

**STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE**

**REQUEST:** October 11, 2006  
**CASE #:** PXXXXXX  
**AGENCY:** Nassau  
**FH #:** 4647997J

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In the Matter of the Appeal of  
S J  
from a determination by the Nassau County  
Department of Social Services

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**DECISION  
AFTER  
FAIR  
HEARING**

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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 March 27, 2007, in Nassau County, before Thelma Lee, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant  
S J, Appellant  
Herb Harris, Esq., Nassau Suffolk Law Services

For the Social Services Agency  
William Denson, Fair Hearing Representative

**ISSUE**

Was the Agency's determination to discontinue the Appellant's Public Assistance and Food Stamps and to impose a 90 day Public Assistance sanction and a two month Food Stamp sanction on the grounds that he refused to comply with WEP (Work Experience Program) by failing to report to a work site interview 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 is a sixty year old man in receipt of Public Assistance and Food Stamps for a household of one person.
2. The Appellant's date of birth is December xx, 19xx.

3. The Appellant is not the parent or caretaker of a dependent child.
4. The Appellant's address of record is located at xxx W P, R, New York, xxxxx.
5. The Agency determined that the Appellant was employable.
6. By letter dated August 3, 2006, the Agency advised the Appellant that he was required to report on August 11, 2006, at 10:00 AM for a work site interview with the N County Department of Public Works located at xxx C R Road, H, New York, xxxxx.
7. The Agency mailed the August 3, 2006, letter to the address of record.
8. The Appellant did not report to the Department of Public Works on August 11, 2006.
9. The Agency provided the Appellant with an opportunity at conciliation to explain the August 11<sup>th</sup> absence from the Department of Public Works.
10. The Appellant did not appear at the Agency's conciliation.
11. By notice dated October 3, 2006, the Agency advised the Appellant of its determination to discontinue Public Assistance and Food Stamps and to impose a 90 day Public Assistance sanction and a two month Food Stamp sanction on the grounds that he failed to report to the work site interview on August 11, 2006.
12. On October 11, 2006, 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 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.

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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 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 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

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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.

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 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).

. The local social services districts were notified through the General Information System GIS 05 TA/ DC032 dated September 14, 2005 that districts must revise their conciliation and sanction procedures so that in most cases, a sanction is only imposed for non-compliance with employment requirements when the refusal or failure to comply was both willful and without good cause. The determination of when such conduct is willful and without good cause may include but is not necessarily limited to, identifying a pattern of the recipient's failure to take reasonable steps to address issues within the recipient's control that may prevent the recipient

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from complying with employment requirements. Such a determination must be made on a case by case basis and the steps that the recipient took to address issues within the recipient's control which prevented him or her from complying with the employment requirement need to be explored in each instances of non-compliance.

Section 332 of the Social Services Law and 18 NYCRR 385.2 provides that an applicant for or recipient of Public Assistance shall not be required to participate in work activities if such individual is determined by the social services district to be exempt because such individual is:

- (1) ill or injured to the extent that he/she is unable to engage in work activities for up to three months, as verified by medical evidence;
- (2) 60 years of age or older;
- (3) under 16 years of age or under the age of 19 and attending full-time a secondary, vocational or technical school;
- (4) disabled or incapacitated in accordance with 18 NYCRR 385.2(d);

### **DISCUSSION**

The Appellant testified that he was unable to report to the August 11, 2006, interview at the Department of Public Works due to the non-receipt of the Agency's August 3, 2006, appointment letter. The Appellant urged that during the summer of 2006 the R Post Office hired several temporary employees as mail carriers . The Appellant maintained that his letters were misplaced or misdelivered by these carriers. The Appellant presented proof that efforts were made to acquire a Post Office Box in September, 2006, to avoid these problems with the mail.

The Appellant's representative, Mr. Harris, urged that the Agency lacked sufficient evidence to demonstrate that this non-compliance with work was both willful and without good cause. Mr. Harris noted that the Appellant received an exemption from job search requirements as of December 14, 2006, because he reached age sixty.

William Denson, the Agency's Fair Hearing Representative, stated that the August 3, 2006, letter was properly sent to the address of record. Since this appointment letter was not returned to the case worker and the Appellant was absent from the August 11<sup>th</sup> interview, the October 3, 2006 notice was issued.

The Agency's decision to discontinue the Appellant's Public Assistance and Food Stamps and to impose sanctions on the grounds that he refused to comply with WEP (Work Experience Program) by failing to report to a work site interview correct was correct when made. The Appellant's testimony pertaining to his inability to appear at this interview was credible and persuasive. The Appellant's contention that the use of different short-term Postal carriers

resulted in problems in the delivery of mail was reasonable. Furthermore, the Agency did not establish that the Appellant has engaged in a pattern of behavior or conduct to intentionally avoid compliance with the work rules. Since there was sufficient evidence that his August 11<sup>th</sup> absence from the Department of Public Works was due to good cause, the Agency's October 3, 2006, notice should not be implemented.

### **DECISION AND ORDER**

The Agency's determination to discontinue the Appellant's Public Assistance and Food Stamps and to impose a 90 day Public Assistance sanction and a two month Food Stamp sanction on the grounds that he refused to comply with WEP (Work Experience Program) by failing to report to a work site correct was correct when made.

1. The Agency is directed to continue the Appellant's Public Assistance and Food Stamps.
2. The Agency is directed to exempt the Appellant from the work rules since he has reached age sixty as of this Fair Hearing.

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  
April 10, 2007

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee