

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST July 16, 2004
CASE # PXXXXXX
CENTER # Nassau
FH # 4156583J

In the Matter of the Appeal of :

RC

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 August 6, 2004, in Nassau County, before Irene Biggs, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

RC, Appellant
Herb Harris, Esq., Representative

For the Social Services Agency

William D. Denson, Jr., Fair Hearing Representative
Pat Lawrence, Welfare Examiner I, Witness

ISSUE

Was the Agency's determination to deny the Appellant's application for Public Assistance, Medical Assistance, and Food Stamp benefits for failure to provide documentation necessary to determine the Appellant's eligibility for such benefits 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. On May 13, 2004, the Appellant applied for Public Assistance, Medical Assistance, and Food Stamp benefits for himself only. The Appellant listed his mailing address as what appeared to be XX S Street.
2. On May 21, 2004, the Agency sent a Medical Report form 279 to the Appellant at XX S Street. The due date was June 7, 2004.
3. On or about June 2, 2004, the Appellant moved to XX B Street.
4. The Agency was advised of the Appellant's move and assistance with the move was requested.

5. On June 10, 2004, the Medical Report form 279 was returned by the post office.

6. On June 10, 2004, the medical form 279 was resent to the Appellant at XX S Street.

7. On June 14, 2004, the Agency issued a room and board payment for June 1, 2004, through June 30, 2004, for the Appellant's new residence.

8. On July 9, 2004, the Agency sent a Denial Notice setting forth its determination to deny the Appellant's application for Public Assistance, Medical Assistance and Food Stamp benefits because the Appellant had failed to return the 279 form to the Agency by June 7, 2004.

9. On July 16, 2004, the Appellant requested this fair hearing.

APPLICABLE LAW

Regulations at 18 NYCRR 351.1 and 351.2 require that to demonstrate eligibility, applicants for and recipients of Public Assistance must present appropriate documentation of such factors as identity, residence, family composition, rent payment or cost of shelter, income, savings or other resources and, for aliens, of lawful residence in the United States. These obligations also apply to non-legally responsible caretaker relatives of children receiving public assistance, as well as minor siblings of such children residing in the same household. Section 351.5 of the Regulations provides that if the applicant or recipient has previously verified necessary information which is not subject to change and the Agency possesses documentation of such verification in its files, the applicant or recipient is not required to resubmit verification of such information. Section 351.6 of the Regulations provides that verification of data is an essential element of the eligibility investigation process. The applicant or recipient is the primary source of the required information. However, when the applicant or recipient is unable to provide the required verification, the Agency must assist the applicant or recipient in obtaining the verification or make collateral investigation. 18 NYCRR 351.5 and 351.6. If a third party seeks to impose a charge or fee for providing required information to the applicant or recipient, the Agency must pay such fee or must assist the applicant or recipient in obtaining the information by other means. 18 NYCRR 351.5. The applicant's or recipient's failure or refusal to cooperate in providing necessary information is a ground for denying or discontinuing Public Assistance.

An applicant for or recipient of public assistance is exempt from complying with any requirement concerning eligibility for public assistance if the applicant or recipient establishes that good cause exists for failing to comply with the requirement. Except where otherwise specifically set forth in regulations, good cause exists when the applicant or recipient has a physical or mental condition which prevents compliance; the applicant's or recipient's failure to comply is directly attributable to Agency error; or other extenuating circumstances, beyond the control of the applicant or recipient, exist which prevent the applicant or recipient from being reasonably expected to comply with an eligibility requirement. 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

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and evidence provided and make a determination of whether the information and evidence supports a finding of good cause. 18 NYCRR 351.26.

Section 360-2.2(f) of the Regulations requires that a personal interview be conducted with all applicants for Medical Assistance. Such personal interview shall be conducted before a decision on Medical Assistance eligibility is authorized or reauthorized. The State may grant a waiver of the personal interview requirement for recertification of aged, certified blind or certified disabled recipients when the Agency demonstrates that alternative procedures have been established to verify that recipients continue to meet all eligibility requirements for Medical Assistance. Section 360-2.3 of the Regulations provides that the Medical Assistance applicant and recipient has a continuing obligation to provide accurate and complete information on income, resources and other factors which affect eligibility. An applicant or recipient is the primary source of eligibility information. However, the Agency must make collateral investigation when the recipient is unable to provide verification. The applicant's or recipient's failure or refusal to cooperate in providing necessary information is a ground for denying an application for a Medical Assistance Authorization or for discontinuing such benefits.

Section 360-2.4(c) of the Regulations provides that an initial authorization for Medical Assistance will be made effective back to the first day of the first month for which eligibility is established. A retroactive authorization may be issued for medical expenses incurred during the three month period preceding the month of application for Medical Assistance, if the applicant was eligible for Medical Assistance in the month such care or services were received.

The Food Stamp application process includes filing and completing the application form, being interviewed and having certain information verified. If the household refuses to cooperate with the Agency in completing this process, the application shall be denied. In order for a determination of refusal to be made, the household must be able to cooperate but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. 7 CFR 273.2(d); 18 NYCRR 387.5, 387.6, 387.7.

For households initially applying for Food Stamp benefits mandatory verification shall be completed regarding: gross nonexempt income, alien status, shelter expenses, medical expenses, residency, household size, Social Security number, identity, date of birth, utility expenses, resources, disability and, if questionable, household composition and citizenship and any other questionable information that has an effect on the household's eligibility and benefit level. 7 CFR 273.2(f); 18 NYCRR 387.8(b).

To be considered questionable, the information on the application must be inconsistent with statements made by the applicant, or inconsistent with other information on the application or previous applications. The local department shall determine if information is questionable based on the household's individual circumstances. 7 CFR 273.2(f); 18 NYCRR 387.8(b).

Written documentary evidence is to be used as the primary source of verification of all items except residency and household size. Residency and household size may be verified either through readily available documentary evidence or through a collateral contact. Residency is to be verified except

where verification cannot reasonably be accomplished such as in homeless cases. 7 CFR 273.2(f); 18 NYCRR 387.8(b).

The household has the primary responsibility for providing documentary evidence to support its application and to resolve any questionable information. The local Agency, however, is obligated to offer assistance in situations where the household cannot obtain the documentation in a timely manner. Such assistance may include using a collateral contact or home visit unless otherwise required by Federal or State Regulations. 7 CFR 273.2(f); 18 NYCRR 387.8(b).

If the Agency determines to verify a deductible expense and such verification has not been obtained and obtaining the verification may delay the household's certification, then the Agency may determine eligibility and benefit level without providing a deduction for the claimed but unverified expense, including medical expense. If the household subsequently provides verification, benefits shall be redetermined. 7 CFR 273.2(f).

When a household's eligibility cannot be determined within thirty days of filing of the application, the Agency must determine the cause of the delay. If the delay is the fault of the household, then the application must be denied. However, if the household takes the required action within sixty days of the filing of the application, the case must be processed without requiring a new application. Prorated benefits must then be provided to the household from the date the necessary verification was provided. If the delay is the fault of the Agency, then the Agency must notify the household as to what action it must take to complete the application. The cause of the delay in failing to complete verification shall be considered the household's fault only if the Agency has assisted the household in trying to obtain the verification and allowed the household at least ten days to obtain the missing verification. If the household is found to be eligible during the second thirty-day period, prorated benefits must be provided from the date of application. 7 CFR 273.2(h); 18 NYCRR 387.14(a)(4).

If, due to the Agency's fault, the application process is not completed by the end of the second thirty-day period, the Agency must continue to process the application until an eligibility decision is reached. If the household is found eligible and the Agency was at fault for the delay in the initial thirty days, the household must receive benefits retroactive to the day of application. However, if the initial thirty-day delay was the household's fault, the household must receive benefits retroactively to the date final verification of all required eligibility factors was received. If the household was at fault for not completing the application process by the end of the second thirty-day period, the application must be denied and the household will not be entitled to any lost benefits, even if the delay in the initial thirty days was the fault of the Agency. 18 NYCRR 387.14(a)(4).

DISCUSSION

The Appellant stated that, at the time of application for Public Assistance, Medical Assistance, and Food Stamp benefits, he listed his brother's address as his mailing address. The Appellant testified that his brother lives at XX S Street. The Appellant, however, listed his brother's address as XX S Street on his application. The Appellant stated that he was not sure how to spell S.

Based on the mailing address on the application, on May 21, 2004, the

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Agency mailed a Medical Report form to the Agency at XX S Street advising that the form should be returned by June 7, 2004. The 279 form was returned to the Agency by the post office on June 10, 2004. The Agency's witness then mailed it out again on June 10, 2004. The Agency initially stated that the 279 was mailed to the Appellant's current address of record. The Agency did not submit sufficient evidence to establish that fact. In addition, the Appellant's representative submitted a copy of an Agency envelope postmarked June 11, 2004. This envelope was addressed to XX S Street. The Appellant stated that the 279 form was in that envelope and that the post office did finally deliver it to his brother's address but not until sometime in July 2004.

The record establishes that the Appellant provided the Agency with an incorrect mailing address, but that said address was not provided by the Appellant for any fraudulent purpose. Relying on the information provided by the Appellant, the Agency sent the medical form to the incorrect address. It appears that, while someone at the Agency was aware of the Appellant's move to H in June 2004, the Agency's witness was not aware of said move and remailed the 279 form to the Appellant at his mailing address of XX S Street. The Appellant did not receive the form in a timely manner and, therefore, was unable to return it to the Agency as requested.

It is also noted that the Agency's notice advised the Appellant that his application was being denied for failing to return the 279 form by June 7, 2004. The Appellant had not received the form at that point and the Agency was aware of that fact.

The Agency's determination cannot be affirmed.

DECISION AND ORDER

The Agency's determination to deny the Appellant's application for Public Assistance, Medical Assistance and Food Stamp benefits is not correct and is reversed.

1. The Agency is directed to continue to process the Appellant's application and afford the applicant the opportunity to submit any other documents necessary to establish eligibility.

2. The Agency is directed to advise the Appellant in writing of its determination and to provide lost benefits, if any.

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 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
August 30, 2004

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee