

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: October 5, 2004
CASE NO: PxxxxxxxBEA
CENTER : Erie
FH No. : 4210017Q

In the Matter of the Appeal of	:
LB	: DECISION
	: AFTER
from a determination by the Erie County	: FAIR
Department of Social Services	: HEARING
	:

JURIDICTION

Pursuant to Section 22 of the New York State Social Services Law (hereinafter referred to as "the Social Services Law") and Part 358 of Title 18 of the New York Code of Rules and Regulations (18 NYCRR, hereinafter referred to as "the Regulations"), a Fair Hearing was held on November 16, 2004, in Buffalo, New York, before Administrative Law Judge Snitzer. The following persons appeared:

For the Appellant

LB, the Appellant;
Marilyn Bradley, the Appellant's representative (NLS);
Penny Selmonsky, observer (NLS)

For the Erie County Department of Social Services
(herein referred to as "the Agency")

Mr. Wile, Senior Examiner

ISSUE

Was a determination to discontinue the Appellant's assistance and benefits, based on failure to submit verification needed to complete a periodic recertification, correct?

FACT FINDINGS

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 Temporary Assistance, Medical Assistance ("Medicaid") and Food Stamp benefits for herself and five children.

2. On September 20, 2004, the Agency determined to discontinue the Appellant's Temporary Assistance and Food Stamp benefits, based on failure to provide verification pertaining to the transfer of her utility services to a new address, and of Section 8 Housing Assistance program approval of her new address.

a. On September 10th, the Appellant appeared for a recertification

interview, and advised her Worker (Mr.Wile) that she would be moving from her BP (B) residence, to a new address on CS, but that her move was subject to inspection and approval of the premises by the agency administering the Section 8 Housing Assistance Program, and arrangements for utility services (gas & electric) at her new address.

- b. Following receipt of that information, the Agency advised the Appellant to submit a Landlord Statement from the new landlord, verification showing that final arrangements to transfer utility services had been completed, and the amount and effective date of Section 8 Rental Assistance at the new address. All requested items were due by September 20th.
 - c. On September 20th, the Agency received a Landlord Statement signed by the property owner on September 17th, indicating an expected "move-in" date of October 1st. It also received a document issued by the agency administering the Section 8 Housing Assistance Program, indicating that the Appellant was eligible for Rental Assistance for rent exceeding the applicable Temporary Assistance allowance, \$395 per month. Although informed the Appellant could not submit verification of the change of her utility services because she has been on vouchered payment arrangements, and that she could not provide verification, on September 20th, of a move scheduled for October 1st, the Agency provided no additional time for submittal.
 - d. The Agency's September 20th notice of intent was mailed to the CS address, despite the Agency's awareness that the Appellant had not yet moved to that address. The Appellant did not receive that notice prior to this hearing, but became aware of action taken thereon after she attempted to access her assistance and benefits for October, but was unable to do so.
3. Although the Appellant's intended move was subject to housing inspection of the premises on CS, those premises initially failed to meet housing quality standards, requiring the Appellant to "hold over" at her BP address beyond October 1st. She was then threatened with eviction from that address based on her failure to vacate, but she was unable to take possession of her new residence on CS until October 21st, after reinspection and a finding that the property then met housing quality standards. She was approved for Section 8 Rental Assistance effective November 1st.
 4. On October 5, 2004, a request for a Fair Hearing was made on behalf of the Appellant, seeking review of the Agency's failure to provide assistance and benefits for October. Said request, made by fax transmittal, sought expedited scheduling based on the threatened eviction.

APPLICABLE LAW

Section 351.20 of the Regulations requires that continuing eligibility for Temporary Assistance must be established through periodic recertification. From time-to-time, recipients of Temporary Assistance are required to respond to eligibility questionnaires and/or to personally appear at face-to-face interviews, to present appropriate documentation to demonstrate their continuing eligibility for such assistance.

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Sections 351.1 and 351.2 of the Regulations require that to demonstrate eligibility, all applicants for or recipients of assistance, benefits or services must present appropriate documentation to verify all variable factors affecting eligibility and need, including, but not limited to all available income and savings or other resources; residence; the identity of all household members; and rent payment or other shelter costs. (For aliens, lawful residency must also be verified.) The obligation to provide documentation to the local social services district to verify the factors which affect eligibility and the amount of assistance to be provided is a condition of eligibility; if any applicant/recipient fails to cooperate in securing necessary documentation, the local district may deny or discontinue assistance, benefits or services.

Section 351.5 of the Regulations provides that each applicant/recipient, any member of his or her household, or public records must be relied upon as a primary sources of information required for proper evaluation of eligibility and degree of need for assistance, benefits or services. It also provides that if a recipient has previously provided documentation which is not subject to change and the local district has that documentation in its files, the recipient shall not be required to re-submit such documentation (except if required for a State quality control review).

Section 351.26 of the Regulations also provides that an applicant or recipient may be excused from eligibility requirements if good cause for failure to comply is shown.

Section 387.17 of the Regulations requires periodic recertification for Food Stamp benefits, also. The local social services district must provide the household with a specific notice of expiration of benefits prior to the first day of the last month of the Food Stamp certification period. A participating household receiving a notice of expiration must attend an interview, and following any Food Stamp recertification interview, the local district must allow the household at least ten calendar days from the interview to submit additional or missing verification.

DISCUSSION

The determination under review, that of discontinuance based on failure to submit all requested verification, cannot be affirmed. The Agency representative sought to explain his issuance of a manual notice on September 20th, claiming he could not be certain the verification would be received prior to September 30th, and because the notice had to be issued at least ten days in advance prevented him from allowing any extension of time. When it was noted that the manual notice he prepared on September 20th was mailed to the wrong address and was never actually received by the Appellant, he offered no explanation for his use of the CS address, knowing the Appellant could not yet have moved.

From his responses, it was clear the Agency representative was fully aware of all pending arrangements related to the Appellant's move, and that every item he requested was dependent on factors outside her control. Thus, he must have been aware the Appellant could not submit any additional information to resolve uncertainty about the actual date of her move, or the final calculation of her rental assistance and its effective date. He was also aware, or should have been, that the Appellant would not make arrangements to have her utility service transferred from one address to

another until she moved.

Finally, it must be noted that this record included testimony regarding a statement or statements made to the Appellant for the apparent purpose of discouraging her from exercising her right to request a case conference or a Fair Hearing. Whether or not such statement(s) were intended as a threat, they were apparently perceived as such. The Agency representative did not deny that such statements had been made.

DECISION AND ORDER

The determination to discontinue the Appellant's Temporary Assistance and Food Stamp benefits, based on failure to submit verification required for completion of a periodic recertification, is not correct, and is reversed.

- * The Agency is directed to take no action on its September 20, 2004 notice, and continue to provide assistance and benefits in accordance with the Appellant's verified degree of need.

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

DATED: Albany, New York
November 26, 2004

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee