
In the Matter of the Appeal of	:
	: DECISION
B and J L	: AFTER
	: FAIR
from a determination by the Oswego County	: HEARING
Department of Social Services	:

JURIDICTION

Pursuant to Section 22 of the New York State Social Services Law (hereinafter referred to as "the Social Services Law") and Part 358 of Title 18 of the New York Code of Rules and Regulations (18 NYCRR, hereinafter referred to as "the Regulations"), a Fair Hearing was held on February 6, 1998, in Mexico, New York, before Administrative Law Judge Snitzer. The following persons appeared:

For the Appellants

B L and J L the Appellants;
Heidi Siegfried, the Appellants' attorney (Legal Services of CNY)

For the Oswego County Department of Social Services
(herein referred to as "the Agency")

Joan Mattison, Examiner

ISSUE

Was a determination to discontinue the Appellants' Public Assistance and Food Stamp benefits, to impose sanctions against both of them based on their failure to report for health screening appointments, correct?

FACT FINDINGS

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 have been in receipt of Public Assistance, Medical Assistance ("Medicaid") and Food Stamp benefits for their needs. Both are between 21 and 65 years of age, have no children residing in their household, and neither has claimed to have any medically-disabling condition. Both are considered employable.

2. On December 11, 1997, after providing each an opportunity for Conciliation, the Agency determined to discontinue the Appellants' Public Assistance, to impose sanctions against both of them based on failure without good cause to comply with assigned work requirements.

- a. On November 18, 1997, the Agency's program operator reportedly sent separate letters to each of the Appellant's, advising each of them of a scheduled appointment for health screening on November 24th.
- b. Neither Appellant reported for the scheduled health screening on November 24th, and neither called regarding said screening.
- c. The December 11th notice indicated that both Appellants would be disqualified from receipt of Public Assistance for a period of 90 days, this being the first unexcused failure to comply with any work requirement for each of them.
- d. The Agency notice also indicated intent to discontinue the Appellants' Food Stamp benefits, to impose a two-month Food Stamp sanction against each of them, based on their failure without good cause to comply with a work requirement.

3. On December 17, 1997, a Fair Hearing was requested by or on behalf of both Appellants, seeking review of the Agency's determination to discontinue their assistance and benefits.

APPLICABLE LAW

Title 9-B of the Social Services Law, as recently amended, authorizes Public Assistance Employment Programs, and requires all applicants for and recipients of Public Assistance to participate in assigned Public Assistance Employment Program activities unless they are exempt. Additionally, Section 1300.2 of the Regulations of the NYS Department of Labor (12 NYCRR 1300.2) provides that all applicants for and recipients of Public Assistance must participate in Public Assistance Work Activities assigned by social services districts in accordance with Part 1300 of said Regulations.

Section 1300.9 of said Regulations lists Work Activities and Work Requirements that social services districts may assign to employable applicants for and recipients of Public Assistance.

Section 1300.2(a) of the Regulations of the NYS Department of Labor (12 NYCRR 1300.2) provide that applicants or recipients who fail to comply without good cause with assigned Work Requirements or Work Activities shall be subject to disqualification in accordance with Section 1300.12 of said Regulations. However, in accordance with provisions of Section 341 of the Social Services Law and Section 1300.11 of the Regulations of the NYS Department of Labor (12 NYCRR 1300.11), prior to taking any action to impose an authorized sanction, the local district must offer an opportunity for conciliation, and to review claims of good cause for non-compliance.

Section 342 of the Social Services Law and Section 1300.12 of the Regulations of the NYS Department of Labor (12 NYCRR 1300.12) authorizes sanctions for cases where a Public Assistance applicant or recipient has failed to comply with Work Requirements or Work Activities without good cause. For a non-compliant member of a (SNA) household having no dependent child, the Public Assistance benefits otherwise available to the household shall be reduced pro-rata, for the following periods:

- (a) for the first instance of failure to comply without good cause, 90 days, continuing until the individual is willing to comply;
- (b) for the second instance of failure to comply, 150 days, continuing until the individual is willing to comply; and
- (c) for the third and any subsequent instances of failure to comply, 180 days and thereafter until willing to comply.

Pursuant to 7 U.S.C 2015 (Section 6 of the federal Food Stamp Act of 1977), as amended by the the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), if a disqualification is imposed on an employable member of a Food Stamp household based on failure without good cause to comply with an employment-related requirement under a federal, State or local law related to a means-tested public assistance program, the local social services district may also impose a Food Stamp disqualification against that household member, providing benefits only for other household members remaining eligible.

Section 1300.12(e) of the Regulations of the NYS Department of Labor (18 NYCRR 1300.12) and provisions of federal regulations at 7 CFR 273.7(g) provide that if a local social services district determines that an employable member of a Food Stamp household has failed without good cause to comply with Food Stamp employment requirements, that individual will be ineligible to receive Food Stamp benefits for two months for the first instance, four months for the second instance, and six months for the third and subsequent instance of a failure to comply within a three-year period from the last such failure.

Section 366(1) of the Social Services Law provides that, effective November 1, 1997, no person who is otherwise eligible for Medical Assistance shall lose eligibility for such assistance as a result of the imposition of an employment sanction.

DISCUSSION

Although the Agency submitted copies of two November 18th letters said to have been sent to the Appellants by its program operator (Oswego County Employment & Training), both Appellants credibly testified neither letter was ever received. They suggested the letters might have been lost when their mailbox had been knocked over by a plow following a snowstorm. The Appellants had given the same explanation, being unaware of the scheduled health screening, when they attended conciliation conferences on December 1st. Although it was claimed neither letter had been returned by the postal service, that is insufficient to overcome testimony denying receipt of the letters.

Accordingly, the determination under review cannot be affirmed.

It is also noted that the Appellants claimed they are required to remain in the home to provide care for a medically-dependent family member. The Agency should review that claim and make a timely determination regarding possible exemption of one of the Appellants from Public Assistance Employment Program requirements.

FH# 2818437N

DECISION AND ORDER

The determination to discontinue the Appellants' assistance and benefits, based on their failure to comply with a requirement for health screening, is not correct, and is reversed.

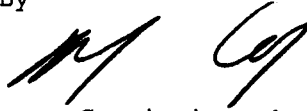
- * The Agency is directed to take no action on its December 11, 1997 notice, and to continue to provide assistance and benefits in accordance with the Appellants' verified degree of need and program entitlement.

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

DATED: Albany, New York
February 17, 1998

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By



Commissioner's Designee