

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

REQUEST June 24, 2004
CASE # PAXXXXXX
CENTER # Suffolk
FH # 4144127Q

In the Matter of the Appeal of :

MM

**DECISION
: AFTER
FAIR
HEARING**

from a determination by the Suffolk 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 August 18, 2004, in Suffolk County, before Susan Lerner, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

MM, Appellant
A. Ezechi, Esq., Nassau Suffolk Law Services

For the Social Services Agency

A. Salinero, Fair Hearing Representative

ISSUE

Was the Agency's determination to reduce the Appellant's Family Assistance on the grounds that Appellant failed to participate in the assessment process correct?

Was the Agency's determination to discontinue the Appellant's authorization to remain in temporary housing 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, age thirty-four, resides in temporary housing with her four children, ages eleven, seven (twins), and three.
2. By letter dated March 18, 2004 the Agency instructed the Appellant to report to an employment assessment interview on March 29, 2004. That letter was sent to the Appellant at her address of record.
3. The Appellant did not receive the appointment letter and therefore did not report as scheduled.

4. On June 21, 2004 the Agency notified the Appellant of its intent to reduce the Appellant's Family Assistance for at least six months and until willing to comply on the grounds that Appellant failed to participate in the assessment process.

5. The Appellant has been sanctioned twice before.

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 her reasons, the Agency issued the Notice of Intent.

8. By notice dated July 14, 2004 the Agency determined to discontinue the Appellant's temporary housing authorization for the duration of her employment sanction.

9. On June 24, 2004, 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 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 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 12 NYCRR 1300.6 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;

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- (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.

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 12 NYCRR 1300.12.

Social services officials are required by Section 341 of the Social Services Law and 12 NYCRR 1300.11 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 notice of denial or 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 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. 12 NYCRR 1300.12(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 12 NYCRR 1300.12 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.

352.35 Eligibility for temporary housing assistance for homeless persons.

- (a) Scope. This regulation governs the provision of temporary housing assistance to persons who are homeless. It sets forth the requirements

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with which an individual or family who applies for temporary housing must comply in order to be eligible for temporary housing assistance.

(b) Definitions.

- (1) Assessment is the evaluation of an individual's or family's housing and housing-related public assistance and care needs including, but not limited to, the availability of housing, the need for temporary housing assistance, employment and educational needs, the need for preventive or protective services, the ability to live independently, and the need for treatment of physical and mental health problems, including substance abuse.
- (2) Independent living plan is a plan developed and/or revised by a social services district and/or its designee, with the cooperation of an individual or family, which sets forth a strategy for meeting such individual's or family's housing-related public assistance and care needs as identified in an assessment and for obtaining housing other than temporary housing and which establishes such individual's or family's responsibilities during their receipt of temporary housing assistance and specifies the conditions upon which temporary housing assistance will be provided. An independent living plan also must specify the temporary housing facility, if any, to which the individual or family has been or will be referred, any requirements of such facility, and the expected duration of the individual's or family's receipt of temporary housing assistance.
- (3) Temporary housing includes family shelters authorized by Part 900 of this Title and section 352.8(a) of this Part, room and board authorized by section 352.8(b) of this Part which is provided to a homeless person on a temporary basis, hotel/motel facilities authorized by section 352.3(e) of this Part and shelters for adults authorized by Part 491 of this Title.
- (4) Temporary housing assistance is a public assistance benefit provided temporarily for an eligible homeless individual or family to meet an immediate need for shelter.

(c) As a condition of eligibility for temporary housing assistance, individuals and families must comply with the requirements of this subdivision. Temporary housing assistance will be denied or discontinued under the conditions specified below. Temporary housing assistance will not be denied or discontinued for failure of the individual or family to comply with the requirements of this subdivision when such failure is due to the physical or mental impairment of the individual or family member.

- (1) An individual or family must cooperate in and complete an assessment conducted by the social services district. When an individual or family fails to cooperate in and complete the assessment, the social services district must deny the individual's or family's application for temporary housing assistance.
- (2) An individual or family must cooperate with the social services

district in developing, carrying out and completing an independent living plan, if the social services district, based on its assessment of the individual or family, has determined that such a plan will assist such individual or family to relocate to housing other than temporary housing. When an individual or family unreasonably fails to comply with the independent living plan requirements, the social services district must discontinue temporary housing assistance. When an individual or family unreasonably fails two or more times to comply with the independent living plan requirements, the social services district must discontinue temporary housing assistance and the individual or family is disqualified from receiving temporary housing assistance until the failure ceases or for 30 days, whichever period of time is longer.

- (3) An individual or family must actively seek housing other than temporary housing, as required by the social services district, and not unreasonably refuse or fail to accept any such housing, including but not limited to, permanent housing, reunification with family or relocation to other appropriate residential facility. When an individual or family fails to comply with these requirements, the social services district must discontinue temporary housing assistance until the failure ceases, or for 30 days, whichever period is longer.
 - (4) An individual or family must refrain from engaging in acts which endanger the health or safety of oneself or others, or which substantially and repeatedly interferes with the orderly operation of a temporary housing facility. When an individual or family commits such acts, including but not limited to acts of violence, selling drugs, or repeated violations of the rules of a temporary housing facility, the social services district must discontinue temporary housing assistance until the failure ceases, or for 30 days, whichever period is longer.
- (d) Prior to denying or discontinuing temporary housing assistance pursuant to subsection (c) of this section, the social services district must evaluate the individual's or the family's need for protective services for adults, preventive services for children and protective services for children and, if necessary, make an appropriate referral.
- (e) A homeless individual or family applying for or receiving temporary housing assistance, pursuant to sections 352.3(e) or 352.8 of this Part or Parts 371 or 491 of this Title, also must comply with all other applicable public assistance and care requirements including, but not limited to:
- (1) requirements for participation in employment and training programs, in accordance with part 385 of this title, including looking for work, engaging in training, accepting jobs and work assignments, and participating in rehabilitative services;
 - (2) requirements for participation in rehabilitative services, as described in section 370.2(d)(7) of this Title and Part 385 of this Title;
 - (3) requirements for participation in the child support enforcement

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program, as described in sections 351.2(e)(2)(iv), 369.2(b) and 370.2(d) of this Title;

- (4) requirements to apply for supplemental security income benefits, as described in sections 369.2(h) and 370.2(c)(5) of this Title;
- (5) requirements for location of resources, as described in section 351.2(e) of this Title; and
- (6) requirements for acceptance of the offer of a home, as described in section 370.2(c) of this Title.

Failure to comply with any public assistance and care requirements, including, but not limited to, those described above, will subject the recipient of temporary housing assistance to the sanctions specified in the applicable sections of this Title.

- (f) A homeless individual or family applying for or receiving temporary housing assistance is subject to the income and resource requirements of this Title; and must cooperate with the social services district's efforts to determine available resources, and must apply for and use any benefits and resources that will reduce or eliminate the need for temporary housing assistance, in accordance with the provisions of this Title.
- (g) A social services district must deny or discontinue a person's or family's temporary housing assistance if it determines that the person or family has other housing available, or if it determines, consistent with the regulations in this Title, that the person or family is required to, but is not applying income and/or using available resources to reduce or eliminate the need for temporary housing assistance.
- (h) Any individual or family whose application for temporary housing assistance is denied or whose temporary housing assistance is discontinued pursuant to subdivision (c) or (g) of this section, is entitled to a fair hearing, in accordance with subpart 358-3 of this Title.

DISCUSSION

The Agency testified to having sent the Appellant a March 18, 2004 appointment letter, instructing her to report to an employment assessment interview on March 29, 2004. The Agency testified to having sent it to the Appellant's address of record at N's House in CM, New York, in accordance with standard mailing procedures. The Agency stated that a copy was kept in the case file after the original was mailed, and that the letter was not returned by the United States Postal Service as being undeliverable.

The Appellant, however, testified credibly that she did not receive the appointment letter in issue. Her testimony was logical, consistent and persuasive. She stated, both at her fair hearing and at her conciliation conference, that mail is delivered to the N's House address and is taken from the mailbox and put on a desk. She stated that house personnel then distribute the mail to the residents. The Appellant stated that she did not learn of the appointment until after the appointment date. The Appellant submitted a letter from a site supervisor at N's House, dated August 16, 2004, indicating that it is house policy for staff to retrieve mail from the

mailbox and then to distribute it to clients. The letter indicates further that the "employee who would have been on the 8 AM to 4 PM shift at XXX R Avenue in CM" in March, 2004, is no longer employed there. Accordingly, the person who would have been responsible for giving the Appellant her mail is unavailable to testify. The Appellant's testimony is sufficient, however, to establish her claim of non-receipt.

A review of the record supports the finding that, although the Agency mailed the scheduling notice to the Appellant, she did not receive it, and thus was not aware of the appointment in issue. Therefore, she has established good cause for her noncompliance and neither the proposed employment sanction, nor the proposed discontinuance of temporary housing, can be implemented at this time.

DECISION AND ORDER

The Agency's determination to reduce the Appellant's Family Assistance on the grounds that Appellant failed to participate in the assessment process was correct when made, but cannot be implemented at this time.

The Agency's determination to discontinue the Appellant's authorization to remain in temporary housing was correct when made.

1. However, the Agency is directed to continue the Appellant's grant of Family Assistance as well as her temporary housing authorization and is to restore any assistance withheld as a result of the Agency's action retroactive to the date of reduction.

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

DATED: Albany, New York
September 8, 2004

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee