

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: August 20, 2007
CASE #: Fxxxxxxx
AGENCY: Suffolk
FH #: 4856543R

In the Matter of the Appeal of
K W
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 October 25, 2007, in Suffolk County, before Antonia Ezechi, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

K W, Appellant
Nora Gonzalez, Nassau/Suffolk Law Services, Appellant's Representative

For the Social Services Agency

Amie Salinero, Esq., Fair Hearing Representative

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 49, has been in receipt of Public Assistance for a household of one and Food Stamps for a household of three, consisting of herself, her 24 year old child and her fourteen month old grandchild. The Appellant has a mixed household for food stamp benefits.

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2. The Appellant is not the parent or caretaker of a dependent child.
3. By notice dated, April 21, 2007, the Agency advised the Appellant that a required assessment appointment had been scheduled for the Appellant at the Department of Labor on May 7, 2007.
4. The Appellant failed to report for that appointment.
5. On August 4, 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 Appellant's portion of 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 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.
8. On August 20, 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.

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

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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.

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); 18 NYCRR 385.12(e).

DISCUSSION

A review of the records indicated that the Appellant failed to report for a required assessment appointment scheduled for her at the Department of Labor. The Agency demonstrated the basis for its determination in this case.

The Appellant testified that she received the appointment letter too late due to two reasons. She stated that her kids picked up the mail and tossed it between piles of magazines and due to her multiple debilitating illnesses she would often lay in bed for days at a time. This combination of factors conspired to make the Appellant notice the mail too late to report for the appointment. She stated that she called the Agency ostensibly to reschedule the appointment but it appeared that because of the timing of her call she was scheduled for the conciliation instead. She realized that it was the conciliation when she reported on the determined date and instead of an assessment, she was only questioned about her missed appointment.

The Agency argued with some merit that since the Appellant was aware of the careless reception of mail in her household before said incident, her failure to attend was willful because she failed to be more careful about the possibility of missing her mail.

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An application of willfulness based on the Agency's argument would be circuitous indeed. The fact that the Appellant was not aware of the appointment negates a finding of willfulness for her failure to report to said appointment. It is notable however, that the Agency's point had merit in that the Appellant had the responsibility to secure her mail in order to secure her necessary correspondence from the Agency utilizing that medium. The merit of the Appellant's argument would have been considerably thinner were it not for the added problems presented by her preexisting multiple debilitating illnesses, which the Agency did not dispute. The Appellant's often incapacitating medical conditions were acknowledged by both parties and were not in dispute. The combination of factors support a finding of good cause in this instance.

It is important to state that a proper assessment for employability must be made by the Agency and the Appellant has an obligation to make herself available for such assessments whenever necessary in order to continue the receipt of her benefits. Availability would include careful receipt of the Agency's mail scheduling such assessments. The Appellant must not expect automatic rescheduling of missed appointments especially for rescheduling requests made after the date of the missed appointments.

It was noted that the Appellant had a pending application for Social security Disability benefits.

Based on the evidence educed at this hearing, the Agency's determination in this instance was correct when made but cannot be implemented at this time.

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.

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 any 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
October 30, 2007

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee