

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

REQUEST March 2, 1993
CASE# P342008
CENTER# Nassau
FH# 1942470J

In the Matter of the Appeal of :

D C

DECISION
: AFTER
FAIR
HEARING

from a determination by the Nassau County
Department of Social Services :

received
5/4/93

JURISDICTION

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on April 9, 1993, in Nassau County, before Jonathan M. Kastoff, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

D C , Appellant
John McGeehan, Representative

For the Social Services Agency

Sharon Wallach,
Francis Hendricks, Fair Hearing Representatives

ISSUE

Was the Agency's determination to discontinue the Appellant's Home Relief and to discontinue the Appellant's Medical Assistance and to discontinue the Appellant's Food Stamp benefits on the grounds that Appellant willfully and without good cause failed or refused to participate in an initial assessment of employability 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 Home Relief, Medical Assistance and Food Stamps.

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2. By notice dated February 22, 1993, the Agency determined to discontinue the Appellant's Home Relief for a period of 60 days and thereafter until willing to comply with the assigned requirements of the JOBS Program and to discontinue the Appellant's Medical Assistance and to discontinue the Appellant's Food Stamp benefits for a period of two months on the grounds that Appellant willfully and without good cause failed or refused to participate in an initial assessment of employability.

3. Before sending the Notice of Intent, the Agency sent Appellant a 14-day notice of conciliation advising this individual of the opportunity to contest the Agency's claim of failure to comply with the requirements of the JOBS Program.

4. Appellant responded to the notice of conciliation and attended a conference with the Agency to give reasons for the failure to comply. After evaluating Appellant's reasons, the Agency issued the Notice of Intent.

5. Appellant was scheduled for an employment program appointment on December 28, 1993.

6. Appellant failed to report to the scheduled employment program appointment on December 28, 1993.

7. Appellant had not been sanctioned previously within a three year period for willfully and without good cause failing to comply with the assigned requirements of the JOBS Program.

8. On March 2, 1993, the Appellant requested this fair hearing.

APPLICABLE LAW

Section 131.5 of the Social Services Law provides that no assistance or care shall be given to an employable applicant for or recipient of home relief who has failed to comply with the requirements of the Job Opportunities and Basic Skills Training Program (JOBS) which is found in Title 9-B of the Social Services Law, who has failed to comply with work relief requirements under section 164 of the Social Services Law or who has refused to accept employment in which he or she is able to engage.

All applicants for and recipients of Aid to Dependent Children, Home Relief or Veteran's Assistance must participate in JOBS as required by the agency unless they are exempt under section 385.2(b) of the Department's Regulations. 18 NYCRR 385.2, 18 NYCRR 385.4(b).

Within a reasonable period of time not to exceed one year after a participant's application for assistance, the social services district must conduct an assessment of employability for each recipient of Home Relief participating in the JOBS program based on the educational level, child day care and other supportive services needs, skills, prior work experience, training and vocational interests of such participant. In addition, the assessment must include a review of family circumstances

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including review of any special needs of a child. Based on the assessment, the social services official, in consultation with the participant, must develop an employability plan in writing which must set forth the services that will be provided by the social services official and the activities in which the participant will take part under the JOBS program and which sets forth an employment goal for the participant. Social Services Law Section 335-a, 18 NYCRR 385.4(a).

An employable applicant for or recipient of Home Relief must, as required by the Agency, participate in the initial assessment and in the preparation of an employability plan. 18 NYCRR 385.4(b)(1).

Social services officials are required by Section 341 of the Social Services Law and Section 385.18 of the Department's Regulations to establish a conciliation procedure to assist in resolving participant grievances and instances in which participants have failed to comply with program requirements.

The conciliation procedure must provide for at least one conference between the participant, appropriate social services district staff and a mediator. The process may last no longer than 30 days unless by mutual agreement of the social services district and the participant.

JOBS participants must be afforded an opportunity for conciliation to dispute a JOBS assignment or any action taken by the social services district in accordance with the provisions of Part 385 of the Department's Regulations.

If the dispute is resolved to the satisfaction of the participant and the district through the conciliation process, a written document memorializing such resolution must be sent to the social services official and the participant within ten days of such resolution. Such resolution is binding on the social services district and the participant.

If the district and the participant cannot, with the assistance of the mediator, resolve the issues related to the participant's refusal or failure to comply, a written document summarizing the conciliation must be given or sent to the participant by the district within 10 days of the termination of conciliation. The social services official must incorporate such document into the participant's case record and, in the event of a fair hearing, present it as required in accordance with 18 NYCRR 358-4.3.

A social services official must issue a notice to each applicant or recipient who refuses or fails to comply with the requirements of Part 385 of the Department's Regulations. Such notice must advise the participant of his or her refusal or failure to comply and that he or she has 14 days to request conciliation with the social services district regarding any dispute related to such refusal or failure to comply.

If the participant requests conciliation within 14 days, conciliation will be commenced promptly and it will be the participant's responsibility to provide reasons for such refusal or failure to comply.

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If the district and the participant cannot, with the assistance of the mediator, resolve the issues related to the participant's refusal or failure to comply, and if the district determines that the 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 14 day conciliation letter issued by the social services official, or if the social services official determines that the participant's refusal or failure to comply was willful and without good cause, then the social services official must issue an adequate notice to deny public assistance or a timely and adequate notice of intent to discontinue or reduce public assistance.

No sanction related to the participant's failure to comply may be imposed during the conciliation period.

The needs of an employable Aid to Dependent Children or Home Relief recipient who has willfully failed without good cause to comply with the requirements of the JOBS program will not be taken into account in determining the needs of his or her household for assistance or the amount of assistance during the sanction period. 18 NYCRR 385.19(e).

The sanctions for recipients of Home Relief who willfully failed without good cause to comply with JOBS requirements are found in Section 385.19(e)(2) of the Department's Regulations and are as follows:

- (i) for the first instance of willful failure to comply without good cause within any three year period, a period of 60 days and thereafter until the recipient is willing to comply with requirements assigned in accordance with Part 385 of the Department's Regulations.
- (ii) for the second instance of willful failure to comply without good cause within a three year period beginning with the effective date of the discontinuance or reduction of assistance in the first instance of willful failure to comply without good cause, a period of 120 days and thereafter until the recipient is willing to comply with requirements assigned in accordance with Part 385 of the Department's Regulations.
- (iii) for the third instance of willful failure to comply without good cause within a three year period beginning with the effective date of the discontinuance or reduction of assistance in the second instance of willful failure to comply without good cause, a period of 180 days and thereafter until the recipient is willing to comply with requirements assigned in accordance with Part 385 of the Department's Regulations.
- (iv) for all subsequent instances of willful failure to comply without good cause within a three year period beginning with the effective date of the discontinuance or reduction in assistance in the last instance of willful failure to comply without good

cause, a period of 180 days and thereafter until the recipient is willing to comply with requirements assigned in accordance with Part 385 of the Department's Regulations.

Under Section 366 of the Social Services Law a person who requires Medical Assistance is eligible for such assistance where such person:

- (a) is receiving or is eligible for Home Relief or Aid to Dependent Children or Supplemental Security Income;
- (b) although not receiving or in need of public assistance or care, has not sufficient income and resources to meet all the costs of medical care and services available under the Medical Assistance Program and such person is:
 - (i) under the age of 21; or
 - (ii) 65 years of age or older; or
 - (iii) the spouse of a cash Public Assistance recipient living with him/her and essential or necessary to his/her welfare and whose needs are taken into account in determining his/her cash payments; or
 - (iv) for reasons other than income or resources, is eligible for Aid to Dependent Children or Supplemental Security Income and/or additional state payments.
- (c) is at least 21 years of age but under the age of 65 and is not receiving or eligible to receive Home Relief or aid to dependent children and:
 - (i) who is the parent of a dependent child under the age of 21; and
 - (ii) who lives with such child; and
 - (iii) whose net income, without deducting the amount of any incurred medical expenses, does not exceed the net income exemption set forth in Section 366.2(a)(8) of the Social Services Law.

Department Regulations at 18 NYCRR 360-2.2(d) provide that for a person who does not meet the criteria set forth above, other than financial, eligibility for Medical Assistance must be determined on the basis of that person's eligibility for Home Relief in accordance with the requirements of 18 NYCRR Part 352 and Part 370.

Food Stamp work registrants must participate in an employment and training program when so assigned by the agency, respond to a request from the agency for supplemental information regarding employment status or availability for work, report to an employer to whom referred by the agency if the potential employment is suitable, and accept a bona fide offer of suitable employment. 7 CFR 273.7(e), 18 NYCRR 387.13(d).

Persons required to register for work and not exempted by the agency from placement in an employment and training program who fail to comply, without good cause, with the requirements imposed by the agency will be disqualified as specified in 7 CFR 273.7(g). 7 CFR 273.7(f), 18 NYCRR 387.13(a).

A Food Stamp employment and training program offered by the agency must offer one or more of the following components:

- (i) A job search program comparable to that required for the AFDC program under Title IV of the Social Security Act.
- (ii) A job search training program that includes reasonable job search training and support activities. Such a program may consist of job skills assessments, job finding clubs, training in techniques for employability, job placement services, or other direct training or support activities.
- (iii) A workfare program.
- (iv) A program designed to improve the employability of household members through actual work experience or training, or both, and to enable individuals employed or trained under such programs to move promptly into regular public or private employment.
- (v) A project, program or experiment such as a supported work program, or a JTPA or State or local program aimed at accomplishing the purpose of the employment and training program.

7 CFR 273.7(f) (1).

A household containing a member who was exempt from work registration because he or she was registered for work under a Title IV or unemployment compensation who fails to comply with a Title IV or unemployment compensation requirement comparable to a food stamp work registration or employment and training program requirement must be treated as though the member had failed to comply with the corresponding food stamp requirements. Household members who fail to comply with a noncomparable Title IV or unemployment compensation requirement will lose their exemption and must register for work if required. 7 CFR 273.7(g) (2), 18 NYCRR 387.13(e) (2) (ii).

A public assistance, Title IV or unemployment compensation work requirement is comparable to food stamp work requirements if it does not place responsibilities on the household which exceed those imposed by the food stamp work requirements. 7 CFR 273.7(g) (2) (i), 18 NYCRR 387.13(e) (2) (iii).

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If the Agency determines that an individual other than the head of household has refused or failed without good cause to comply with work registration requirements, including employment and training programs, that individual is ineligible to receive Food Stamp benefits for two months. If the head of household fails to comply, the entire household is ineligible for Food Stamp benefits for the two month period. 7 CFR 273.7(g); 18 NYCRR 387.13(e)(1).

Eligibility may be re-established if the household member who caused the disqualification leaves the household, becomes exempt other than by registering in a Title IV or unemployment compensation employment program, or complies with the requirements as follows:

for refusal to register - register;

for refusal to respond to a request for supplemental information regarding employment status or availability for work - complies with the request;

for refusal to report to an employer - reports to this employer if work still available or another employer if referred;

for refusal to accept offer of suitable employment - accepts the employment if available or secures other employment yielding equivalent earnings; and

for refusal to comply with assignment as part of an approved employment and training program - complies with the assignment or an alternative assignment made by the agency.

7 CFR 273.7(h); 18 NYCRR 387.13(f)(2).

In addition, a sanctioned household may reestablish eligibility if a new and eligible person joins the household as its head of household. 7 CFR 273.7(g)(1); 18 NYCRR 387.13(f)(2).

Prior to sending a notice of adverse action, the Agency must determine whether good cause for non-compliance with work registration requirements exists. In determining whether good cause exists, the Agency must consider the facts and circumstances, including information submitted by the household member involved and the employer. Good cause shall include circumstances beyond the member's control such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, the unavailability of transportation, or the lack of adequate child care for children who have reached age six but are under age 12. 7 CFR 273.7(m); 18 NYCRR 387.13(g).

DISCUSSION

Appellant testified that he did not report to the scheduled employment program appointment on December 28, 1992 because he failed to receive the Agency's notice scheduling the appointment. Appellant further testified that he resides in a rooming house with eight to ten other people, and that mail is delivered to a single mailbox for all the house's tenants, resulting in occasional mail delivery problems within the house. Appellant's testimony was consistent as to detail, plausible and persuasive. Appellant presented sufficient evidence to establish good cause for his failure to report to the scheduled employment program appointment. Therefore, the Agency's determination to discontinue Appellant's Home Relief cannot be sustained.

Appellant's eligibility to receive Medical Assistance is based solely on Appellant's eligibility to receive Home Relief. Since Appellant remains eligible to receive Home Relief, Appellant remains eligible to receive Medical Assistance.

DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Home Relief and to discontinue the Appellant's Medical Assistance and to discontinue the Appellant's Food Stamp benefits on the grounds that Appellant willfully and without good cause failed or refused to participate in an initial assessment of employability was not correct and is reversed.

1. The Agency is directed to continue Appellant's Home Relief, Medical Assistance and Food Stamps and to restore any assistance withheld as a result of the Agency's action retroactive to the date the Agency took action on such benefits.

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

DATED: Albany, New York

APR 29 1993

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

By

Susan M. Miele
Commissioner's Designee