

**STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE**

REQUEST: April 13, 2006
CASE #: P0xxxxxxx
AGENCY: Suffolk
FH #: 4531276J

In the Matter of the Appeal of
N K and
T L
from determinations 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 August 31, 2006, in Suffolk County, before Thelma Lee, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellants

N K and T L, Appellants
Nora Gonzalez, Appellants' Representative, Nassau Suffolk Law Services

For the Social Services Agency

Randi Delirod, Fair Hearing Representative

ISSUE

Was the Agency's determination to reduce the household's Family Assistance and to impose a three month sanction for the Appellant N K on the grounds that he failed to report to Department of Labor (DOL) to register for Suffolk Work Experience Program (SWEP) correct?

Was the Agency's determination to reduce the household's Family Assistance and to impose a three month sanction for the Appellant T L on the grounds that she failed to report to an employment assessment 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 Appellants, N K (age thirty) and T L (age twenty-five) are in receipt of Family Assistance and reside at the address of record with their five children, ages seven to one month.
2. The Appellants are in receipt of benefits from the Shelter Supplement Program (SSP).
3. The actual monthly cost of the Appellants' shelter is \$1,472.00 per month.
4. The Agency was advised that the address of record is located at 123 W Drive M B, New York.
5. On November 15, 2005, the Appellant, Mr. K, reported to the Agency's Case Management Project (CMP) and it was concluded that he was employable part-time with limitations.
6. By letter dated November 15, 2005, the Agency advised N K that he was required to report on December 1, 2005 at 10:30 AM to DOL to register for SWEP.
7. The Agency sent its November 15, 2005 letter to the address of record. There were also tokens included in this letter for Mr. K, to report to the December 1st appointment.
8. N K failed to appear at DOL on December 1st pursuant to the November 15th letter.
9. The Appellant, Mr. K, was previously sanctioned for non-compliance with the work rules by notice dated May 16, 2005.
10. The Agency provided Mr. K with an opportunity at conciliation to explain the December 1, 2005, absence from DOL.
11. There was no conciliation actually held. However, the Agency was informed by Mr. K that the absence from DOL was due to non-receipt of the November 15, 2005, appointment letter.
12. By notice dated April 7, 2006, the Agency advised N K of its determination to reduce Family Assistance and to impose a 90 day sanction on the grounds that he failed to report to DOL on December 1, 2005, to register for SWEP.
13. In or about December, 2005, the Agency was advised by T L that she was no longer in receipt of earned income and was in receipt of monthly unemployment benefits of \$567.67.

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14. By letter dated December 21, 2005, the Agency advised T L that she was required to report to an assessment at DOL, located in H, New York, on January 20, 2006, at 1:30 PM.

15. On January 20, 2006, Miss L informed the Agency that she was unable to report to DOL due to the lack of funds for transportation.

16. The Agency advised T L that the household's Family Assistance cash grant was available on January 21st and to report to DOL on January 23, 2006 before 3:00 PM.

17. The Agency issued a Family Assistance benefit of \$57.35 on January 17, 2006 which was available on January 18, 2006.

18. The Appellant (T L) did not report to DOL on January 23, 2006.

19. T L was previously sanctioned for non-compliance with the work rules by notice dated July 16, 2005.

20. The Agency provided Miss L with an opportunity at conciliation to explain her absence from the January, 2006, assessment.

21. T L did not respond to the Agency's conciliation letter.

22. By notice dated June 5, 2006, the Agency advised the Appellant T L of its determination to reduce Family Assistance and to impose a three month sanction on the grounds that she failed to report to the January, 2006, assessment.

23. By notice dated May 27, 2006, the Agency advised the Appellants of its determination to recoup an overpayment of \$1,205.41 of Public Assistance incurred from October, 2004, to September, 2005, due to an energy reconciliation.

24. By notice dated June 21, 2006, the Agency advised the Appellants of its determination to reduce the household's Public Assistance benefits due to the loss of benefits in the SSP and the ineligibility of a household member for Public Assistance.

25. On April 13, 2006, the Appellants 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 persons 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

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person who refuses to accept such care or undergo such instruction or training is ineligible for Public Assistance and care.

Section 335 of the Social Services Law and 18 NYCRR 385.6 require that each recipient of Public Assistance who is a member of a household with dependent children and is eighteen years of age or older, or who is sixteen or seventeen years of age and is not attending secondary school and has not completed high school or a high school equivalency program, receives an assessment of employability based on his or her educational level, including literacy and English language proficiency, basic skills proficiency, child care and other supportive services needs; and the skills, prior work experience, training and vocational interests. The assessment must include a review of family circumstances including a review of any special needs of a child. The assessment must be completed within 90 days of the date on which such person is determined eligible for Public Assistance. An applicant for or recipient of Public Assistance may be assigned to work activities prior to completion of such assessment. Applicants and recipients are required to participate in an assessment as assigned by the social services official.

Based on the assessment, the social services official will develop a written employability plan in consultation with the recipient, which shall set forth:

- (a) the services which the district will provide, including child care;
- (b) the work activities to which the recipient will be assigned;
- (c) the recipient's employment goal, which shall reflect, to the extent possible, the recipient's preferences to the extent they are consistent with the assessment.

In developing the plan, the social services official shall take into account:

- (a) the recipient's supportive services needs;
- (b) the available program opportunities;
- (c) the local employment opportunities;
- (d) if the recipient is assigned to an education program, the recipient's liability for student loans, grants and scholarship awards.

If a recipient's preferences cannot be accommodated in the employability plan, the plan shall record the reasons.

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 federal and state work activity participation rates before completing an individual's employability plan.

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The entire household of an applicant who fails or refuses to participate with the requirements for assessments shall be ineligible for Public Assistance. Recipients who fail or refuse to participate with the requirements of this section 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 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 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 if 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).

The parent or care taker relative of a child under thirteen years of age shall not be subject to the ineligibility provisions of Section 342 of the Social Services Law if the individual can demonstrate, in accordance with the regulations of the Office of Children and Family Services,

that lack of available child care prevents such individual from complying with the work requirements. The parent or caretaker relative shall be responsible for locating the child care needed to meet the work requirements; provided, however, that the relevant social services district shall provide a parent or caretaker relative who demonstrates an inability to obtain needed child care with a choice of two providers, at least one of which will be a regulated provider.

Section 342 of the Social Services Law and 18 NYCRR 385.12 provides that in the case of an applicant for or recipient of Public Assistance who is a parent or caretaker of a dependent child 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 instance of failure to comply without good cause until the individual is willing to comply;
- (b) For the second instance of failure to comply without good cause, for a period of three months and thereafter until the individual is willing to comply;
- (c) For the third and all subsequent instances of failure to comply without good cause, for a period of six months and thereafter until the individual is willing to comply.

The Consolidated Employment Plan for Suffolk County at page 20 states that under Supportive Services Section 4.1, the district reimburses participants for any public transportation costs related to work activity travel. In addition, if the participant uses their own vehicle, the participant is reimbursed at the rate of 30 cents per mile. Tokens are also provided to participants who plan to use bus transportation to travel to and from work activities and employment related appointments (Please note these policies do not apply to travel to employment as the budgeting methodology includes a transportation allowance).

. The local social services districts were notified through the General Information System GIS 05 TA/ DC032 dated September 14, 2005 that districts must revise their conciliation and sanction procedures so that in most cases, a sanction is only imposed for non-compliance with employment requirements when the refusal or failure to comply was both willful and without good cause. The determination of when such conduct is willful and without good cause may include but is not necessarily limited to, identifying a pattern of the recipient's failure to take reasonable steps to address issues within the recipient's control that may prevent the recipient from complying with employment requirements. Such a determination must be made on a case by case basis and the steps that the recipient took to address issues within the recipient's control which prevented him or her from complying with the employment requirement need to be explored in each instances of non-compliance.

DISCUSSION

At this Fair Hearing, the Agency withdrew its June 21, 2006, notice which proposed to reduce Family Assistance for this household due to the loss of the SSP and the Public Assistance sanction imposed against household members. The Agency agreed to re-evaluate Food Stamp eligibility for the Appellants retroactive to the effective date of the notices of April 7, 2006, and June 5, 2006, which recommended the reduction of Family Assistance based on the Appellants' non-compliance with the work rules.

With respect to the energy reconciliation, the Agency stipulated to subtract \$299.51 from the recoupment figure of \$1,205.44 as contained in its May 27, 2006, notice. Thus, the notices of April 7, 2006 and June 5, 2006, which recommended a decrease in Family Assistance and sanctions for failing to comply with the work rules, are the only issues requiring the Commissioner to review in this Decision.

The Appellant, N K, asserted that he was unable to report to DOL on December 1, 2005, due to the lack of receipt of the November 15, 2005, appointment letter. The Appellant's significant other, Miss L, substantiated the non-receipt of this letter at the address of record. The household has resided at W Drive for approximately one year. There have been no ongoing difficulties with the mail delivery. Mr. K testified that occasionally letters for other families in the neighborhood are left by the Post Office in the mail box at W Drive.

Nora Gonzalez, Mr. K's Representative, disputed the Agency's position that the November 15th letter, which contained tokens and a DSS4005 (notice of employability) was mailed using a window envelope. Miss Gonzalez urged that there was insufficient evidence to establish if the November 15th letter was mailed by CMP, DOL, or SWEP. N K produced evidence that there was no conciliation actually held due to surgery on his arm which was performed in February, 2006.

Randi Delirod, the Agency's Fair Hearing Representative, described the Agency's mailing procedures. The Agency contended that a conciliation would have been rescheduled if medical documentation of this surgery was supplied in February, 2006.

The Agency's determination to reduce the household's Family Assistance and to impose a three month sanction against N K on the grounds that he failed to report to DOL on December 1, 2005 was correct when made. Mr. K's testimony regarding the non-receipt of the Agency's appointment letter was credible and persuasive. This testimony was confirmed by an adult member of his household. Pursuant to GIS 05 TA/DC 032, there was no proof that Mr. K's absence from DOL on the date at issue was both intentional and without good cause. The Appellant, N K, should be given another reasonable opportunity to comply with the work rules. Thus, this determination should not be implemented at this time.

The Appellant, T L, asserted that she was unable to appear at an employment assessment on January 20, 2006, or January 23, 2006, due to the lack of funds for transportation. Miss L resides in M B. The January, 2006, assessments were scheduled in H, NY. Miss L testified that

this required fares for two buses to travel one way. Miss L testified that in December, 2005, the household's automobile was repossessed. This resulted in the loss of her earned income from a temporary employment located in M, New York. There was also a waiting period prior to the award of unemployment benefits.

T L testified that the household's cash Family Assistance benefits and unemployment benefits were used to pay the difference between the actual shelter cost of \$1,472.00 per month and the Agency's decreased restrict rent payments, which included reduced SSP benefits. Miss L also used required funds to cover the needs of her five minor dependent children and Mr. K. The Appellant, Miss L, asserted that the Agency never informed her on January 20, 2006, that reimbursement for bus fare could be supplied on the rescheduled date of January 23rd. Nora Gonzalez, Miss L's representative, presented excerpts from the Suffolk County Employment Plan regarding supportive services, including transportation reimbursement, for work activities. Miss Gonzalez noted that the Agency included bus tokens in the November, 2005, letter for Mr. K, but that there were none in the appointment letter for Miss Le.

Randi Delirod, the Agency's Fair Hearing Representative, asserted that Miss L could have saved funds from her earned income or unemployment benefits or cash Family Assistance to appear at the appointment at issue. Miss Delirod urged that Miss L should have known about the policy regarding transportation reimbursement since tokens were provided to her on September 14, 2005, (Agency Ex. 20) for another employment-related activity.

The Agency's determination to reduce the household's Family Assistance and to impose a three month sanction for the Appellant T L on the grounds that she failed to report to an employment assessment was correct when made. The Appellant, Miss L, acknowledged receipt of the Agency's appointment letter to report to the January 20, 2006, assessment. The Agency was advised by T L on January 20th that she lacked funds to keep this appointment. The Agency did not dispute the testimony regarding the need to apply the household's unemployment benefits and cash Family Assistance benefits towards the household's actual monthly shelter cost of \$1, 472.00 or the needs of the six other family members. Miss L was unaware that reimbursement for the tokens would be supplied if she appeared at the rescheduled date. This absence from the Agency's employment assessment in January, 2006, does not fall within the parameters of GIS 05 TA/ DC 032 which requires the refusal or failure to comply with work activities as both intentional and without good cause. T L should be given another opportunity to report to an assessment.

DECISION AND ORDER

The Agency's determination to reduce the household's Family Assistance and to impose a three month sanction for the Appellant N K on the grounds that he failed to report to DOL to register for SWEP was correct when made.

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The Agency's determination to reduce the household's Family Assistance and to impose a three month sanction for the Appellant T L on the grounds that she failed to report to an employment assessment was also correct when made.

1. The Agency is directed to continue the Appellants' Family Assistance.
2. The Agency is directed to give the Appellants, N K and T L, another reasonable opportunity to comply with work activities.
3. The Agency is directed to re-evaluate the Appellants eligibility for Food Stamps retroactive to its April 7, 2006, and June 5, 2006, notices.

The Agency is also directed to withdraw its June 21, 2006, notice as agreed to by its Fair Hearing Representative.

The Agency is directed to reduce the recoupment figure of \$1,205.41 by \$299.51, as reflected in its May 27, 2006, notice as agreed to at this Fair Hearing.

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.

DATED: Albany, New York
September 7, 2006

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee