

STATE OF NEW YORK  
DEPARTMENT OF LABOR

REQUEST April 29, 2002  
CASE # PXXXXXXXXX  
CENTER Suffolk  
FH # 3712336Z

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In the Matter of the Appeal of :

DH

**DECISION**  
: **AFTER**  
**FAIR**  
**HEARING**

from a determination by the Suffolk County  
Department of Social Services :

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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 May 30, 2002, in Suffolk County, before Richard S. Levchuck, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

DH, Appellant; Antonia Ezechi, Esq., Appellant's Representative

For the Social Services Agency

Randi Delirod, Fair Hearing Representative

ISSUE

Was the Agency's determination to discontinue the Appellant's Safety Net Assistance on the grounds that Appellant refused to report to the Agency in order to register with its Work Experience Program 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 Safety Net Assistance for a household of one person.
2. Appellant is not the parent or caretaker of a dependent child.
3. On December 19, 2001, the Agency sent notification to the Appellant advising him to report to its Department of Labor on January 8, 2002 in order to register with its Work Experience Program.
4. The Appellant did not receive the notification from the Agency dated December 19, 2001 advising him to report to its Department of Labor on January 8, 2002.

5. The Appellant failed to report to the Agency's Department of Labor on January 8, 2002.

6. On April 20, 2002 the Agency notified the Appellant of its intent to discontinue the Appellant's Safety Net Assistance for at least 90 days and until willing to comply on the grounds that Appellant refused to report to the Agency's Department of Labor in order to register with its Work Experience Program.

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

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

9. On April 29, 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.

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 12 NYCRR 1300.11 and 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.

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

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whether the information and evidence supports a finding of good cause. 12  
NYCRR 1300.12(c).

Section 342 of the Social Services Law and 12 NYCRR 1300.12 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.

#### DISCUSSION

At the hearing, the Appellant testified that he did not report to the Agency's Department of Labor on January 8, 2002 because he did not receive the notification of this appointment from the Agency. This testimony was plausible and was persuasive. The Agency noted at the hearing that there was some indication of difficulties with mail delivery involving the Appellant as other mail had been returned to the Agency by the post office. As such, the Appellant has established good cause for his failure to report to the Agency's Department of Labor on January 8, 2002. The Agency's determination to discontinue Safety Net Assistance to the Appellant cannot be sustained.

#### DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Safety Net Assistance on the grounds that Appellant refused to report to the Agency's Department of Labor in order to register with the Work Experience Program was not correct and is reversed.

1. The Agency is directed to continue the Appellant's grant of Safety Net Assistance 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 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  
June 12, 2002

NEW YORK STATE DEPARTMENT  
OF LABOR

By

Commissioner's Designee