

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: February 22, 2006
CASE #: xxxxxxxxx
AGENCY: Suffolk
FH #: 4498612P

In the Matter of the Appeal of
J B
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 March 27, 2006, in Suffolk County, before Richard S. Levchuck, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

J B , Appellant; Nora Gonzalez, Appellant's Representative

For the Social Services Agency

Ken Rogers, Fair Hearing Representative

ISSUES

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

Was the Agency's determination to discontinue temporary housing assistance to the Appellant on the ground that the Appellant failed to comply with his independent living plan by not complying with employment program requirements 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 has been in receipt of Public Assistance and Food Stamps for a household of two. The Appellant and his child are also in receipt of temporary housing assistance.
2. The Appellant is the parent or caretaker of a dependent child.
3. On November 22, 2005, the Agency mailed a letter to the Appellant advising him to report to its Department of Labor on December 6, 2005 for an assessment appointment.
4. The Appellant did not receive the letter from the Agency dated November 22, 2005 that advised him of the appointment scheduled for December 6, 2005.
5. The Appellant did not report to the Agency's Department of Labor on December 6, 2005.
6. On February 10, 2006 the Agency notified the Appellant of its intent to reduce the Appellant's Public Assistance grant for three months and until the Appellant is willing to comply with employment requirements and to reduce the household's Food Stamp benefits for four months and thereafter until the Appellant complies on the grounds that the Appellant refused to cooperate and participate in an assessment.
7. 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.
8. The Appellant responded to the notice of conciliation and had a conciliation with the Agency to give reasons for the failure to comply. After evaluating the Appellant's reasons, the Agency issued the Notice of Intent.
9. On February 22, 2006, the Agency determined to discontinue temporary housing assistance and school bus transportation for his child from temporary housing would be discontinued due to his non-compliance with his independent living plan as a result of his sanction for non-compliance with employment program requirements. The Agency's notice advised the Appellant that his child could not remain at the shelter without him.
10. On February 22, 2006, 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 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.

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.

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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 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. 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 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.

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).

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.

Pursuant to 7 U.S.C. 2015 (Section 6 of the federal Food Stamp Act of 1977), as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), if a disqualification is imposed on a member of a household because of that member's failure to perform an action required under a federal, State or local law relating to a means-tested public assistance program, the Agency may also impose a disqualification on the household member under the Food Stamp Program.

If the Agency determines that an individual has refused or failed without good cause to comply with Food Stamp employment requirements, that individual is ineligible to receive Food Stamp benefits for two months, and thereafter until the individual complies, for the first instance; four months, and thereafter until the individual complies, for the second instance, and six months, and thereafter until the individual complies, for the third and subsequent instance of a failure to comply. For the period prior to August 19, 2002, a subsequent failure had to be within three years of the previous such failure in order to increase the duration of the sanction. 7 CFR 273.7(g); 12 NYCRR 1300.12(e).

Regulations at 18 NYCRR 352.35 govern the provision of temporary housing assistance to persons who are homeless. These regulations set 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.

Regulations at 18 NYCRR 352.35(c) provide that 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.

Regulations at 18 NYCRR 352.35(d) provide that 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.

Regulations at 18 NYCRR 352.35(e) provide that a homeless individual or family applying for or receiving temporary housing assistance, 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 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;

Failure to comply with any public assistance and care requirements will subject the recipient of temporary housing assistance to the sanctions specified in the applicable sections of this Title.

DISCUSSION

At the hearing, the Appellant testified that he did not report to the Agency's Department of Labor on December 6, 2005 because he did not receive the letter from the Agency advising him of the time and place of this appointment. The Appellant further testified that he resides in temporary housing and that all mail at his location is retrieved from a mailbox that is located outside the home. He added that the mail is then placed in individual bins at the housing facility. He also stated that there has been a problem with mail delivery at the facility due to the involvement of co-residents in the distribution of the mail.

The Agency, for its part, contended that the appointment letter was properly addressed to the Appellant and was mailed in accordance with Agency mailing procedure. The Agency noted that its mailing envelopes advise the post office that its mail cannot be forwarded.

This testimony of the Appellant at the hearing was plausible, persuasive and was corroborated by a flyer distributed by a manager at the temporary housing facility where the Appellant resides. The flyer advised the residents that they are not allowed to retrieve mail and warned the clients of the consequences of a failure to heed this warning. In this case, the need to distribute such a warning is indicative of a problem with respect to the securing of mail at the particular location of temporary housing where the Appellant was residing.

Accordingly, the Appellant has established good cause for his failure to report to his assessment appointment on December 6, 2005. The Agency's determination to reduce his grant of Public Assistance and Food Stamp benefits cannot be sustained.

With respect to the determination of the Agency to discontinue temporary housing assistance, since the Appellant and his representative have established a valid basis for his failure to report to the Agency's Department of Labor on December 6, 2005, the Agency determination to discontinue temporary housing assistance to the Appellant due to non-compliance with employment program requirements cannot be sustained.

DECISION AND ORDER

The Agency's determination to reduce the Appellant's Public Assistance and Food Stamps on the grounds that the Appellant refused to cooperate and participate in the assessment process was not correct and is reversed.

The Agency's determination to discontinue temporary housing assistance to the Appellant was not correct and is reversed.

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 continue the Appellant's Food Stamp benefits and to restore benefits withheld as a result of the Agency's action retroactive to the date of reduction.

3. The Agency is directed to continue to provide the Appellant and his child with temporary housing assistance.

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.

DATED: Albany, New York
March 30, 2006

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee