

STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST January 11, 2005  
CASE # Pxxxxxxx  
CENTER # Suffolk  
FH # 4260073L

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In the Matter of the Appeal of :

TA

**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 March 3, 2005 and March 23, 2005, in Suffolk County, before Thelma Lee, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

TA, Appellant; DA, Witness  
Nora Gonzalez, Nassau Suffolk Law Services

For the Social Services Agency

Eileen Alheidt, Fair Hearing Representative

ISSUE

Did the Appellant make a timely request for a Fair Hearing to review the Agency's August 25, 2004 notice to reduce assistance and to impose a sanction for D A due to his failure to report to an assessment correct?

Assuming there was a timely request, was the determination of the Agency to reduce the Appellant's Family Assistance due to a failure by DA to attend an alcohol or substance abuse assessment correct?

Was the Agency's denial of the Appellant's request for a shelter supplement on the grounds that the housing did not pass inspection and there were rent arrears which were incurred due to Mr. A's sanction 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 is a twenty-eight year old woman residing at the address of record with DA, age thirty-six, and their four children, ages nine to eighteen months.

2. The Appellant is in receipt of Family Assistance for herself, Mr. A and their children.

3. The Appellant's address of record is X N Road, MB, New York.
4. The monthly rent at the address of record is \$1,472.00.
5. The Appellant was approved for a shelter supplement by the Agency from July 2004 until September 2004. The Agency authorized a restricted shelter allowance of \$1,472.00 paid directly to the landlord during this period.
6. On July 27, 2004, the Agency advised DA that he must report to a 10:00 AM August 10, 2004 substance abuse assessment at the FC.
7. DA did not attend the August 10, 2004 appointment at the FC.
8. By notice dated August 25, 2004, effective October 1, 2004, the Agency determined to reduce the Appellant's assistance by removing DA from the grant because he failed to attend the assessment at the FC.
9. The Agency sent its August 25, 2004 notice to the address of record.
10. The Appellant was informed, via the August 25, 2004 notice, that a request for a fair hearing must be made within sixty days.
11. The Agency discontinued the shelter supplement for the Appellant's household based on its August 25, 2004 notice.
12. The Agency restored the needs of Mr. A to the Family Assistance grant effective October 18, 2004 after it was established that he was willing to comply with the assessment.
13. On November 15, 2004, the Appellant applied for the shelter supplement to cover the \$1,472.00 monthly rent.
14. By notice dated January 6, 2005, the Agency denied the Appellant's request for this supplement on the grounds that the housing did not pass inspection and the Agency cannot cover rent arrears incurred due to a sanction period of a household member.
15. On January 11, 2005, the Appellant requested this fair hearing.

#### 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.

Regulations at 18 NYCRR 351.2(i) provide that an adult is any individual in the household who is age 18 or over who is applying for or in receipt of Public Assistance, except an individual 18 years of age who is a full time student regularly attending a secondary school, or in the equivalent level of vocational or technical training.

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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.

Regulations at 18 NYCRR 351.2(i) provide that to be considered an appropriate treatment program, the treatment program must:

- (a) be licensed or certified by the Office of Alcoholism and Substance Abuse Services or operated by the United States Department of Veterans Affairs and be determined by the social services official to meet the rehabilitation needs of the individual, in accordance with standards developed by the Office of Alcoholism and Substance Abuse Services;
- (b) develop a treatment plan for the individual which includes an expected date of availability for work related activities and provide a copy of such plan to the local district responsible for payment, in a manner consistent with 41 CFR Part 2;
- (c) provide at a minimum of every three months, a treatment progress report for each recipient of public assistance to the local district responsible for payment of public assistance benefits; and
- (d) request approval by the local district responsible for payment of public assistance benefits prior to changing an individual's level of treatment care.

If the local district is responsible for payment of treatment, the district can require in-district treatment, provided an appropriate treatment program is available. When residential treatment is appropriate for a single custodial parent, the social services official must make diligent efforts to refer the parent to a program that would allow the family to remain intact for the duration of the treatment.

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).

Section 132(4) of the Social Services Law provides that provisions regarding screening and rehabilitation for alcohol and substance abuse apply to Medical Assistance only to the extent that they are not inconsistent with applicable federal law. Therefore, singles, childless couples and parents in intact households who are between 21 and 64 years old and who are ineligible for ADC-U will need to comply with alcohol and substance abuse screening and treatment in order to receive or continue to receive Medical Assistance unless they are certified blind or disabled.

Administrative Directive 03 ADM-07 advised local districts of several different amended Office of Temporary and Disability (OTDA) regulations that will significantly impact Local Department of Social Services (LDSS). In particular, the amendments are designed to address the following objectives:

A. For each district within the State, provide a shelter allowance that reflects the cost of acceptable quality housing.

B. Provide a supplement to ensure that family units facing special circumstances may be kept together in a home-type setting.

C. Maintain strong incentives to work.

03 ADM-07 at page 10 states: This Office will not approve plans that provide for shelter supplementation for TA households that include a sanctioned individual or are comprised solely of single individuals or childless couples.

#### DISCUSSION

The Appellant, via his representative, asserted the Commissioner is not barred by the statute of limitations from reviewing the Agency's August 25, 2004 reduction notice due to the non-receipt of that notice.

DA contended that he could not go to the FC on August 10, 2004 because he never received a letter for that appointment. The Appellant and Mr. A testified that there is a N Road E and M Road W in MB. A body of water divides these two roads. It was claimed that there have been multiple problems with mail delivery at the address of record. The street signs for N Road do not state which is "E" or "W". NG, the Appellant's representative, presented a March 22, 2005 letter from the Post Office confirming that there are two different N Roads in MB.

EA, the Agency's Fair Hearing Representative, contended that the Appellant's request for a Fair Hearing to review the August 25, 2004 notice was not timely. The Agency's Fair Hearing Representative was unable to ascertain if the appointment slip for the August 2004 assessment for Mr. A was personally handed to him.

The Commissioner is not barred by the statute of limitations from reviewing the August 25, 2004 reduction notice. There was credible proof that the Appellant never received this notice. When the Agency restored his needs to the budget in October 2004, Mr. A reasonably believed that there was no need to request a Fair Hearing. Thus, there is sufficient evidence to

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toll the sixty day statute of limitations.

The Agency's decision to decrease the Appellant's Family Assistance by removing Mr. A from this grant due to his failure to attend an assessment was correct when made. The Agency properly required Mr. A to report to an August 10th interview at the FC. The August 25, 2004 notice was issued when he did not keep this appointment. However, Mr. A's testimony regarding the non-receipt of the appointment note was credible and persuasive. The MB Post Office confirmed that there are two N Roads in that town. The Agency did not establish that an appointment slip was personally given to Mr. A. Therefore, this Agency's notice should not be implemented.

Miss G acknowledged that the Agency restored the needs of Mr. A to the Family Assistance budget as of October 18, 2004. It was asserted that the household should have been provided with an opportunity to satisfy the short period of arrears incurred between October 1st to the 18th, through charity or funds from family, before denying the November 2004 request for a shelter supplement.

Miss G stated that in June 2004 the household signed a waiver to receive this supplement because the living space at X N Road was too small for a family of six. It was surmised that this may have been why the January 6, 2005 denial notice stated that the housing did not pass inspection.

Miss A contended that the records of the housing unit were not available at this Fair Hearing and that the Agency is required to inspect housing to approve a shelter supplement.

The Agency's January 6, 2005 denial of the Appellant's request for a shelter supplement was correct when made. This denial was based on shelter arrears incurred during a sanction period. As stated above, the August 25, 2004 sanction notice should not be implemented based on the reasons cited in this Fair Hearing Decision. The Agency should restore any benefits lost retroactive to the effective date of its reduction notice.

With respect to the failure to pass inspection, the Appellant testified that this was because the living quarters were insufficient to accommodate a family of six. Since the Agency failed to produce the relevant case record, this testimony was not contradicted at this Fair Hearing. The Agency approved the supplement for this same housing in June 2004 when a waiver was signed. The Appellant and her household should be given another reasonable opportunity to sign another waiver, if required, for a shelter supplement.

#### DECISION AND ORDER

The Commissioner has jurisdiction to review the Agency's August 25, 2004 reduction notice.

The determination of the Agency to reduce the Appellant's Family Assistance by removing D A from this grant due to his failure to attend a substance abuse assessment was correct when made, but cannot be implemented at this time.

1. The Agency is directed to restore the needs of Mr. A to the Appellant's Family Assistance, retroactive to the effective date of its August 25, 2004 reduction notice.

The Agency's determination to deny the Appellant's application for a shelter supplement was correct when made.

1. The Agency is directed to continue to process the Appellant's November 2004 shelter supplement application and to issue benefits retroactive to that application if eligibility can be established.

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  
April 5, 2005

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee