

STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST April 23, 2003  
CASE # PXXXXXX  
CENTER # Nassau  
FH # 3897139L

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In the Matter of the Appeal of :

KT

**DECISION**  
: **AFTER**  
**FAIR**  
**HEARING**

from a determination by the Nassau County  
Department of Social Services :

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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 July 2, 2003, in Nassau County, before Jonathan M. Kastoff, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

KT, Appellant  
JK, Representative

For the Social Services Agency

Helene Mergentheimer, Fair Hearing Representative  
Trevor Capleton, Witness

ISSUE

Was the Agency's determination that the Appellant was ineligible for Public Assistance, Medical Assistance and Food Stamp benefits because Appellant failed to cooperate with the Agency's Special Investigation Unit 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 has been in receipt of Public Assistance, Medical Assistance and Food Stamp benefits for a one person household.
2. On April 18, 2003, the Agency sent a Notice of Intent to the Appellant setting forth its determination to discontinue Appellant's Public Assistance, Medical Assistance and Food Stamp benefits on the grounds that Appellant failed to cooperate with the Agency's Special Investigation Unit.
3. On March 13, 2003, a worker in the Agency's Special Investigation Unit made an unannounced visit to Appellant's address of record. Appellant

was not present and the worker left notice for Appellant to contact the worker. Appellant did not contact the worker.

4. On March 20, 2003 the worker mailed Appellant a letter requesting that Appellant contact the worker within five days so that a home visit could be scheduled. Appellant failed to contact the worker.

5. On April 23, 2003, the Appellant requested this fair hearing.

#### APPLICABLE LAW

Regulations define an investigation of eligibility and degree of need as a continuous process concerned with all aspects of eligibility for Public Assistance and care, including Medical Assistance, from the period of initial application to case closing. Investigation means the collection, verification, recording and evaluation of factual information on the basis of which a determination of eligibility and the degree of need is made. As part of this investigation, it is the responsibility of an applicant or recipient of Public Assistance and care to verify his/her place of residence. 18 NYCRR 351.1, 351.2 and 360-1.2, 360-2.3.

Contacts with recipients and collateral sources shall include face-to-face contacts, correspondence, reports on resources, eligibility mailouts and other documentation. Contacts with or concerning recipients shall be made as frequently as individual need, change in circumstances or the proper administration of assistance or care may require. 18 NYCRR 351.21(a)

An Agency, however, may not deny Public Assistance benefits solely on the ground that a homeless person has no permanent address. Administrative Directive 94 ADM-20 provides that a person does not have to be domiciled or have an address to be eligible for Public Assistance, Medical Assistance or Food Stamp benefits. A permanent or temporary residence is not an eligibility requirement for receipt of assistance under these programs.

An applicant for or recipient of public assistance is exempt from complying with any requirement concerning eligibility for public assistance if the applicant or recipient establishes that good cause exists for failing to comply with the requirement. Except where otherwise specifically set forth in regulations, good cause exists when the applicant or recipient has a physical or mental condition which prevents compliance; the applicant's or recipient's failure to comply is directly attributable to Agency error; or other extenuating circumstances, beyond the control of the applicant or recipient, exist which prevent the applicant or recipient from being reasonably expected to comply with an eligibility requirement. 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 351.26.

The application process for Food Stamp benefits includes the completion and submission of an application form, a personal interview and the verification of information. Statements made on the application must be documented or otherwise verified. Except in unusual circumstances such as homelessness where verification cannot be reasonably accomplished, residency must be verified. Residency may be verified either through readily available documentary evidence or through a collateral investigation. 7 CFR 273.2; 18

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NYCRR 387.8(b). An otherwise eligible household cannot be required to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. 18 NYCRR 387.9(a)(1).

Households receiving Food Stamp benefits have a continuing responsibility to report changes in residence. 7 CFR 273.12, 18 NYCRR 387.17(e).

#### DISCUSSION

In January, 2003 appellant reported to the Agency as homeless and submitted a letter from a friend that he was staying temporarily at the friend's address. The Agency worker then made his visit to the residence in March, 2003 to verify residence. The worker was advised by the landlord at the residence that Appellant was not residing there. Appellant did not respond to the two notices issued by the worker. Therefore, the Agency's determination to discontinue Appellant's Public Assistance, Medical Assistance and Food Stamps was correct when made on April 18, 2003.

However, at the hearing Appellant testified that he is still homeless, and has been staying with friends and at motels and shelters without Agency assistance. Appellant further testified that as a result of disagreements in February, 2003 he was no longer residing with the friend he had advised the Agency of in January, 2003, and that he did not receive either letter from the Agency worker requesting the home visit. Appellant has been issued a Public Assistance grant without a shelter allowance since October, 2002. Within the last month, Appellant been using his grandmother's address as a mailing address, which he had been using as a mailing address until January, 2003. Appellant's testimony was plausible, corroborated in part by Agency records, and persuasive. Appellant presented sufficient evidence to establish good cause for Appellant's failure to cooperate with the Agency's Special Investigation Unit. Therefore, the Agency's determination to discontinue Appellant's Public Assistance, Medical Assistance and Food Stamps cannot be sustained at this time.

#### DECISION AND ORDER

The Agency's determination to discontinue Appellant's Public Assistance, Medical Assistance and Food Stamp benefits was correct when made.

1. However, the Agency is directed to continue the Appellant's Public Assistance, Medical Assistance and Food Stamp benefits and to restore any assistance withheld as a result of the Agency's action, retroactive to the date of discontinuance.

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

DATED: Albany, New York  
July 8, 2003

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee