

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

REQUEST: August 1, 2005
CASE #: XXXXX
AGENCY: Suffolk
FH #: 4380121Q

In the Matter of the Appeal of
T H
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 November 21, 2005, in Suffolk County, before Thelma Lee, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

T H, Appellant

Cheryl Keshner, Appellant's Representative from 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 and to impose a six month sanction on the grounds that she refused to comply with work requirements by failing to report to the Department of Labor (DOL) to register for the Suffolk Work Experience Program (SWEP) correct?

Was the Agency's determination to discontinue the Appellant's temporary housing assistance (THA) on the grounds that she received a six month Public Assistance sanction 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 twenty-three, was in receipt of Public Assistance for a household of three, consisting of herself and two minor dependent children, ages four and two.
2. The Appellant is in receipt of THA and is currently residing in a temporary housing facility operated by D H.
3. The Appellant signed an Independent Living Plan for Clients in Temporary Housing Plan acknowledging that she must comply with the requirements for Public Assistance, including work requirements, to remain eligible for THA.
4. Prior to relocating to a temporary housing facility, the Appellant resided at XXX, XXX, NY XXXXX from July 2003 to December 2004.
5. On or about September 2004, the Agency determined that the Appellant is employable with limitations.
6. By letter dated September 22, 2004, the Agency advised the Appellant that she must report on October 7, 2004 at 10:30 AM to DOL to register for SWEP.
7. The Agency mailed its September 22, 2004 letter to the Appellant's address of record.
8. The Appellant did not report to the October 7th appointment at DOL.
9. The Appellant was previously sanctioned on two prior occasions for non-compliance with the work rules.
10. The Agency provided the Appellant with an opportunity at conciliation to explain her absence from the October 7th DOL appointment. The Appellant asserted that this inability to report was due to the non-receipt of the Agency's September 22, 2004 appointment letter. The Agency determined that there was insufficient evidence of good cause to excuse the absence from the October 7th appointment.
11. On April 22, 2005 the Agency notified the Appellant of its intent to reduce the Public Assistance grant from \$738.00 to \$492.00 per month for six months and until the Appellant is willing to comply with work experience requirements on the grounds that she refused to cooperate with work experience requirements by failing to report to DOL to register for SWEP.
12. By notice dated July 26, 2005, the Agency advised the Appellant of its determination to discontinue THA on the grounds that she failed to comply with the Independent Living Plan and received a six month Public Assistance sanction as reflected on the April 22, 2005 notice.

13. On August 1, 2005, the Appellant requested this fair hearing.

APPLICABLE LAW

Section 352.35 of the Department Regulations deals, in pertinent part, with eligibility for temporary housing assistance for homeless persons.

- (a) Scope. This regulation governs the provision of temporary housing assistance to persons who are homeless. It sets forth the requirements with which an individual or family who applies for temporary housing must comply in order to be eligible for temporary housing assistance.
- (b) Definitions.
 - (3) Temporary housing includes family shelters authorized by Part 900 of this Title and section 352.8(a) of this Part, room and board authorized by section 352.8(b) of this Part which is provided to a homeless person on a temporary basis, hotel/motel facilities authorized by section 352.3(e) of this Part and shelters for adults authorized by Part 491 of this Title.
 - (4) Temporary housing assistance is a public assistance benefit provided temporarily for an eligible homeless individual or family to meet an immediate need for shelter.
- (c) As a condition of eligibility for temporary housing assistance, individuals and families must comply with the requirements of this subdivision. Temporary housing assistance will be denied or discontinued under the conditions specified below. Temporary housing assistance will not be denied or discontinued for failure of the individual or family to comply with the requirements of this subdivision when such failure is due to the physical or mental impairment of the individual or family member.
 - (4) An individual or family must refrain from engaging in acts which endanger the health or safety of oneself or others, or which substantially and repeatedly interferes with the orderly operation of a temporary housing facility. When an individual or family commits such acts, including but not limited to acts of violence, selling drugs, or repeated violations of the rules of a temporary housing facility, the social services district must discontinue temporary housing assistance until the failure ceases, or for 30 days, whichever period is longer.
- (d) Prior to denying or discontinuing temporary housing assistance pursuant to subsection (c) of this section, the social services district must evaluate the individual's or the family's need for protective services for adults, preventive services for children and protective services for children and, if necessary, make an appropriate referral.
- (e) A homeless individual or family applying for or receiving temporary housing assistance,

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pursuant to sections 352.3(e) or 352.8 of this Part or Parts 371 or 491 of this Title, also must comply with all other applicable public assistance and care requirements including, but not limited to:

(1) requirements for participation in employment and training programs, in accordance with Part 385 of this Title, including looking for work, engaging in training, accepting jobs and work assignments, and participating in rehabilitative services ;

(2) requirements for participation in rehabilitative services, as described in section 370.2(d)(7) of this Title and Part 385 of this Title;

Failure to comply with any public assistance and care requirements, including, but not limited to, those described above, will subject the recipient of temporary housing assistance to the sanctions specified in the applicable sections of this Title.

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 person 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.

Pursuant to Section 336-c of the Social Services Law and 12 NYCRR 1300.9, 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 12 NYCRR 1300.11 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.

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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 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. 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;

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- (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

At this Fair Hearing, the Appellant's representative, Miss Keshner, noted that the Agency has accepted the Appellant's application for preventive services and that these services are authorized until February 2006. The Agency cannot terminate the household's THA pursuant to Administrative Directive 96 ADM-20 because of the active preventive services case.

The Agency acknowledged that its computation of the Family Assistance reduction (Agency's Exhibit 31) which supported its April 22, 2005 notice was incorrect. The Agency agreed to re-compute this budget to accurately reflect the Appellant's receipt of THA.

The Appellant, via her representative, testified that she was unable to appear at the October 7, 2004 DOL appointment due to the non-receipt of the Agency's appointment letter. The Appellant asserted that there were three other families living at the address of record and that the mail was placed on the dining room or on an entertainment table, which were in areas accessible to all the tenants.

The Appellant further contended that in September 2004 there was tension between the household and the landlord, M W. The Appellant was advised to leave the address of record to accommodate the return of Miss W's son from a correctional facility. The Appellant asserted that in September and October 2004 the household stayed intermittently with the Appellant's mother (R E) and an adult cousin. The Appellant's mother assisted with taking the Appellant's youngest child to Head Start. The Appellant presented proof that the Agency placed the household in a shelter on or about November 2004, after the landlord forced the family out of XXX.

Marlene Rund, the Agency's Fair Hearing Representative, stated that the Agency properly sent its appointment letter to the Appellant at the address of record. Since the Appellant did not appear at the October 7th DOL appointment, the Agency issued its reduction notice recommending a six month Public Assistance sanction. The Agency stated that THA was discontinued since the Appellant was sanctioned from receiving Public Assistance.

The Agency's determination to reduce the Appellant's Public Assistance and to impose a six month sanction was correct when made. The Agency properly notified the Appellant, via a letter mailed to the address of record, that she must report to DOL on October 7, 2004 pursuant to the work rules. The Agency issued its April 22, 2005 notice recommending a six month Public Assistance sanction when she failed to report at this appointment.

However, the Appellant's testimony regarding the inability to appear at this mandatory appointment was credible and persuasive. There was no evidence that the Appellant was intentionally refusing to participate in any work activities or that her absence from DOL was willful. Furthermore, the Agency did not dispute the Appellant's description of the living arrangements at XXX, which lead to the non-receipt of the Agency's appointment letter. The Appellant should be given another reasonable opportunity to comply with the work rules. Thus, the Agency's April 22, 2005 notice should not be implemented at this time.

Similarly, the Agency's determination to discontinue the Appellant's THA was correct when made. The Agency was required to issue its July 26, 2005 notice after the Appellant was sanctioned via its April 22, 2005 notice from receiving Public Assistance. Nevertheless, there was sufficient evidence at this Fair Hearing that her absence from the October 2004 DOL appointment was based on good cause. Furthermore, based on the active preventive services case, the Appellant is entitled to remain in a temporary housing facility in accordance with the cited ADM. Thus, the Agency's July 2005 notice was also correct when made.

DECISION AND ORDER

The Agency's determination to reduce the Appellant's Public Assistance and to impose a six month sanction on the grounds that the Appellant refused to comply with the SWEP requirements by reporting to DOL in October 2004 was correct when made.

1. The Agency is directed to restore any benefits lost to the Appellant as the result of its April 22, 2005 notice.
2. The Agency is directed to give the Appellant another reasonable opportunity to report to a SWEP appointment.

The Agency's determination to discontinue the Appellant's THA was also correct when made.

1. The Agency is directed to continue to provide THA to the Appellant's household.

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 6, 2005

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee