
In the Matter of the Appeal of
BT
from a determination by the Erie County
Department of Social Services

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**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 July 8, 2008, in Erie County, before Martin Erazo, Jr., Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant
BT, Appellant
JC, witness

For the Social Services Agency
Alfred P. Nicosia, Fair Hearing Representative

ISSUE

Was the Agency's February 1, 2008 determination to discontinue the Appellant's Public Assistance benefits, because the Appellant failed to provide the agency with medical documentation, 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, age 52, had been in receipt of Public Assistance benefits for a household only for herself.
2. The Appellant advised the Agency that she has a visual impairment which limits the Appellant's ability to participate in work activities.

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3. On December 6, 2007, the Agency advised the Appellant to present medical documentation by January 16, 2008 containing a specific medical diagnosis and specifying any work limitation.

4. On February 1, 2008, the Agency determined to discontinue the appellant's Public Assistance benefits on the grounds that the Appellant failed to provide the Agency with medical documentation by January 16, 2008.

5. On February 29, 2008, the Appellant requested this fair hearing.

APPLICABLE LAW

Section 332-b of the Social Services Law and regulations at 18 NYCRR 385.2(d), provide that the Agency must, at application and recertification or whenever there is reason to believe that an applicant for or recipient of Public Assistance might have a physical or mental impairment, inquire whether such individual has any medical condition which would limit his/her ability to participate in work activities.

If the applicant or recipient declares that he or she has a mental or physical impairment, the Agency must notify the individual of the opportunity to present to the Agency, within ten calendar days of such notification, any medical documentation, including but not limited to, drug prescriptions and reports of the individual's treating health care practitioner. Such documentation must contain a specific diagnosis resulting from any medically appropriate tests and specify any work limitation of the individual.

The Agency may also, either in addition to or instead of the above, refer the individual to a health care practitioner certified by the New York State Office of Disability Determinations or, if applicable, to the contracted agency or institution by or with which such health care practitioner is employed or affiliated, for a determination of the individual's medical condition. If the Agency refers an individual to the district's practitioner prior to such individual submitting documentation from the individual's practitioner, the individual shall make his or her best efforts to bring the documentation to the examination by the district's practitioner, so that it may be reviewed as a part of the examination. In such instances, any documentation available from the individual's practitioner must be submitted to the district's practitioner no later than four days after the examination, provided that in no instance shall such time period exceed ten calendar days from the notification set forth above, or the district's practitioner will not be required to consider it as a part of the evidence used to determine the individual's medical condition.

In evaluating an individual's claim of a physical or mental impairment, the Agency shall have sole discretion in determining whether any documentation provided by the individual's practitioner is sufficient to make such a determination.

In evaluating the initial claim of a mental or physical impairment made by an applicant, or the continuing claim of a medical impairment made by a recipient who has been previously determined exempt from participation in work activities, the social services official may require

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the individual to submit medical documentation as a condition of eligibility for public assistance and food stamps in accordance with the requirements of Parts 351 and 387 of 18 NYCRR.

DISCUSSION

The Agency's February 1, 2008 determination to discontinue the Appellant's Public Assistance benefits, because the Appellant failed to provide the agency with medical documentation by January 16, 2008, was not correct and is reversed.

Procedure

On April 14, 2008, the Appellant was granted an adjournment by the hearing officer in order to review the documents that were submitted by the Agency. The adjournment was granted on the basis of the Appellant's claim of a visual impairment. The time was allowed so the Appellant could have an opportunity to review and understand the evidence presented by the Agency. On April 24, 2008, the Office of Fair Hearings (OAH) granted an adjournment in order to allow the Appellant the time to retain an attorney. On June 9, 2008, the Appellant's counsel appeared at hearing, however, the Appellant did not. The Appellant had transportation problems. OAH scheduled the new hearing date for July 8, 2008. On July 8, 2008, a hearing was held on the merits. The Appellant confirmed that her attorney had withdrawn her appearance. (Agency Exhibit 4) The Appellant also confirmed that she wished to proceed without the benefit of counsel.

Good Cause

The Agency established that the Appellant did not submit a completed medical form by January 16, 2008, in support of her claim that she is unable to engage in employment related activities. The Appellant established good cause reasons for her actions.

First, the Appellant testified that she did not receive the Agency's December 6, 2007 request for a medical form that was due by January 16, 2008. (Agency Exhibit 1, pp.3-4)

The Agency did not establish a rebuttable presumption that the December 6, 2007 document was mailed to _____, _____, New York _____. The Agency provided an affidavit of mailing that described in detail the mailing procedures used in the issuance of manual notice. (Agency Exhibit 5, p.9) However, the affidavit, and Agency testimony, did not establish key elements necessary to establish a presumption. There is no indication on the affidavit identifying who prepared the document. The name is not identified anywhere. The signature is not legible. No testimony was given stating who prepared it.

Even if the Agency had established a presumption of mailing, the Appellant presented credible testimony to rebut this presumption. The Appellant credibly testified that she had serious mailing problems when she moved from her _____, Buffalo address to _____, Buffalo address. The Appellant lived at the _____ address for 6 years. The Appellant moved to the _____ address in November 2007. The Appellant testified that the United States Postal Service (USPS) continued to deliver her mail to her _____ address after she moved to _____. The Appellant complained to the United States Postal Service (USPS). The Appellant gave convincing

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testimony concerning her conversations with the USPS. The Appellant twice spoke with a USPS representative "Marvin" who eventually corrected the mailing problem. The Appellant further testified that she only became aware that the Agency had proposed to close her case when she called the Agency on a different issue related to Medicaid.

Based upon the totality of the evidence, the Appellant has established good cause for failing to provide the medical documentation requested by the Agency by January 16, 2008.

The Agency also established that subsequent to the January 16, 2008 deadline, the Appellant and her representative had been given additional opportunities to submit a medical statement. The Agency specifically identified that on April 14, 2008 and on June 9, 2008, the Appellant, or her representative at the time, was manually handed a blank medical form to fill. To date, the Appellant has failed to submit the medical.

Nonetheless, the Appellant's good cause argument on this point has been very consistent throughout her testimony. The Appellant clearly and convincingly has informed the Agency that she did not have the money to pay for a doctor's visit to review of her medical situation. The Appellant credibly stated that she had informed her worker, Mr. Graczyk, of the need to receive Medicaid so that she could have a medical doctor make an assessment. It was Mr. Crenshaw who initially sent the Appellant the December 6, 2007 letter with the January 16, 2008 deadline. The Agency did not produce Mr. Crenshaw as a witness. The Appellant's testimony remained unchallenged on this point.

The Appellant described in detail what appears to be a serious medical condition that seriously limits her daily functioning. The Appellant detailed that she moved in with her mother at the address when the Appellant could no longer care for herself because of her deteriorating eyesight. The Appellant claims that she is legally blind in her left eye and needs to be assessed for her deteriorating vision in her right eye. The Appellant claimed that she last saw an eye doctor in 2006 but cannot afford to visit one without having the ability to pay for the services. The Appellant subsequently moved with her mother to , Buffalo, New York , where she currently lives.

The Appellant's testimony is also consistent with the hearing officer's observations. It appears that the Appellant had a genuine problem seeing where she was going when entering and leaving the hearing room. The Appellant also appeared to have a serious problems viewing and reading the material handed to her.

In summary, the evidence supports that Appellant did not receive the December 6, 2007 Agency notice. The evidence supports that even if the Appellant had received the notice the Appellant had informed the Agency that she needed assistance in obtaining a medical assessment of her condition because she did not have the funds to pay for an assessment of her visual impairment. The Appellant's unchallenged testimony supports that the Appellant informed the Agency that she needed help with Medicaid for the very purpose of obtaining a medical assessment.

DECISION AND ORDER

The Agency's February 1, 2008 determination to discontinue the Appellant's Public Assistance benefits, because the Appellant failed to provide the agency with medical documentation, was not correct and is reversed.

1. The Agency is directed to reinstate the Appellant's grant of Public Assistance benefits and to restore any Public Assistance withheld retroactive to the effective date of the Agency's action, February 16, 2008.

2. The Agency is directed to assist the Appellant in obtaining a medical assessment of her visual impairment.

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
August 22, 2008

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee