

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

REQUEST: August 30, 2008
CASE #: PXXXXXXX
AGENCY: Suffolk
FH #: 5104267K

In the Matter of the Appeal of
SB
from a determination by the Suffolk County
Department of Social Services

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**DECISION
AFTER
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 December 17, 2008, in Suffolk County, before Timothy Hannon, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

SB, Appellant; Nora Gonzalez, Esq. NSLS; KB, fiancé

For the Social Services Agency

Amie Salinero, Fair Hearing Representative

ISSUE

Was the Agency's determination to reduce the Appellant's Public Assistance on the grounds that the Appellant refused to comply with work experience requirements by failing to report on July 29, 2008, to the Suffolk County Department of Labor for a Labor Registration appointment 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, age 38, has been in receipt of Public Assistance for a household of seven persons consisting of him and his fiancé, age 28, his seven year old daughter and five sons, ages five, three and the two year old twins.

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2. The Appellant is the parent or caretaker of a dependent child.
3. On July 15, 2008, the Agency mailed an appointment letter to the Appellant's address of record at XXX R A , R, New York , advising him to report on July 29, 2008, for a Labor Registration appointment.
4. The appointment letter dated July 15, 2008, mailed by the Agency to the Appellant's address of record at XXX R A , R , New York , an emergency shelter where the Appellant and his household were located by the Agency. This letter was not returned as undeliverable by the United States Postal Service.
5. The Appellant failed to report for his July 29, 2008, enrollment appointment and the Agency issued the subject notice of determination.
6. On July 29, 2008, the Appellant moved to xxx W Drive, M B New York .
7. On August 28, 2008, the Agency notified the Appellant of its intent to reduce the Appellant's Public Assistance grant for 90 days and until the Appellant is willing to comply with work experience requirements and Sanction the Appellant's Food Stamp benefits for four months on the grounds that the Appellant refused to cooperate with work experience requirements by failing to report on July 29, 2008, to the Suffolk County Department of Labor for a Labor Registration appointment. The notice also advises that the Appellant's Shelter Supplement will end effective October 1, 2008, because of the aforementioned Public Assistance sanction.
8. The Appellant was previously sanctioned for non-compliance with the work rules by notice dated June 14, 2005.
9. Before sending the Notice of Intent, the Agency sent the Appellant a notice of conciliation advising this individual of the opportunity to take part in conciliation regarding the Agency's claim.
10. The Appellant did not respond to the notice of conciliation and the Agency subsequently issued the Notice of Intent.
11. On August 30, 2008, 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 persons 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

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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.

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 of 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 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).

The parent or care taker relative of a child under thirteen years of age shall not be subject to the ineligibility provisions of Section 342 of the Social Services Law if the individual can demonstrate, in accordance with the regulations of the Office of Children and Family Services, that lack of available child care prevents such individual from complying with the work requirements. The parent or caretaker relative shall be responsible for locating the child care needed to meet the work requirements; provided, however, that the relevant social services district shall provide a parent or caretaker relative who demonstrates an inability to obtain needed child care with a choice of two providers, at least one of which will be a regulated provider.

Section 342 of the Social Services Law and 18 NYCRR 385.12 provides that in the case of an applicant for or recipient of Public Assistance who is a parent or caretaker of a dependent child 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 instance of failure to comply without good cause until the individual is willing to comply;
- (b) For the second instance of failure to comply without good cause, for a period of three months and thereafter until the individual is willing to comply;
- (c) For the third and all subsequent instances of failure to comply without good cause, for a period of six months and thereafter until the individual is 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.

DISCUSSION

The Agency's position is that the Appellant was mailed an appointment letter advising him to report to the Suffolk County Department of Labor on July 29, 2008, for a Labor Registration appointment. The Appellant failed to report to his scheduled appointment or respond to the Suffolk County Department of Labor's offer of a conciliation meeting and the Agency issued the notice of determination.

The Appellant and Counsel acknowledge that he failed to report to his scheduled appointment, but contend that the Agency has failed to consider that he never received the appointment letter or his conciliation notice.

The Agency contended that the appointment letter was mailed to the address of record and was not returned as undeliverable by the U.S. Postal Service. The Agency representative testified the mailing procedure is that the appointment letter is typed by an Agency worker who personally puts it in a window envelope and puts a copy of the correspondence sent to the Appellant in the case record after it is mailed out. The worker personally walks the correspondence to the U.S. Postal Service mailbox, according to the Agency.

The Agency entered into evidence an exact copy of the letter which had been mailed to the Appellant. The letter supports the Agency's claim of mailing because the Agency testified that the procedure is to put a copy of correspondence sent to the Appellant in the case record after it is mailed out.

The Appellant stated that he resided at xxx RA, R from May 28, 2008 to July 28, 2008, and had problems with their mail delivery as it was a shelter and the mail box was open and available to anyone of the several tenants. Ms. B testified that she spoke to the house manager a few weeks after they moved in and as she soon as she realized they were not getting their mail, but she got no satisfaction. On inquiry, she said she thought she may have spoken to the house manager in May or the middle of June 2008. In regard to the conciliation the Appellant stated that he did not respond to the conciliation letter because he moved to permanent housing and changed his address which may have caused a delay in receiving his mail. Ms. B stated she had reported the matter to the Postal Service and after an adjournment provided a letter in which the Post Office states they are delivering all the Appellant's mail to her address and she should check with the mailer to see if they are addressing it correctly.

The Agency notes that the subject appointment letter was properly addressed and mailed in the ordinary course of business and not returned as undeliverable.

It is noted that the sole issue of this fair hearing is the failure to report for an enrollment appointment and the Appellant's contention that he failed to receive the subject appointment letter because he had problems with his mail delivery while he was residing in the emergency shelter.

There is a rebuttable presumption that a notice properly addressed, stamped and mailed is

received by the addressee. The Agency has established that the notice was sent to the Appellant in the regular course of business. However, the Appellant's evidence establishes that the subject appointment letter may have been misdirected after it was delivered to the shelter as it was not delivered into the custody of any one responsible person but to a general delivery box which is open and available to the residents and staff. The Appellant's testimony was found to be credible as it was specific and detailed as to whom she spoke to and when. His failure to forward his mail to a local family member or friend or open a Post Office box is not aggravating as it is reasonable in light of the fact they were residing at the shelter for only two months, attempting to move to permanent housing and have their mail catch up with them. Therefore, the Agency's action is correct when made but cannot be implemented at this time.

DECISION AND ORDER

The Agency's determination to reduce the Appellant's Public Assistance on the grounds that the Appellant refused to comply with work experience requirements was correct when made but cannot be implemented at this time.

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

2. The Agency is directed to re-calculate the Appellant's Food Stamp grant and to restore any assistance withheld as a result of the Agency's action retroactive to the date of reduction.

3. The Agency is directed to not discontinue the Appellant's Supplemental Shelter allowance as the Public Assistance sanction cannot be implemented at this time.

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.

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DATED: Albany, New York
December 31, 2008

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee