
In the Matter of the Appeal of

W D

:
DECISION
: AFTER
FAIR
BEARING

from a determination by the Oneida County
Department of Social Services

JURISDICTION

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on January 31, 1996, in Oneida County, before Orrie Eihacker, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

W D, Appellant; Warren Shiell and Carrie Nikodem, Legal Aid Society of Mid-New York

For the Social Services Agency

Melanie Semian, Fair Hearing Representative; Stuart Fowler, investigator

ISSUE

Was the Agency's determination to deny the Appellant's application for Public Assistance, Medical Assistance and Food Stamp benefits on the grounds that the Appellant failed to respond to a request to contact the Agency correct?

FACT FINDING

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 applied for Public Assistance, Medical Assistance and Food Stamp benefits for his needs only on October 16, 1995.

2. On October 25, 1995 the Agency made an unannounced home visit to the Appellant's apartment.

3. The Appellant was not at home and the Agency left a note under the door asking the Appellant to contact the Agency within five days for an

appointment.

4. By letter dated October 25, 1995 the Agency mailed a request to the Appellant to contact the Agency within five days for an appointment.

5. The Appellant did not contact the Agency because he did not receive either the note left under his door or the letter mailed to his address requesting that he contact the Agency.

6. By notice dated November 7, 1995 the Agency advised the Appellant of its determination to deny his application for Public Assistance, Medical Assistance and Food Stamp benefits on the grounds that he had not responded to the request that he contact the Agency.

7. On November 15, 1995, the Appellant requested this fair hearing.

APPLICABLE LAW

Department Regulations at 18 NYCRR 351.1 and 351.2 require that to demonstrate eligibility, applicants for and recipients of Public Assistance must present appropriate documentation of such factors as identity, residence, family composition, rent payment or cost of shelter, income, savings or other resources and, for aliens, of lawful residence in the United States. Section 351.5 of the Regulations provides that if the applicant or recipient has previously verified necessary information which is not subject to change and the Agency possesses documentation of such verification in its files, the applicant or recipient is not required to resubmit verification of such information. Section 351.6 of the Regulations provides that verification of data is an essential element of the eligibility investigation process. The applicant or recipient is the primary source of the required information. However, when the applicant or recipient is unable to provide the required verification, the Agency must assist the applicant or recipient in obtaining the verification or make collateral investigation. 18 NYCRR 351.5 and 351.6. If a third party seeks to impose a charge or fee for providing required information to the applicant or recipient, the Agency must pay such fee or must assist the applicant or recipient in obtaining the information by other means. 18 NYCRR 351.5. The applicant's or recipient's failure or refusal to cooperate in providing necessary information is a ground for denying or discontinuing Public Assistance.

Section 360-2.2(f) of the Regulations requires that a personal interview be conducted with all applicants for Medical Assistance. Such personal interview shall be conducted before a decision on Medical Assistance eligibility is authorized or reauthorized. The Department may grant a waiver of the personal interview requirement for recertification of aged, certified blind or certified disabled recipients when the Agency demonstrates that alternative procedures have been established to verify that recipients continue to meet all eligibility requirements for Medical Assistance. Section 360-2.3 of the Regulations provides that the Medical Assistance applicant and recipient has a continuing obligation to provide accurate and complete information on income, resources and other factors which affect eligibility. An applicant or recipient is the primary source

of eligibility information. However, the Agency must make collateral investigation when the recipient is unable to provide verification. The applicant's or recipient's failure or refusal to cooperate in providing necessary information is a ground for denying an application for a Medical Assistance Authorization or for discontinuing such benefits.

Section 360-2.4(c) of the Regulations provides that an initial authorization for Medical Assistance will be made effective back to the first day of the first month for which eligibility is established. A retroactive authorization may be issued for medical expenses incurred during the three month period preceding the month of application for Medical Assistance, if the applicant was eligible for Medical Assistance in the month such care or services were received.

The Food Stamp application process includes filing and completing the application form, being interviewed and having certain information verified. If the household refuses to cooperate with the Agency in completing this process, the application shall be denied. In order for a determination of refusal to be made, the household must be able to cooperate but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. 7 CFR 273.2(d); 18 NYCRR 387.5, 387.6, 387.7.

For households initially applying for Food Stamp benefits mandatory verification shall be completed regarding: gross nonexempt income, alien status, shelter expenses, medical expenses, residency, household size, Social Security number, identity, date of birth, utility expenses, resources, disability and, if questionable, household composition and citizenship and any other questionable information that has an effect on the household's eligibility and benefit level. 7 CFR 273.2(f); 18 NYCRR 387.8(c).

To be considered questionable, the information on the application must be inconsistent with statements made by the applicant, or inconsistent with other information on the application or previous applications. The local department shall determine if information is questionable based on the household's individual circumstances. 7 CFR 273.2(f); 18 NYCRR 387.8(c).

Written documentary evidence is to be used as the primary source of verification of all items except residency and household size. Residency and household size may be verified either through readily available documentary evidence or through a collateral contact. Residency is to be verified except where verification cannot reasonably be accomplished such as in home-less cases. 7 CFR 273.2(f); 18 NYCRR 387.8(c).

The household has the primary responsibility for providing documentary evidence to support its application and to resolve any questionable information. The local Agency, however, is obligated to offer assistance in situations where the household cannot obtain the documentation in a timely manner. Such assistance may include using a collateral contact or home visit unless otherwise required by Federal or State Regulations. 7 CFR 273.2(f); 18 NYCRR 387.8(c).

If the Agency determines to verify a deductible expense and such verification has not been obtained and obtaining the verification may delay the household's certification, then the Agency may determine eligibility and benefit level without providing a deduction for the claimed but unverified expense, including medical expense. If the household subsequently provides verification, benefits shall be redetermined. 7 CFR 273.2(f).

When a household's eligibility cannot be determined within thirty days of filing of the application, the Agency must determine the cause of the delay. If the delay is the fault of the household, then the application must be denied. However, if the household takes the required action within sixty days of the filing of the application, the case must be processed without requiring a new application. Prorated benefits must then be provided to the household from the date the necessary verification was provided. If the delay is the fault of the Agency, then the Agency must notify the household as to what action it must take to complete the application. The cause of the delay in failing to complete verification shall be considered the household's fault only if the Agency has assisted the household in trying to obtain the verification and allowed the household at least ten days to obtain the missing verification. If the household is found to be eligible during the second thirty-day period, prorated benefits must be provided from the date of application. 7 CFR 273.2(h); 18 NYCRR 387.14(h)(4).

If, due to the Agency's fault, the application process is not completed by the end of the second thirty-day period, the Agency must continue to process the application until an eligibility decision is reached. If the household is found eligible and the Agency was at fault for the delay in the initial thirty days, the household must receive benefits retroactive to the day of application. However, if the initial thirty-day delay was the household's fault, the household must receive benefits retroactively to the date final verification of all required eligibility factors was received. If the household was at fault for not completing the application process by the end of the second thirty-day period, the application must be denied and the household will not be entitled to any lost benefits, even if the delay in the initial thirty days was the fault of the Agency. 18 NYCRR 387.14(h)(4).

DISCUSSION

The Agency's determination to deny the Appellant's application for Public Assistance, Medical Assistance and Food Stamp benefits cannot be upheld because the record fails to establish that the Appellant failed or refused to cooperate with the Agency's investigation into his eligibility.

The record establishes that the Appellant applied for Public Assistance, Medical Assistance, and Food Stamp benefits for his needs only on October 10, 1995 and that he submitted a landlord form verifying that he lives at 242 J Street, Utica since October 1, 1995.

The Agency's investigator stated that he went to 242 J Street on October 24, 1995. He stated that there were no numbers on the apartment doors, but that he is familiar with the building and knows which apartment

is number one, the Appellant's apartment. He stated that no one was home and that he left a note under the Appellant's door, with a portion of the note sticking out from under the door. The note asked the Appellant to contact the Agency within five days. He stated that later that day he sent a letter to the Appellant, also asking the Appellant to contact the Agency within five days.

At the hearing the Appellant stated that he does live at 242 J Street, apartment one, but that he did not receive either the note that was left under his door or the letter that was mailed to him asking him to contact the Agency. He stated that he had just moved into the apartment in the month of his application for assistance, but that his name is on the mail box and that as far as he knows he does not have any trouble receiving mail. He did state that the entrance to the building is kept unlocked during the day, and that anyone from the street would have access to the mail boxes. It is noted that the Appellant has re-applied for assistance and that during a later home visit he was located at 242 J Street.

The Appellant's testimony was clear and plausible. Since the note left under his door was visible to any one passing by, and since the building is not locked during the day, anyone could have taken that note before the Appellant returned home. In addition, the mail in his mail box would also be vulnerable to theft due to the unlocked building. Moreover, there was no indication, either in his testimony or the testimony of the Agency's investigator, that the Appellant did not actually live at 242 J Street, as verified by the landlord form. The Appellant's testimony is therefore found to be credible.

The record therefore establishes that the Appellant did not fail or refuse to cooperate with the Agency in establishing his eligibility. Under these circumstances, the Agency's determination to deny the Appellant's application of October 16, 1995 for Public Assistance, Medical Assistance and Food Stamp benefits on the grounds that he failed to cooperate with an investigation into his eligibility cannot be upheld.

It is noted that the Appellant's representative also contended that the Agency's home visit policy was invalid and violates state and federal statutes and the state and federal constitutions. The Appellant's representative requested that the policy be invalidated, and that a corrective in similar cases be made. Based on the decision in this case, these contentions need not be reached.

DECISION AND ORDER

The Agency's determination to deny the Appellant's application of October 16, 1995 for Public Assistance, Medical Assistance and Food Stamp benefits is not correct and is reversed.

1. The Agency is directed to continue to process the Appellant's application, to provide the Appellant with an opportunity to submit any other documents necessary to establish eligibility, if necessary, and to make a new determination regarding his eligibility for Public Assistance, Medical Assistance and Food Stamp benefits based on his October 16, 1995

application.

2. The Agency is directed to advise the Appellant in writing of its new determination.

3. If the Agency determines that the Appellant is eligible, the Agency is directed to restore Public Assistance benefits retroactive to 45 days from October 16, 1995 and until his new application was accepted, Medical Assistance retroactive to October 1, 1995 and until his new application was accepted, and Food Stamps retroactive to October 16, 1995 and until his new application was accepted.

As required by Department Regulations at 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York
February 20, 1996

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

By


Commissioner's Designee