

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST June 15, 2004
CASE # PXXXXXX
CENTER # Nassau
FH # 4139844M

In the Matter of the Appeal of :

MSF

DECISION
: **AFTER**
FAIR
HEARING

from a determination by the Nassau 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 Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on September 20, 2004, in Nassau County, before Susan Lerner, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

MSF, Appellant
J. Kaslow, Esq., Nassau Suffolk Law Services

For the Social Services Agency

W. Denson, Fair Hearing Representative

ISSUE

Was the Agency's determination to discontinue the Appellant's Public Assistance and Food Stamp benefits for failure to appear at a face-to-face recertification interview 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 and Food Stamp benefits.
2. The Agency notified the Appellant to appear for a face-to-face recertification interview on May 12, 2004. The Appellant did not appear and her recertification interview was rescheduled for May 25, 2004.
3. The appointment notices in issue were addressed to the Appellant at XXX BH Road, W, New York.
4. The Appellant did not appear for the recertification interview because the Appellant did not receive the appointment letter.

5. By Notice of Intent dated May 15, 2004, the Agency determined to discontinue the Appellant's Public Assistance and Food Stamp benefits due to the Appellant's failure to appear for the face-to-face recertification interview.

6. On June 15, 2004, the Appellant requested this fair hearing.

APPLICABLE LAW

Regulations at 18 NYCRR 351.20 provide that continuing eligibility for Public Assistance must be established through the process of face-to-face recertification interviews. From time to time recipients of Public Assistance are required personally to appear at the recertification interviews and to present appropriate documentation to demonstrate their continuing eligibility for such assistance.

Section 351.22 of the Regulations provides that if a recipient fails to appear at a scheduled interview without good cause, the Agency must send a notice of proposed discontinuance to the recipient. If the recipient appears at the Agency during the ten day period, an interview must be scheduled. If the recipient is found to be eligible as a result of such interview, the ten day notice of proposed discontinuance must be cancelled and the recipient's Public Assistance must be continued.

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.

Federal Regulations at 7 CFR 273.14 and Regulations at 18 NYCRR 387.17 provide that the Agency shall deny a reapplication for Food Stamp benefits if the household fails to attend any interview scheduled on or after the deadline for timely filing of the recertification application or to submit all necessary verification within the time frame established by the State.

The Agency must provide the household with a notice of expiration of benefits prior to the first day of the last month of the certification period. The notice must contain the following information:

- (a) the consequences of failure to comply with the expiration notice;
- (b) the date the current certification period ends;
- (c) the date by which the recipient's household must reapply to receive uninterrupted benefits;

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- (d) the date of any scheduled interview, and a statement that the recipient is responsible for rescheduling a missed interview;
- (e) the number of days the recipient has for submitting missing verification after the interview or after the recertification form is received by the local social services district if no interview is required;
- (f) the specific regulation upon which the action is based;
- (g) the household's right to request an application for food stamp benefits and the obligation of the local social services district to accept the application, provided that the application is signed and contains a legible name and address;
- (h) the address where the application must be filed;
- (i) the household's right to apply for food stamp benefits by mail or through an authorized representative;
- (j) information that any household consisting only of Supplemental Security Income (SSI) applicants or recipients is entitled to apply for food stamp recertification at any office of the Social Security Administration (SSA); and
- (k) the household's right to a fair hearing.
- (l) the procedure for requesting an agency conference or fair hearing, including an address and telephone number where a request for a fair hearing may be made and the time limits within which the request for a fair hearing must be made;
- (m) the right of the recipient to review the recipient's case record. The notice must contain an address and telephone number where the recipient can obtain additional information about the recipient's case; how to request a fair hearing; access to the case file; and/or obtaining copies of documents;
- (n) the right to representation by legal counsel, a relative, friend or other person or to represent oneself, and the right to bring witnesses to the fair hearing and to question witnesses at the hearing; and
- (o) the right to present written and oral evidence at the hearing;

18 NYCRR 358-2.11

Households which are initially certified for one or two months must receive a notice of expiration at the time of certification and will have fifteen days from the date that the notice of expiration is received to file a timely application for recertification. All other households must submit an application for recertification by the fifteenth day of the last month of certification. 18 NYCRR 387.17(f).

The recipient must be interviewed and must submit all verification prior

to the end of the final month of the certification period to be entitled to uninterrupted benefits. The Agency must allow the household at least ten calendar days from the interview to submit any additional or missing verification. If the household fails to appear for the interview, fails to file the recertification application prior to the required time period or fails to provide missing verification by the end of the 10-day time period, the Agency must deny the recertification application. 18 NYCRR 387.17(f).

DISCUSSION

The uncontroverted evidence establishes that the Appellant did not report to a scheduled face-to-face recertification interview. However, the Appellant presented credible evidence at the hearing establishing that she did not receive the notice of the interview. The Appellant's evidence includes her testimony that the owner of the premises where she rented a room did not initially know that she was a tenant there. She stated that she rented a room from the owner's tenant and that, upon learning that the Appellant was renting a room, the owner wanted her to leave. The Appellant explained that the building's owner received all mail deliveries and was not giving the Appellant's mail to her.

The record shows that the Agency was under the assumption that the Appellant was claiming that the appointment notices were sent to the wrong address. The Appellant clarified that she did reside at XXX BH Road when the notices were sent there. She stated, however, that after June 1, 2004, she moved because of the problems she was having with the building's owner and her mail delivery. In support of her claim regarding the non-receipt of mail, the Appellant's attorney submitted a form filed by the Appellant with INS, asking that her mail be sent to her in care of her brother in Florida.

The Agency's position is that the Appellant should have asked the building's owner for her mail. Clearly, if that individual was not inclined to forward it to her, her inquiring would be to no avail. The Appellant testified logically and credibly that she failed to report to her recertification interview because she was not aware of the appointment. Therefore, although correct when made, the Agency determination in issue cannot be affirmed.

DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Public Assistance and Food Stamp benefits for failure to appear at a face-to-face recertification interview was correct when made, but cannot be implemented at this time.

1. The Agency is directed to restore/continue the Appellant's Public Assistance and Food Stamp benefits retroactive to the date of the discontinuance.

2. The Agency is directed to reschedule a recertification interview with the Appellant.

It is noted that the Appellant must cooperate in the recertification process in order to continue to receive assistance and/or benefits.

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
September 24, 2004

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee