and shall be subject to the sanctions set forth in section 342 of the Social Services Law and 18 NYCRR 385.12.

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.

FH# 4604458Z

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.

FH# 4604458Z

## **DISCUSSION**

At the hearing, the Appellant and W T testified that neither of them received the Agency's appointment letter dated July 12, 2006, which notified Mr. T to report for the scheduled assessment appointment on July 24, 2006. This testimony was plausible and was persuasive. The Agency contended at the hearing that the letter was properly addressed to W T and that it was mailed in a window envelope in accordance with mailing procedure that is conducted in the usual course of business. However, it is noted that the address on the appointment letter was handwritten and portions of the address, including the zip code, could not be clearly read.

As such, W T has established a valid basis for his failure to report to the Agency on July 24, 2006. While the Agency's determination to discontinue the Appellant's grant of Public Assistance was correct when made, the Agency should continue to provide the Appellant with Public Assistance and restore any assistance lost to her as a result of its action.

## **DECISION AND ORDER**

The Agency's determination to discontinue the Appellant's Public Assistance on the grounds that W T refused to cooperate and participate in the assessment process was correct when made.

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 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  
November 7, 2006

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee