

STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST June 18, 2001  
CASE #  
CENTER # Nassau  
FH # 3546270J

---

In the Matter of the Appeal of

:

LH

**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 July 24, 2001, in Nassau County, before Susan Lerner, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

LH, Appellant  
D. Ruff, Esq., Nassau Suffolk Law Services

For the Social Services Agency

W. Denson, Fair Hearing Representative

ISSUE

Is the Agency's determination to discontinue Appellant's child day care services 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 was in receipt of child day care services for DS, age nine.
2. Appellant is unable to provide care or supervision to the Appellant's one child due to Appellant's employment.
3. By letter dated June 6, 2000, sent to the Appellant's address of record, the Agency attempted to notify the Appellant that her Day Care authorization had expired on May 31, 2000 and that she was to return all listed eligibility documentation to the Agency in order to be recertified to receive day care services.
4. The Appellant did not receive the Agency's letter of June 6, 2000

and therefore did not meet the recertification requirements.

5. By notice dated June 20, 2000, the Agency determined to discontinue Appellant's child day care services on the grounds that the Appellant had failed to submit required eligibility documentation.

6. The Appellant did not receive the above notice.

7. In August, 2000 the Agency sent the Appellant a letter indicating her "new weekly fee for Day Care Services", based upon a New York State approval to modify the family share for Day Care Services.

8. On October 30, 2000 the Agency discontinued Appellant's Day Care Services authorization, without having sent any notice beyond its notice of June 20, 2000.

9. The Appellant learned of the above discontinuance on or about February, 2001. She paid for services privately until she could no longer afford to do so. The Appellant has since (on June 14, 2001) reapplied for, and has received, Day Care Services for her child.

10. On June 18, 2001, 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 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.

Pursuant to 18 NYCRR 415.2 day care services are only allowable in the following instances:

(a) As a necessary part of a plan of self-support for the parent(s) or caretaker relative(s) who meet the following requirements:

(1) are employed;

Pursuant to Section 415.10 of 18 NYCRR, a family will be eligible for at-risk low income child care services if the family is not receiving ADC, needs to receive at-risk low income child care services in order for a family member to accept or retain employment and is likely to become eligible for ADC if the family does not receive at-risk low income child care services.

FH# 3546270J

Pursuant to Section 415.11(b) of 18 NYCRR, a family will be eligible for services as a child care and development block grant service if the family:

- o includes at least one eligible child as defined in 18 NYCRR 415.1(b).
- o is financially eligible.
- o needs to receive child care services as part of a child protective case or to permit an eligible child's caretaker to attain or retain employment, or to permit an eligible child's caretaker to participate in an approved education program or training activity.

In addition to the program requirements contained in 18 NYCRR 415.2 and 415.10 as set forth above, most families must meet income eligibility standards established by the local Agency pursuant to 18 NYCRR 407.5(f). However, families and children eligible for day care services under the Emergency Assistance to Families (EAF) program must meet the financial eligibility requirements of the EAF program. Families in receipt of Aid to Dependent Children (ADC) or Supplemental Security Income (SSI) are not required to meet the income eligibility standards set by the local Agency. Families and children requiring day care services as a necessary and integral part of an approved child welfare plan of services to provide protective services for children who have been reported neglected, abused or maltreated must have services provided regardless of income. Families and children who have income up to 200 percent of the State income standard are financially eligible for transitional child care and at-risk low income child care services and services as a child care development block grant service.

18 NYCRR 415.3

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.

Section 351.21(a) of 18 NYCRR provides that contacts with recipients and collateral sources shall include face-to-face contacts, correspondence, reports on resources, eligibility mailouts and other documentation. Contacts with or concerning recipients shall be made as frequently as individual need, change in circumstances or the proper administration of assistance or care may require.

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

#### DISCUSSION

The Agency claims that this hearing request is time barred. However, the Appellant established that she received neither the Agency request for recertification documentation, nor the June 20, 2000 Notice of Discontinuance. Therefore, the State Commissioner has jurisdiction to review Appellant's Fair Hearing claim. The Appellant's claim, besides that of non-receipt, is that the Agency erred in sending a documents request after Day Care Services were to expire; discontinuing Appellant's authorization without notice, four months after issuing their Notice of Discontinuance; and sending the Appellant a letter regarding her weekly services fee, in the interim period between June and October, 2000.

While the Appellant's points are well taken, they need not be evaluated because she has testified credibly as to non-receipt of the Agency request for recertification documents. The Appellant stated that she has had problems regarding the receipt of mail and she submitted documentation from the Postmaster in H, New York, acknowledging her request for a Post Office Box. As the Appellant was unaware of the Agency's request for documents, or of their subsequent Notice of Discontinuance, their determination cannot be affirmed.

#### DECISION AND ORDER

The Agency's determination to discontinue Appellant's child day care services is not correct and is reversed.

1. The Agency is directed to reinstate Appellant's child day care services.

FH# 3546270J

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 14, 2001

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee