

STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: July 20, 2007  
CASE #: Pxxxxxxx  
AGENCY: Suffolk  
FH #: 4833248J

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In the Matter of the Appeal of :  
DS : **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 August 31, 2007, in Suffolk County, before Cynthia R. Wong-Ortiz, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

DS, Appellant; Nora Gonzalez, Appellant's Representative,. Nassau/Suffolk Law Services

For the Social Services Agency

Amie Salinero, Fair Hearing Representative

**ISSUE**

Was the Appellant's request for a fair hearing to review the Agency determination to discontinue the Appellant's Safety Net Assistance and Food Stamp benefits on the grounds that the Appellant failed to report for enrollment in a Work Experience Program (WEP) or report back to the Department of Labor (DOL) by 3:00 pm the next business day timely?

Assuming the request was timely, was the Agency's determination to discontinue the Appellant's Safety Net Assistance and Food Stamp benefits 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 32, has been in receipt of Safety Net Assistance and Food Stamp benefits for one person.
2. The Appellant is not the parent or caretaker of a dependent child.
3. On April 17, 2007, the Appellant signed and received an Appointment letter for the Appellant to report for Enrollment in Work Experience on April 26, 2007. Further, the Appellant signed and received the WEP Participant Fact Sheet, and his Employability Plan.
4. On April 26, 2007, the Appellant failed to report for enrollment in WEP as directed. The Appellant did not appear at DOL by 3:00 pm the next business day.
5. On May 16, 2007, the Agency notified the Appellant of its intent to discontinue the Appellant's Public Assistance grant for 150 days and until the Appellant is willing to comply with work experience requirements and to discontinue the household's Food Stamp benefits for four months and thereafter until the Appellant complies on the grounds that the Appellant refused to cooperate with work experience requirements by failing to report for enrollment in a Work Experience Program or report back to the DOL by 3:00 pm the next business day.
6. The Notice advised the Appellant that a fair hearing must be requested within sixty days of the Agency's action concerning Public Assistance and within ninety days of the Agency's action concerning Food Stamps.
7. The Agency mailed the notice to the Appellant's address as contained in the Appellant's case record.
8. 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.
9. The Appellant did not respond to the notice of conciliation and the Agency subsequently issued the Notice of Intent.
10. On July 20, 2007, the Appellant requested this fair hearing.

**APPLICABLE LAW**

Section 22 of the Social Services Law provides that applicants for and recipients of Public Assistance, Emergency Assistance to Needy Families with Children, Emergency Assistance for Aged, Blind and Disabled Persons, Veteran Assistance, Medical Assistance and for any services

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authorized or required to be made available in the geographic area where the person resides must request a fair hearing within sixty days after the date of the action or failure to act complained of. In addition, any person aggrieved by the decision of a social services official to remove a child from an institution or family home may request a hearing within sixty days. Persons may request a fair hearing on any action of the social services district relating to food stamp benefits or the loss of food stamp benefits which occurred in the ninety days preceding the request for a hearing. Such action may include a denial of a request for restoration of any benefits lost more than ninety days but less than one year prior to the request. In addition, at any time within the period for which a person is certified to receive food stamp benefits, such person may request a fair hearing to dispute the current level of benefits.

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 person 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.

Pursuant to Section 336-c of the Social Services Law and 18 NYCRR 385.9, work experience programs meeting State and federal requirements may be established by social services districts. Work experience programs may include the performance of work for a federal office or agency, county, city, village or town or for the State or in the operation of or in an activity of a nonprofit agency or institution.

Work experience opportunities are limited to projects which serve a useful public purpose in fields such as health, social services, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, operation of public facilities, public safety, and child day care.

Social services officials are required by Section 341 of the Social Services Law and 18 NYCRR 385.11 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

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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 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 must establish a conciliation procedure for the resolution of grievances initiated by individuals assigned to work activities to give individuals an opportunity to dispute an assignment to a work activity. No sanction related to the participant's failure to comply may be imposed during this conciliation period. If the individual's grievance is not resolved, the individual shall be informed of the right to a fair hearing. Individuals shall be required to participate in work activities as assigned during the fair hearing process.

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 of 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. 18 NYCRR 385.12(c).

Section 342 of the Social Services Law and 18 NYCRR 385.12 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.

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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.

Pursuant to 7 U.S.C. 2015 (Section 6 of the federal Food Stamp Act of 1977), as amended by the the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), if a disqualification is imposed on a member of a household because of that member's failure to perform an action required under a federal, State or local law relating to a means-tested public assistance program, the Agency may also impose a disqualification on the household member under the Food Stamp Program.

If the Agency determines that an individual has refused or failed without good cause to comply with Food Stamp employment requirements, that individual is ineligible to receive Food Stamp benefits for two months, and thereafter until the individual complies, for the first instance; four months, and thereafter until the individual complies, for the second instance, and six months, and thereafter until the individual complies, for the third and subsequent instance of a failure to comply. For the period prior to August 19, 2002, a subsequent failure had to be within three years of the previous such failure in order to increase the duration of the sanction. 7 CFR 273.7(g); 18 NYCRR 385.12(e).

## **DISCUSSION**

On May 16, 2007, the Agency notified the Appellant that it had determined to discontinue the Appellant's Safety Net Assistance and Food Stamp benefits on the grounds that the Appellant failed to report for enrollment in a Work Experience Program or report back to DOL by 3:00 pm the next business day.

Although the Agency's notice advises the Appellant that a fair hearing must be requested within sixty days of its action concerning Public Assistance or Medical Assistance and within ninety days of its action concerning Food Stamp benefits, the Appellant failed to request this fair hearing until July 20, 2007, which was more than sixty days after the Agency's determination.

The Agency stated that the Notice of Intent, dated May 16, 2007, was sent to the Appellant's address of record. The Agency testified as to the mailing procedure, and noted that mail from the Department of Social Services (DSS) cannot be forwarded, and should any mail be deemed undeliverable, said mail would be returned to DSS. The Agency further testified that should the Appellant have any problems with the receipt of his mail, he should have taken steps to rectify the situation. Also the Agency introduced a copy of a notarized Affidavit, signed by Michael D. Taber, the Client Notice System (CNS) Project Manager, employed by Office of Temporary and Disability Assistance (OTDA). Said Affidavit states the mailing procedure for the CNS Notices mailed from Albany.

The Agency stated that the Appellant requested the Fair Hearing on July 20, 2007. The Agency further stated that due to the Statute of Limitations of sixty days, the Appellant is barred

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from the merits of the Notice dated May 16, 2007, being heard at the Fair Hearing, as the Commissioner lacks jurisdiction to hear this matter.

The Appellant stated that he did not receive the Notice dated May 16, 2007. The Appellant stated that he did not even know that his aid had stopped until the Landlord from his building advised him in July, 2007, that she did not receive the rent check from the Agency. The Appellant then stated that he went to DSS and inquired as to the status of his aid, and he was advised that he was under a DOL sanction for failure to report for WEP Enrollment. The Appellant then requested that he receive some type of written notice, wherein, the Agency gave the Appellant a hand-written Notice, dated July 25, 2007. Said Notice advised the Appellant of his DOL sanction and the period of each sanction, as to Public Assistance and Food Stamps.

The Appellant further testified that he has had trouble with the receipt of his mail, and has spoken to the Landlord about his non-receipt of mail. The Appellant stated that the Landlord, B D , was uncooperative. The Appellant further explained that the Landlord has placed mailboxes at some of her residences, but not at his residence. Upon inquiry, the Appellant acknowledged that he did not go to the Post Office to complain about the non-receipt of his mail, nor did he request that his mail be re-directed. The Appellant stated that all of his mail, including mail from DSS, is forwarded to the Landlord's address of XX H Drive, C, NY XXXXX. The Appellant testified that his mail is in a large bin at the aforementioned address. The Appellant further testified that when DSS provides tokens to the Appellant in his mail, the tokens are taken before he retrieves his mail.

The record does establish a sufficient basis for tolling the statute of limitations. The Agency acknowledged that other Appellants who reside in similar type housing owned by the Appellant's Landlord have problems with the receipt of their mail. The Appellant's testimony was credible, as it established a sufficient basis for tolling the statute of limitations. The Appellant stated he repeatedly approached the Landlord about the non-receipt of his mail, requested that a mailbox be placed at his specific residence, and complained about his tokens being taken before he could retrieve them from his mail. Additionally, the Appellant stated that his mail from DSS was being forwarded, in direct contradiction to the Agency's statement that no mail from DSS can be forwarded. The Appellant's statement was not in dispute. Therefore, a sufficient basis for tolling of the statute of limitations was established.

As to the merits of the case, the Agency stated that the Appellant signed and received the Appointment letter to enroll in the WEP Program on April 17, 2007, and in addition, signed and received the WEP Fact Participant sheet. The Appellant failed to appear for enrollment at the WEP worksite as directed, and did not appear at DOL by 3:00 pm the next business day. As such, the Appellant willfully and without good cause failed to comply with work experience requirements.

The Appellant stated that he went to see his caseworker, Mr. M and was given a job interview appointment at T Appliance and was subsequently hired on April 19, 2007. The Appellant further stated that he called his caseworker and advised him on the same day that he secured employment at T Appliance. The Appellant then stated that his caseworker advised him

to provide the Agency with verification of said employment, no later than April 26, 2007. The Appellant testified that he mailed the Employment Verification form to the Agency on the next day, April 20, 2007. Upon inquiry, the Appellant admitted that he did not follow-up with the Agency to verify receipt of said form. The Appellant stated that he then learned of his DOL sanction only after his Landlord advised him, in July 2007, that she did not receive his rent payment for June, 2007. The Appellant further stated that he went to DSS wherein he requested and received a written notice, dated July 25, 2007, which indicated his sanction periods for both Public Assistance and Food Stamps. The Appellant stated that he was under the belief that the Agency received his employment verification because he spoke with his caseworker directly about securing the job, and he never received any Notice indicating anything to the contrary.

The Appellant also stated that he was working on April 26, 2007, the date he was directed to appear for Enrollment in WEP. At the Fair Hearing, the Appellant introduced a letter from T Appliance, verifying that the Appellant was hired on June 19, 2007, and on June 26, 2007, the Appellant was working from 9:00 am until 5:30 pm. Said letter did not address whether the Appellant was working on June 27, 2007, although, it should be noted that the Appellant was hired to work full-time.

The Appellant's representative, Ms. Gonzalez, testified on behalf of the Appellant. Ms. Gonzalez testified that she spoke with the Appellant's caseworker. She further testified that the caseworker recalled speaking with the Appellant when he called to advise the Agency that he secured employment at one of the job referrals given to him by the Agency. Ms. Gonzalez further testified that the caseworker also recalled advising the Appellant to verify said employment, but the Agency never received the verification form.

In sum, although the Appellant did not report to a WEP worksite for enrollment as directed, good cause was found for such non-compliance. The Appellant's testimony was found to be credible because he testified that he directly spoke with his caseworker about securing a job that the caseworker referred him to and that he mailed the verification form to the Agency on the very next day, June 20, 2007. Ms. Gonzalez' testimony corroborated the Appellant's contentions. The Appellant further testified that he never received the Notice dated May 16, 2007, and had to appear at DSS to request a hand-written notice about his DOL sanctions, as he had no prior knowledge of such. Further, the Appellant was able to produce a letter from his employer verifying his whereabouts on June 26, 2007, wherein the Appellant failed to appear for enrollment at the WEP worksite. The Appellant's testimony was credible as it was consistent and persuasive. The Agency determination in issue was correct when made. Therefore the Agency determination in issue cannot be imposed.

### **DECISION AND ORDER**

Although this hearing was requested more than sixty days after the Agency determination sought to be reviewed, the Appellant has established good cause to toll the statute of limitations. Hence, the Commissioner has jurisdiction to review the local Agency's determination.

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The Agency's determination to discontinue the Appellant's Public Assistance and Food Stamps on the grounds that the Appellant refused to comply with work experience requirements was correct when made.

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

2. The Agency is directed to continue the Appellant's Food Stamp benefits and to restore benefits 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 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  
September 25, 2007

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee