

STATE OF NEW YORK
DEPARTMENT OF LABOR

REQUEST November 6, 2002
CASE # P00XXXXXX
CENTER # Suffolk
FH # 3811910K

In the Matter of the Appeal of :
M V :

DECISION
: **AFTER**
FAIR
HEARING

from a determination by the Suffolk 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 January 10, 2003, in Suffolk County, before Jonathan M. Kastoff, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

M V, Appellant
Nora Gonzalez, Representative

For the Social Services Agency

Randi Delirod, Fair Hearing Representative

ISSUE

Was the Agency's determination to reduce the Appellant's Family Assistance 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 Family Assistance for a household of two persons.
2. Appellant is the parent or caretaker of a dependent child.
3. On July 12, 2002, the Agency notified Appellant to report to the Department of Labor (DOL) on July 29, 2002 for an employment assessment.
4. Appellant failed to report to the scheduled assessment at DOL on July 29, 2002.
5. On October 30, 2002 the Agency notified the Appellant of its intent

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

6. Before sending the Notice of Intent, the Agency sent Appellant a notice of conciliation advising this individual of the opportunity to take part in conciliation regarding the Agency's claim.

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

8. Appellant had been sanctioned two times previously for failing to comply with assigned work activities.

9. On November 6, 2002, 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.

Section 335 of the Social Services Law and 12 NYCRR 1300.6 require that each recipient of Public Assistance who is a member of a household with dependent children and is eighteen years of age or older, or who is sixteen or seventeen years of age and is not attending secondary school and has not completed high school or a high school equivalency program, receives an assessment of employability based on his or her educational level, including literacy and English language proficiency, basic skills proficiency, child care and other supportive services needs; and the skills, prior work experience, training and vocational interests. The assessment must include a review of family circumstances including a review of any special needs of a child. The assessment must be completed within 90 days of the date on which such person is determined eligible for Public Assistance. An applicant for or recipient of Public Assistance may be assigned to work activities prior to completion of such assessment. 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

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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 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.

The entire household of an applicant who fails or refuses to participate with the requirements for assessments shall be ineligible for Public Assistance. Recipients who fail or refuse to participate with the requirements of this section shall be subject to the sanctions set forth in section 342 of the Social Services Law and 12 NYCRR 1300.12.

Social services officials are required by Section 341 of the Social Services Law and 12 NYCRR 1300.11 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 notice of denial or 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 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.

Section 342 of the Social Services Law and 12 NYCRR 1300.12 provides that in the case of an applicant for or recipient of Public Assistance who is a parent or caretaker of a dependent 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.

DISCUSSION

Appellant testified that she did not report to the scheduled assessment because Appellant failed to receive the Agency's appointment notice. The Agency mailed the notice to 866 W. Avenue in C. I.. Appellant's address is 866 W. Boulevard in C. I.. Although the Agency representative testified as to the Agency's mailing procedures, including placing the notice in a window envelope, the address for Appellant was incorrect. The Agency failed to present sufficient evidence to establish proof of mailing of the appointment

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notice to Appellant's correct address. Therefore, the Agency's determination to reduce Appellant's Public assistance cannot be sustained at this time.

DECISION AND ORDER

The Agency's determination to reduce the Appellant's Family Assistance on the grounds that Appellant refused to cooperate or participate in the assessment process was not correct.

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

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

DATED: Albany, New York
January 22, 2003

NEW YORK STATE DEPARTMENT
OF LABOR

By

Commissioner's Designee