

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

REQUEST: June 6, 2005
CASE #: XXXXX
AGENCY: Suffolk
FH #: 4348506P

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

:
:
:
:
:
:
:

**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 September 9, 2005, in Suffolk County, before Thelma Lee, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant
M M, Appellant
Nora Gonzalez, Nassau Suffolk Law Services

For the Social Services Agency
Marlene Rund , Fair Hearing Representative

ISSUE

Was the Agency's determination to reduce the Appellant's Public Assistance on the grounds that Appellant refused to cooperate and participate in the assessment process correct?

Was the Agency determination to impose a Public Assistance sanction until the Appellant is willing to comply with the assessment process 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 is a thirty year old woman residing with six minor dependent children, ages thirteen to two.
2. The Appellant is in receipt of Public Assistance for a household of seven.
3. The Appellant's current address of record is XXX, XXX, New York.
4. Prior to relocating to the above address, the Appellant was residing at a temporary housing facility located at XXX, XXX, New York, until October 1, 2004.
5. By letter dated September 13, 2004, sent to XXX the Agency informed the Appellant that she must report on September 27, 2004 at 10:30 AM to the Department of Labor (DOL) for an assessment.
6. The Appellant did not report to the September 27th DOL assessment.
7. On June 2, 2005 the Agency notified the Appellant of its intent to reduce Public Assistance grant until Appellant is willing to comply with employment requirements on the grounds that she refused to cooperate and participate in a DOL assessment.
8. On June 6, 2005, 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 person who refuses to accept such care or undergo such instruction or training is ineligible for Public Assistance and care.

Section 335 of the Social Services Law and 12 NYCRR 1300.6 require that each recipient of Public Assistance who is a member of a household with dependent children and is eighteen years of age or older, or who is sixteen or seventeen years of age and is not attending secondary school and has not completed high school or a high school equivalency program, receives an assessment of employability based on his or her educational level, including literacy and English language proficiency, basic skills proficiency, child care and other supportive services needs; and the skills, prior work experience, training and vocational interests. The

assessment must include a review of family circumstances including a review of any special needs of a child. The assessment must be completed within 90 days of the date on which such person is determined eligible for Public Assistance. An applicant for or recipient of Public Assistance may be assigned to work activities prior to completion of such assessment. Applicants and recipients are required to participate in an assessment as assigned by the social services official.

Based on the assessment, the social services official will develop a written employability plan in consultation with the recipient, which shall set forth:

- (a) the services which the district will provide, including child care;
- (b) the work activities to which the recipient will be assigned;
- (c) the recipient's employment goal, which shall reflect, to the extent possible, the recipient's preferences to the extent they are consistent with the assessment.

In developing the plan, the social services official shall take into account:

- (a) the recipient's supportive services needs;
- (b) the available program opportunities;
- (c) the local employment opportunities;
- (d) if the recipient is assigned to an education program, the recipient's liability for student loans, grants and scholarship awards.

If a recipient's preferences cannot be accommodated in the employability plan, the plan shall record the reasons.

Notwithstanding the requirement that the employability be based on the assessment, in developing the employability plan, the social services official must consider the needs of the social services district to meet federal and state work activity participation rates before completing an individual's employability plan.

The entire household of an applicant who fails or refuses to participate with the requirements for assessments shall be ineligible for Public Assistance. Recipients who fail or refuse to participate with the requirements of this section shall be subject to the sanctions set forth in section 342 of the Social Services Law and 12 NYCRR 1300.12.

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 if 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. 12 NYCRR 1300.12(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 12 NYCRR 1300.12 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.

DISCUSSION

The Appellant asserted that she could not report to the September 27th DOL assessment because of non-receipt of the Agency's September 13th appointment letter. The Appellant testified that the staff at the temporary housing facility tacked the mail for the five or six different families at XXX on a bulletin board. This mail was never personally handed or delivered to the individuals residents.

Nora Gonzalez, the Appellant's representative, asserted that the Appellant's failure to comply with the work rules was not willful. The Appellant demonstrated compliance with the work rules based on her participation in a self initiated work program and attendance in school, which was reported to DOL on September 9, 2004. Miss Gonzalez also noted that the Appellant duly informed the Agency on November 9, 2004 when she could not continue participation in the work program, which was not mandated by the Agency.

Marlene Rund, the Agency's Fair Hearing Representative, claimed that the appointment slip was sent to the appropriate address of record and that the Appellant was required to appear at the mandatory DOL interview. The Agency conceded that if the Appellant had appeared at the DOL with verification of participation in a work experience program and school, no additional work activities would have been required..

The Agency's determination to reduce the Appellant's Public Assistance on the grounds that she failed without good cause to report to a DOL assessment was correct when made. The Appellant is in receipt of assistance and required to participate in work activities. By letter dated September 13, 2004 sent to the Appellant, during the period when the household was residing in a shelter, the Agency informed her of a mandatory September 27th DOL appointment. The Agency issued its June 2, 2005 notice.

However, the Appellant's testimony regarding the lack of receipt of the September 2004 appointment letter was credible and persuasive. Furthermore, there was no evidence in this record that the Appellant was intentionally refusing to cooperate with the Agency. The notes from the DOL confirm the Appellant's willingness to participate in other work-related activities. Thus, the Agency's determination should not be implemented at this time.

DECISION AND ORDER

The Agency's determination to reduce the Appellant's Public Assistance on the grounds that Appellant refused to cooperate and participate in the assessment process was correct when made.

1. The Agency is directed to continue the Appellant's Family Assistance benefits.
2. The Agency is directed to give the Appellant another reasonable opportunity to report to a DOL assessment.

As stated in the above directives, the Agency 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.

DATED: Albany, New York
October 18, 2006

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee