

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

REQUEST: March 12, 2007
CASE #: Nxxxxxxx
AGENCY: Westchester
FH #: 4744347K

In the Matter of the Appeal of
SH
from a determination by the Westchester 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 May 17, 2007, in Westchester County, before Joel Dulberg, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

SH, Appellant
Mary Mahoney, Esq., Representative

For the Social Services Agency

Cora Adalin, Fair Hearing Representative
Richard Marin, Employment Counselor (via telephone)

ISSUE

Was the Agency's determination to discontinue the Appellant's Public Assistance and Food Stamps on the grounds that the Appellant refused to cooperate and participate in 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, age 32, has been in receipt of Public Assistance and Food Stamps for a household of one person consisting of herself alone.

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2. The Appellant is not the parent or caretaker of a dependent child.
3. By letter dated January 24, 2007, the Agency advised the Appellant to report to an employment assessment appointment on February 27, 2007, at the local Agency office in Yonkers.
4. The Appellant failed to report to her scheduled employment assessment appointment on February 27, 2007.
5. On March 9, 2007 the Agency notified the Appellant of its intent to discontinue the Appellant's Public Assistance grant for 90 days and until the Appellant is willing to comply with employment requirements and to discontinue the household's Food Stamp benefits for two months and thereafter until the Appellant complies on the grounds that the Appellant refused to cooperate and participate in an assessment.
6. 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.
7. The Appellant did not respond to the notice of conciliation within the 10 day period of conciliation and the Agency subsequently issued the Notice of Intent.
8. On March 12, 2007, 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-a of the Social Services Law and 18 NYCRR 385.7 requires that to the extent resources are available, social services official shall, within a reasonable period of time not to exceed one year following application for safety net assistance conduct an assessment of employability of applicants and recipients in households without dependent children who are not exempt from assignment to work activities. Such assessment shall include, but not be limited to a review of the individual's educational level, including literacy and English language proficiency; basic skills proficiency; supportive services needs; and the skills, prior work experience, training and vocational interests of each participant. This assessment shall include a review of family circumstances.

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An applicant or recipient may be assigned to work activities prior to the completion of the assessment.

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

- (a) services that will be provided, including supportive services;
- (b) work activities to which the individual will be assigned;
- (c) the individual's employment goal.

The plan shall take into account the individual's:

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

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 state work activity participation rates before completing an individual's employability plan.

Each applicant for or recipient of Public Assistance must participate in an assessment as required by the social services district. Entire households of applicants who fail or refuse to participate with the requirements of this section shall be ineligible for Public Assistance. Recipients who fail or refuse to participate with the requirements of this section have the right to a conciliation pursuant to Section 341 of the Social Services Law and 18 NYCRR 385.11 and shall be subject to the sanctions set forth in section 342 of the Social Services Law and 18 NYCRR 385.12.

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.

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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 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 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. 18 NYCRR 385.12(c).

Section 342 of the Social Services Law and 18 NYCRR 385.12 provides that in the case of an individual who is a member of a household without dependent children applying for or in receipt of safety net assistance 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 such failure or refusal to comply, a period of ninety days and thereafter until 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

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(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); 18 NYCRR 385.12(e).

DISCUSSION

The evidence in this case establishes that the Appellant failed to report to her scheduled February 27, 2007, employment assessment interview. The Agency's witness, who is the Appellant's employment counselor testified at the hearing that the appointment letter was mailed to the Appellant's correct address and not returned by the Post Office. The Agency's witness further testified as to the Agency's mailing procedure: that when an original appointment letter is mailed to the Agency's clients, a copy is automatically placed in the recipient's case record. A copy of the Appellant's appointment letter from the Appellant's case record was submitted at the hearing.

Finally, the witness noted that the Appellant called him the date that the notice of intent had been issued, claiming non-receipt of the appointment letter. The witness indicated that he had rejected the Appellant's claim of non-receipt as according to case notes the Appellant then quoted from the appointment letter she claimed she had not received. Based upon the evidence available to the Agency at the time of its adverse action, the Agency's determination must be considered correct when made.

The Appellant contended at the hearing that she failed to receive the appointment letter in the mail and was therefore not aware of the appointment. The Appellant further asserted that due to her deteriorating vision as a result of Proliferative Diabetic Retinopathy, she is unable to read and could not have read the appointment letter in question to the Agency's witness. The Appellant indicated that she had called the Agency's witness (after learning from her worker she was going to be sanctioned due to a missed appointment) to request the employment assessment be rescheduled. Upon review of both the Appellant's detailed testimony and submitted medical evidence, the Appellant's contentions must be sustained.

It is noted with regards the issue of the non-receipt of the appointment letter, the Appellant testified persuasively that she resides with a roommate who has the only key to a shared mailbox and that she never received the appointment letter in question in the mail. The Appellant also indicated she has had ongoing mail problems and also did not receive the conciliation letter,

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which is why she contacted the Agency after the conciliation deadline (once she spoke with her caseworker).

The Appellant's representative, an attorney with Legal Services of the Hudson Valley, also testified that she has known the Appellant for several years as a client while representing her regarding a pending S.S. Disability claim. The Appellant's representative affirmed that the Appellant due to her poor eyesight is unable to read any notices sent in conjunction with her pending S.S. Disability matter. The Appellant's representative further noted that the Appellant is scheduled for laser surgery next month for a detached retina.

Finally, as previously indicated, the Appellant's claim that she is unable to read and therefore could not have read from the appointment letter) is supported in part by submitted medical documentation including a statement from Dr. EG dated March 16, 2007, and a statement from Dr. SB dated March 28, 2006, confirming the Appellant's diagnosis and limited vision.

As the Appellant has by her credible testimony and evidence presented at the hearing, established good cause for her failure to report to an employment assessment appointment, the Agency's determination to discontinue Appellant's Public Assistance and Food Stamp benefits, while correct when made, may not now be sustained.

DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Public Assistance and Food Stamps on the grounds that the Appellant refused to cooperate and participate in the assessment process was correct when made but may not now be implemented.

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 discontinuance.

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 discontinuance.

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
May 29, 2007

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee