

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST August 15, 1997
CASE #
CENTER # Nassau
FH # 2740601W

In the Matter of the Appeal of

M R

:
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 September 15, 1997, in Nassau County, before Philip Mostramo, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

M R Appellant
Mr. Harris, Esq. Appellant's representative

For the Social Services Agency

Ms. Brown, Fair Hearing Representative

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 report to a Jobs interview 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.
2. By notice dated August 15, 1997, the Agency determined to discontinue the Appellant's Home Relief for a period of 150 days and thereafter until the failure/refusal ceases with the assigned requirements of the JOBS Program and to discontinue the Appellant's Medical Assistance

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and to discontinue the Appellant's Food Stamp benefits for a period of four months on the grounds that Appellant willfully and without good cause failed or refused to report to a JOBS interview on July 14, 1997.

3. Before sending the Notice of Intent, the Agency sent Appellant a 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 had been sanctioned previously 1 time within a three year period for willfully and without good cause failing to comply with the assigned requirements of the JOBS Program.

6. By letter of July 1, 1997, the Agency scheduled an appointment with Appellant to appear at the Agency on July 14, at 9:15 A.M. to meet with a JOBS development representative. The Appellant did not appear for the appointment.

7. On August 15, 1997, 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, who has failed to accept medical care, a program of instruction or work training under section 131(7)(b) 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 18 NYCRR. 18 NYCRR 385.2, 18 NYCRR 385.4(b).

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.

The sanctions for applicants and recipients of Home Relief who willfully fail without good cause to comply with requirements for JOBS are found in 18 NYCRR 385.19(e), as amended by Section 131(5) of the Social Services Law. They are as follows:

- (i) for the first instance of willful failure to comply without good cause within any three-year period, a period of 90 days and thereafter until the individual is willing to comply with requirements assigned in accordance with Part 385 of 18 NYCRR.
- (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 denial of assistance, or the discontinuance or reduction of assistance in the first instance of willful failure to comply without good cause, a period of 150 days and thereafter until the individual is willing to comply with requirements assigned in accordance with Part 385 of 18 NYCRR.
- (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 denial of assistance, or 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 individual is willing to comply with the requirements assigned in accordance with Part 385 of 18 NYCRR.
- (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 denial of assistance, or 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 individual is willing to comply with the requirements assigned in accordance with Part 385 of 18 NYCRR.

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;

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).

For infractions occurring on or after September 22, 1996, if the Agency determines that an individual has refused or failed without good cause to comply with work registration requirements or employment and training requirements, that individual is ineligible to receive Food Stamp benefits for:

- (i) two months and thereafter until the individual complies for the first instance of failure to comply without good cause;
- (ii) four months and thereafter until the individual complies for the second instance of failure to comply without good cause within a three year period beginning with the effective date on which the individual became ineligible for food stamps in accordance with (i);
- (iii) six months and thereafter until the individual complies for the third instance of failure to comply without good cause within a three year period beginning with the effective date on which the individual became ineligible for food stamps in accordance with (ii);
- (iv) six months and thereafter until the individual complies for all subsequent instances within a three year period commencing with the effective date of the last instance in which the individual became ineligible for food stamps due for failure without good cause to comply with the requirements of 18 NYCRR 387.13.

DISCUSSION

It is not disputed that Appellant did not appear at the Agency on July 14 for the scheduled appointment. The Appellant claimed at the conciliation conference and again at this fair hearing, that her failure to report was not willful in that she did not receive the appointment notice in the mail.

The Agency submitted a copy of the July 1, letter scheduling the appointment and the agency's representative pointed out that the letter was properly addressed and not returned by the post office.

The Appellant testified that she did not receive the letter of July 1. Appellant explained that she has had problems with receipt of mail, naming a missed recertification appointment notification and a phone bill. She explained that she is a roomer in a private residence, sharing the residence and mailbox with five other people.

The Appellant has established through her testimony that her failure to report on July 14 was not willful in that she was not aware of the appointment. The Appellant's testimony was credible in that she has had mail problems and reasonably explained how such a problem could occur in her living situation. Most importantly, Appellant presented proof that she worked at her WEP site in the afternoon of the same day, lending credence to her testimony that there was no reason for her not reporting to a meeting in the morning.

DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Public Assistance 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 report to a JOBS appointment 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 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York
October 16, 1997

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By


Commissioner's Designee