

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

REQUEST July 31, 2003
CASE # PXXXXXXX
CENTER # Suffolk
FH # 3952733L

In the Matter of the Appeal of :
L P : **DECISION**
from a determination by the Suffolk County : **AFTER**
Department of Social Services : **FAIR**
: **HEARING**

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 September 3, 2003, in Suffolk County, before Richard S. Levchuck, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

L P, Appellant; N G, Appellant's Representative

For the Social Services Agency

E A, Fair Hearing Representative

ISSUES

Was the determination of the Agency to reduce the Appellant's Public Assistance grant by the removal of Appellant from the grant due to a failure of Appellant to attend an alcohol or substance abuse assessment correct?

Was the Agency's determination to reduce the Appellant's Food Stamp benefits 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 Public Assistance and Food Stamp benefits for herself and her three minor children.
2. The agency requested a formal alcohol abuse assessment of Appellant.
3. On April 10, 2003, the Agency scheduled a formal alcohol abuse assessment of Appellant for May 7, 2003.
4. The Appellant did not receive the notification of the formal alcohol abuse assessment from the Agency.

5. Appellant did not attend the Agency's formal alcohol abuse assessment on May 7, 2003.

6. By notice dated July 17, 2003, the Agency determined to reduce the Appellant's assistance by removing Appellant from the Public Assistance grant because Appellant failed to attend an alcohol or substance abuse assessment. The Agency's notice also set forth its intention to reduce the Appellant's Food Stamp benefits because the Appellant's household had a change in Public Assistance benefits.

7. On July 31, 2003, the Appellant requested this hearing to review the Agency's determination to reduce the Appellant's Public Assistance grant by removing Appellant from the grant due to a failure of Appellant to attend an alcohol or substance abuse assessment and to reduce her Food Stamp benefits.

APPLICABLE LAW

Section 132(4) of the Social Services Law and 18 NYCRR 351.2(i) provides for a screening for alcohol and/or substance abuse for heads of households and adult applicants and recipients using a standardized screening. Such screening shall be performed by a social services district at the time of application and periodically thereafter unless the recipient is actively participating in alcoholism and/or substance abuse treatment, but not more frequently than every six months, unless the district has reason to believe that an applicant or recipient is abusing or dependent on alcohol or drugs.

When the screening process indicates that there is reason to believe that an applicant or recipient is abusing or dependent on alcohol or drugs, or there is other evidence that an applicant or recipient is abusing or dependent on alcohol or drugs, the social services district must require the applicant or recipient to undergo a formal alcohol or substance abuse assessment, which may include drug testing, to be performed by an alcohol and/or substance abuse professional credentialed by the Office of Alcoholism and Substance Abuse Services. The assessment may be performed directly by the district or pursuant to contract with the district.

If the formal assessment determines that the applicant or recipient is unable to work by reason of his or her need for treatment for alcohol or substance abuse, or, for determinations prior to April 27, 1998, the applicant or recipient has been ordered to participate in alcoholism or substance abuse treatment by a court of competent jurisdiction, the social services official must refer the individual to an appropriate alcoholism and/or substance abuse treatment program.

A person who fails to participate in the screening or in the assessment is ineligible for Public Assistance and Medical Assistance. Other members of a household which includes a person who has failed to participate in the screening or assessment shall, if otherwise eligible, receive Medical Assistance and shall receive Public Assistance only through non-cash Safety Net Assistance if they are otherwise eligible for Public Assistance and Medical Assistance. The Public Assistance benefits otherwise available to the household of which the sanctioned individual is a member will be reduced prorata. 18 NYCRR 352.30(d).

DISCUSSION

At the hearing, the Appellant testified that she did not report to her

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formal alcohol abuse assessment on May 7, 2003 because she did not receive the notification from the Agency advising her of the time and place of this appointment. While the Agency presented evidence of its mailing procedure and noted that the Appellant had kept other appointments scheduled during 2003, the Appellant noted that eviction proceedings were commenced by her former landlord in April, 2003 and that she had experienced some difficulties with her mail delivery.

The Appellant's testimony at the hearing was plausible, persuasive and was corroborated by documentation in her case record that she had been involved in a dispute with her landlord over allegations of health violations at her former residence. The Appellant has established good cause for her failure to report to her formal alcohol abuse assessment appointment that had been scheduled for May 7, 2003. While the Agency's determination to reduce the Appellant's grant of Family Assistance was correct when made, the Agency should continue to provide the Appellant with a grant of Family Assistance for a four person household. It is noted that the Appellant complied with alcohol abuse treatment requirements on August 11, 2003.

The evidence establishes that the Agency's Notice of Intent dated July 17, 2003, also advised the Appellant that it had determined to reduce the Appellant's Food Stamp benefits because the Appellant's household had a change in Public Assistance benefits.

At the hearing the Agency agreed to take no action on that portion of its Notice of Intent dated July 17, 2003 which advised the Appellant of its intention to reduce the Appellant's Food Stamp benefits. The Agency also agreed to restore any Food Stamp benefits lost by the Appellant based on such action retroactive to the date of the Agency's action and to continue to provide Food Stamp benefits to the Appellant.

Based on the Agency's agreements made at the hearing, no issues remain to be decided.

DECISION AND ORDER

The determination of the Agency to reduce the Appellant's Public Assistance grant by removing Appellant from the Public Assistance grant due to a failure of Appellant to attend an alcohol or substance abuse assessment was correct when made.

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

With respect to the portion of the Agency's Notice of Intent dated July 17, 2003, which advised the Appellant that her Food Stamp benefits would be reduced, in accordance with its agreement at the hearing, the Agency is directed to take the following actions if it has not already done so:

1. Take no action on that portion of its Notice of Intent dated July 17, 2003 which advised the Appellant of its intention to reduce her Food Stamp benefits.
2. Continue to provide Food Stamp benefits to the Appellant.

3. Restore the Appellant's Food Stamp benefits retroactive to the date of the Agency action.
4. If the Agency determines to implement its previously contemplated action, issue a new timely and adequate Notice of Intent.

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
September 9, 2003

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee