

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST December 26, 2000
CASE #
CENTER # Suffolk
FH # 3462886Q

In the Matter of the Appeal of :
BM

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 February 27, 2001, in Suffolk County, before Irene Biggs, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

BM, Appellant
CK, Representative
DK, Case Manager, Witness

For the Social Services Agency

William Schneid, Fair Hearing Representative
Carol Whiting, Suffolk County Department of Labor, Witness

ISSUE

Was the Agency's determination to reduce the Appellant's Family Assistance on the ground that Appellant refused to participate in the assessment process correct?

Was the Agency's determination to discontinue the Appellant's temporary housing 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 herself and her four children, ages thirteen, eleven, eight, and four.

2. By letter dated July 19, 2000, the Nassau County Department of Labor (DOL) advised the Appellant of an August 3, 2000, employment assessment appointment.

3. The Appellant did not report to the August 3, 2000, appointment because she had not received the appointment letter.

4. On September 6, 2000, the Agency notified the Appellant of its intent to reduce the Appellant's Family Assistance and discontinue Appellant Medical Assistance for at least three months and until willing to comply on the ground that Appellant refused to participate in the assessment process.

5. 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.

6. The Appellant did not respond to the notice of conciliation in a timely manner and the Agency subsequently issued the Notice of Intent.

7. On September 15, 2000, the Agency notified the Appellant of its intent to discontinue her temporary housing during her Public Assistance sanction. The notice also advised the Appellant that her children could not remain in temporary housing without the Appellant.

8. On December 26, 2000, the Appellant requested this fair hearing.

9. A prior fair hearing was held on October 5, 2000 and the decision issued on October 31, 2000, which affirmed the Agency's decision to reduce the Appellant's Public Assistance because she failed to cooperate in the assessment process. Subsequent to that, the Appellant's representative requested reconsideration of that issue on the basis that the Agency failed to establish at the hearing that it had mailed the assessment appointment notice in question. Based on an error of fact, after review it was determined to vacate fair hearing #3395064J. The record was reopened for this **de novo** 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 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.

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

FH# 3462886Q

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.

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 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).

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.

352.35 Eligibility for temporary housing assistance for homeless persons.

- (a) Scope. This regulation governs the provision of temporary housing assistance to persons who are homeless. It sets forth the requirements with which an individual or family who applies for temporary housing must comply in order to be eligible for temporary housing assistance.
- (b) Definitions.
 - (2) Independent living plan is a plan developed and/or revised by a social services district and/or its designee, with the cooperation of an individual or family, which sets forth a strategy for meeting such individual's or family's housing-related public assistance and care needs as identified in an assessment and for obtaining housing other than temporary housing and which establishes such individual's or family's responsibilities during their receipt of temporary housing assistance and specifies the conditions upon which temporary housing assistance will be provided. An independent living plan also must specify the temporary housing facility, if any, to which the individual or family has been or will be referred, any requirements of such facility, and the expected duration of the

FH# 3462886Q

individual's or family's receipt of temporary housing assistance.

- (4) Temporary housing assistance is a public assistance benefit provided temporarily for an eligible homeless individual or family to meet an immediate need for shelter.
- (c) As a condition of eligibility for temporary housing assistance, individuals and families must comply with the requirements of this subdivision. Temporary housing assistance will be denied or discontinued under the conditions specified below. Temporary housing assistance will not be denied or discontinued for failure of the individual or family to comply with the requirements of this subdivision when such failure is due to the physical or mental impairment of the individual or family member.
- (1) An individual or family must cooperate in and complete an assessment conducted by the social services district. When an individual or family fails to cooperate in and complete the assessment, the social services district must deny the individual's or family's application for temporary housing assistance.
- (2) An individual or family must cooperate with the social services district in developing, carrying out and completing an independent living plan, if the social services district, based on its assessment of the individual or family, has determined that such a plan will assist such individual or family to relocate to housing other than temporary housing. When an individual or family unreasonably fails to comply with the independent living plan requirements, the social services district must discontinue temporary housing assistance. When an individual or family unreasonably fails two or more times to comply with the independent living plan requirements, the social services district must discontinue temporary housing assistance and the individual or family is disqualified from receiving temporary housing assistance until the failure ceases or for 30 days, whichever period of time is longer.
- (d) Prior to denying or discontinuing temporary housing assistance pursuant to subsection (c) of this section, the social services district must evaluate the individual's or the family's need for protective services for adults, preventive services for children and protective services for children and, if necessary, make an appropriate referral.

(e) A homeless individual or family applying for or receiving temporary housing assistance, pursuant to sections 352.3(e) or 352.8 of this Part or Parts 371 or 491 of this Title, also must comply with all other applicable public assistance and care requirements including, but not limited to:

- (1) requirements for participation in employment and training programs, in accordance with part 385 of this title, including looking for work, engaging in training, accepting jobs and work assignments, and participating in rehabilitative services;

Failure to comply with any public assistance and care requirements, including, but not limited to, those described above, will subject the recipient of temporary housing assistance to the sanctions specified in the applicable sections of this Title.

DISCUSSION

The Appellant stated that she and her family relocated to scattered site temporary housing in January 2000 and were having problems with the receipt of mail while residing there. The Appellant stated that her mailbox was repeatedly broken into and that in February 2000 she purchased a new lock for her mailbox from the post office. The Appellant submitted a copy of the lock receipt. The Appellant testified that she was concerned about not receiving her mail from DOL and the Agency and therefore advised her CHI case manager of the problems with her receipt of mail. The Appellant's CHI case manager verified that the Appellant spoke to her about difficulties with receipt of mail. The Appellant's case manager stated that as a result, on March 27, 2000, she faxed the Agency requesting that any mail sent by the Agency, as well as by DOL, to the Appellant be sent in care of her case manager at CHI. The Appellant's case manager explained that she did not have a transmittal receipt for the March 27, 2000, fax because CHI's fax machine does not routinely issue a receipt after each transmission.

The Appellant stated that for many months during the first half of 2000, she had problems with the Agency's processing of her Public Assistance application and therefore frequently went in person to the Agency. The Appellant contended that because of her frequent in-person contacts with the Agency, she did not realize that the Agency had not changed her mailing address. The Appellant's case manager stated that in August 2000, when they realized that the Appellant had not received mail from the Agency, she contacted the Agency again and was advised to re-submit the letter requesting the change in mailing address, which she did.

Although the Agency submitted sufficient evidence to establish that the Appellant's appointment letter was sent to her temporary housing address,

FH# 3462886Q

the Appellant's and her case manager's testimony, and supporting documentation, were credible and are sufficient to rebut the presumption of receipt of mail. Accordingly, the Agency's determination to reduce the Appellant's Public Assistance was not correct and cannot be affirmed.

The Agency's September 15, 2000, notice of intent to discontinue temporary housing was issued based on the reduction and sanction proposed in the September 6, 2000, notice. Temporary housing is a Public Assistance benefit. As the Appellant's Public Assistance was sanctioned by the September 6, 2000, notice, the Agency's September 15, 2000, determination was correct when made. However, as the Commissioner is reversing the September 6, 2000, notice, the September 15, 2000, notice cannot be sustained.

DECISION AND ORDER

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

1. The Agency is directed to restore any assistance withheld as a result of the Agency's action retroactive to the date of reduction.

The Agency's determination to discontinue the Appellant's temporary housing was correct when made. However,

1. The Agency is directed to take no action on said notice.

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

DATED: Albany, New York

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

Commissioner's Designee