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In the Matter of the Appeal of  
J R  
from a determination by the New York City  
Department of Social Services

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**DECISION  
AFTER  
FAIR  
HEARING**

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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 November 20, 2007, in New York City, before Michael Feuerstein, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

J R, Appellant; Sonja Shield, Bronx Defender's Office

For the Social Services Agency

Mat Nwahiri, Fair Hearing Representative; James Cottrell, Fair Hearing Representative

**ISSUE**

Was the Agency's determination to discontinue the Appellant's Public Assistance on the grounds that the Appellant refused to comply with work experience requirements by 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 for a household of one person.
2. The Appellant is not the parent or caretaker of a dependent child.

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3. On October 6, 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 work experience requirements on the grounds that the Appellant refused to cooperate with work experience requirements.

4. 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.

5. 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.

6. On October 16, 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 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 18 NYCRR 385.9, 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 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

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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 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 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. 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;

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- (b) For the second such failure or refusal to comply, a period of 150 days and thereafter until willing to comply; and
- (c) For the third and all subsequent such failures or refusals, a period of 180 days and thereafter until willing to comply.

Willing to comply means that an individual, as required by a district, reports to an assigned work activity site or other location as assigned by the district on time and prepared to engage in the assigned activity.

## **DISCUSSION**

The record establishes that the Appellant has been in receipt of Public Assistance for a household of one person.

The Appellant is not the parent or caretaker of a dependent child.

On October 6, 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 work experience requirements on the grounds that the Appellant refused to cooperate with work experience requirements.

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.

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.

The Appellant was scheduled for an appointment with the Agency on September 19, 2007. The Appellant did not report to his scheduled appointment with the Agency on September 19, 2007.

At this hearing, the Appellant stated that he did not report to his scheduled appointment with the Agency on September 19, 2007 because he did not receive the appointment letter.

With respect to the failure to comply with employment requirements, although the Appellant contended that this failure was caused by the fact that the Appellant did not receive his appointment notice, the Agency presented evidence establishing that the appointment notice was mailed in the regular course of business. The Agency submitted an affidavit to set forth its mailing procedures for pre-sorted appointment notices which states that such notices contain a specific barcode on the left front side of each page establishing the date of mailing. The affidavit provides that when the notice is mailed, the bar code appears on the notice that is retained by the Agency. The affidavit further states that the bar code that is imprinted on the copy is the same date on which the notice is mailed. The affidavit also explains once the bar code is generated, it cannot be altered, and therefore, reflects the actual date on which the notice was produced and mailed. The Agency submitted a copy of the appointment letter at the hearing which bears the bar code. Accordingly, the record establishes that the Agency did mail the appointment letter to the Appellant on September 9, 2007. This creates a presumption of receipt of mail.

At this hearing, the Appellant credibly testified that he has difficulty in receiving his mail because he lost the key to his mailbox and his landlord has refused to provide him with a new key to the mailbox. The Appellant successfully rebutted the presumption of receipt of mail, specifically the appointment letter in issue. The Appellant has established good cause for his failure to report to his scheduled appointment with the Agency on September 19, 2007. The Agency's determination to sanction the Appellant cannot be sustained.

### **DECISION AND ORDER**

The Agency's determination to discontinue the Appellant's Public Assistance on the grounds that the Appellant refused to comply with work experience requirements 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 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  
November 28, 2007

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee