

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST October 22, 2002
CASE # PXXXXXX
CENTER # Nassau
FH # 3800365P

In the Matter of the Appeal of :

LT

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 October 25, 2002, in Nassau County, before Jonathan M. Kastoff, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

LT, Appellant
Jane Reinhardt, Representative

For the Social Services Agency

Roslyn Weinblatt,
Lisa Amato, Fair Hearing Representatives;
N. Rosen, Witness

ISSUE

Was the determination of the Agency to discontinue the Appellant's Public Assistance grant due to a failure of the Appellant to verify participation in an out-patient rehabilitation program for alcohol and substance abuse correct?

Was the Agency's determination to deny the Appellant's application for allowances for broker's fees, a rent security deposit, and first months' rent 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 a grant of Public Assistance for a household of one person. Appellant resides with her mother, who does not receive Public Assistance.
2. The Agency requested a formal alcohol and substance abuse assessment

of Appellant. Based on such formal assessment, the Agency requested that Appellant participate in an out-patient rehabilitation program for alcohol and substance abuse based on a determination that Appellant was unable to work because of a need for treatment for alcohol and substance abuse.

3. Appellant attended a program at MMC in GC. On September 5, 2002 the Agency requested Appellant to submit a completed medical form 4527 to the Agency by September 20, 2002.

4. Appellant failed to submit the requested medical form.

5. By notice dated October 11, 2002, the Agency determined to discontinue the Appellant's assistance because the Appellant failed to participate in an out-patient rehabilitation program for alcohol and substance abuse. The Agency determined that Appellant should be sanctioned for at least 45 days and until willing to participate in the program.

6. Appellant had not been sanctioned previously for failure to participate in or complete an out-patient rehabilitation program for alcohol abuse or substance abuse or because of noncompliance with the requirements of the federal Social Security Administration regarding treatment of alcohol abuse or substance abuse.

7. On October 22, 2002 Appellant applied for a broker's fee, a rent security deposit, and first month's rent to enable Appellant to move from X B Street in H to XXX T Avenue in H. Appellant's lease expired and was not renewed by her landlord.

8. On October 22, 2002, the Agency denied the Appellant's application for allowances for broker's fees and a security deposit.

9. On October 22, 2002, the Appellant requested this fair hearing.

APPLICABLE LAW

Section 132(4) of the Social Services Law and 18 NYCRR 351.2(i) provides for a screening for alcohol and/or substance abuse for heads of households and adult applicants and recipients using a standardized screening. Such screening shall be performed by a social services district at the time of application and periodically thereafter unless the recipient is actively participating in alcoholism and/or substance abuse treatment, but not more frequently than every six months, unless the district has reason to believe that an applicant or recipient is abusing or dependent on alcohol or drugs.

Regulations at 18 NYCRR 351.2(i) provide that an adult is any individual in the household who is age 18 or over who is applying for or in receipt of Public Assistance, except an individual 18 years of age who is a full time student regularly attending a secondary school, or in the equivalent level of vocational or technical training.

When the screening process indicates that there is reason to believe that an applicant or recipient is abusing or dependent on alcohol or drugs, or there is other evidence that an applicant or recipient is abusing or dependent on alcohol or drugs, the social services district must require the applicant or recipient to undergo a formal alcohol or substance abuse assessment, which may include drug testing, to be performed by an alcohol and/or substance abuse professional credentialed by the Office of Alcoholism

FH# 3800365P

and Substance Abuse Services. The assessment may be performed directly by the district or pursuant to contract with the district.

If the formal assessment determines that the applicant or recipient is unable to work by reason of his or her need for treatment for alcohol or substance abuse, or, for determinations prior to April 27, 1998, the applicant or recipient has been ordered to participate in alcoholism or substance abuse treatment by a court of competent jurisdiction, the social services official must refer the individual to an appropriate alcoholism and/or substance abuse treatment program.

Regulations at 18 NYCRR 351.2(i) provide that to be considered an appropriate treatment program, the treatment program must:

- (a) be licensed or certified by the Office of Alcoholism and Substance Abuse Services or operated by the United States Department of Veterans Affairs and be determined by the social services official to meet the rehabilitation needs of the individual, in accordance with standards developed by the Office of Alcoholism and Substance Abuse Services;
- (b) develop a treatment plan for the individual which includes an expected date of availability for work related activities and provide a copy of such plan to the local district responsible for payment, in a manner consistent with 41 CFR Part 2;
- (c) provide at a minimum of every three months, a treatment progress report for each recipient of public assistance to the local district responsible for payment of public assistance benefits; and
- (d) request approval by the local district responsible for payment of public assistance benefits prior to changing an individual's level of treatment care.

If the local district is responsible for payment of treatment, the district can require in-district treatment, provided an appropriate treatment program is available. When residential treatment is appropriate for a single custodial parent, the social services official must make diligent efforts to refer the parent to a program that would allow the family to remain intact for the duration of the treatment.

A person who fails to participate in the screening or in the assessment is ineligible for Public Assistance and Medical Assistance. Other members of a household which includes a person who has failed to participate in the screening or assessment shall, if otherwise eligible, receive Medical Assistance and shall receive Public Assistance only through non-cash Safety Net Assistance if they are otherwise eligible for Public Assistance and Medical Assistance. The Public Assistance benefits otherwise available to the household of which the sanctioned individual is a member will be reduced prorata. 18 NYCRR 352.30(d).

Regulations at 18 NYCRR 351.2(i) provide that if a person required to participate in treatment pursuant to that subdivision fails to consent to disclosure of necessary treatment information by the treatment program to the social services district, or subsequently revokes such consent, such person

will be ineligible for public assistance. Other members of the household which includes such person will, if otherwise eligible, receive public assistance only through non-cash safety net assistance.

A person referred to a treatment program and the household with which he or she resides shall receive non cash Safety Net Assistance and Medical Assistance while the person is participating in such treatment, if the household is otherwise eligible for Public Assistance and Medical Assistance. If a person referred to treatment cannot participate in that treatment because treatment is not presently available, that person and the household with which he or she resides shall receive non-cash Safety Net Assistance and Medical Assistance if the household is otherwise eligible for Public Assistance and Medical Assistance.

If an applicant or recipient is required to participate in an appropriate rehabilitation program and fails to participate in such program without good cause or leaves such program prior to completion of the program without good cause, provided that program completion shall be solely determined by the guidelines and rules of such rehabilitation program, or if an applicant or recipient has been suspended from the receipt of Social Security Disability benefits or Supplemental Security Income benefits because of noncompliance with requirements of the federal Social Security Administration for treatment for substance abuse or alcohol abuse, the person will be disqualified from receiving Public Assistance and Medical Assistance as set forth below. Failure to participate in such program is defined as failure to comply with the established treatment plan including scheduling treatment sessions. The disqualifications are as follows:

- (i) for the first failure to participate in or complete the program, or to comply with the requirements of the Federal Social Security Administration, until the failure ceases or for 45 days, whichever period of time is longer;
- (ii) for the second such failure, until the failure ceases or for 120 days, whichever period of time is longer; and
- (iii) for the third and subsequent failures, until the failure ceases or for 180 days, whichever period is longer.

The household with which the person resides shall continue to receive safety net assistance and medical assistance if otherwise eligible.

The applicant or recipient must be considered to have good cause for failing to participate or failing to complete a rehabilitation program when:

- (a) the local district, the facility and the applicant or recipient agree that the applicant or recipient is in need of a different program than the one to which he or she was referred or which he or she is attending and the applicant or recipient has enrolled in a rehabilitation program which the local district has determined appropriate; or
- (b) a verified unforeseen circumstance occurs that is beyond the applicant's or recipient's control such as illness or a death in the family.

FH# 3800365P

A person who has been disqualified from receiving Public Assistance or Medical Assistance because of a refusal to participate in or complete a required rehabilitation program or who has been suspended from the receipt of Social Security Disability benefits or Supplemental Security Income benefits because of noncompliance with requirements of the federal Social Security Administration for treatment for substance abuse or alcohol abuse and who is otherwise eligible for Public Assistance and Medical Assistance shall be eligible for non-cash safety net assistance if such person returns to required treatment prior to the end of the disqualification period and is receiving care in an Office of Alcoholism and Substance Abuse certified congregate care Level II facility as defined in 18 NYCRR 352.8 or United States Veterans Hospital residential treatment program.

Section 132(4) of the Social Services Law provides that provisions regarding screening and rehabilitation for alcohol and substance abuse apply to Medical Assistance only to the extent that they are not inconsistent with applicable federal law. Therefore, singles, childless couples and parents in intact households who are between 21 and 64 years old and who are ineligible for ADC-U will need to comply with alcohol and substance abuse screening and treatment in order to receive or continue to receive Medical Assistance unless they are certified blind or disabled.

Section 370.3 of 18 NYCRR provides that Agencies must authorize emergency and short term assistance to provide for the effective and prompt relief of identified needs which cannot be met under Emergency Assistance to Needy Families with Children (EAF), Family Assistance, the Home Energy Assistance Program (HEAP) or Safety Net Assistance. In cases where the need is determined to be temporary, the grant may be limited to those items for which there is immediate need. Emergency Safety Net Assistance can only be provided where there is an identified emergency need and where the applicant is without income or resources immediately available to meet the emergency need. The household's gross income at the time of application cannot exceed 125 percent of the federal income official poverty line unless the emergency is the result of a fire, flood or other like catastrophe or the emergency assistance is granted in accordance with Section 352.5(c), (d) and (e) of 18 NYCRR. An emergency is defined as a serious occurrence or situation needing prompt attention. Emergency Safety Net Assistance is not available if the emergency arose because the applicant failed to comply with the requirements of Part 385 of the regulations relating to employment and training and was therefore disqualified from receiving assistance.

Section 352.6 of 18 NYCRR provides that an Agency shall provide funds for household moving expenses utilizing the least costly practical method of transportation, rent security deposits and/or broker's or finders' fees when in the Agency's judgment one of the following conditions exist:

- (1) the move is to a less expensive rental property and the amount paid for security deposit and moving expenses is less than the amount of a two-year difference in rentals; or
- (2) the move is necessitated by one of the following:
 - (a) the need to move results from a disaster/catastrophe and/or a vacate order placed against the premises by a health agency or code enforcement agency;

- (b) the move is necessitated by a serious medical or physical handicap condition. Such need must be verified by specific medical diagnosis;
- (c) the individual or family is rendered homeless as a result of having been put out by another occupant with whom they were sharing accommodations;
- (d) the move is from temporary to permanent housing;
- (e) the move is from permanent housing to temporary housing which is necessary due to the unavailability of permanent housing;
- (f) the move is from one temporary accommodation to another temporary accommodation which is necessary due to the unavailability of permanent housing;
- (g) the move is from an approved relocation site or to an approved cooperative apartment; or
- (h) there is a living situation which adversely affects the mental or physical health of the individual or family, the need for alternate housing is urgent, and not issuing a security deposit, moving expenses and/or broker's or finders' fees would prove detrimental to the health, safety and well-being of the individual or family.

A security deposit and/or broker's or finders' fees may be provided only when an applicant or recipient is unable to obtain a suitable vacancy without payment of such deposit and/or fees. 18 NYCRR 352.6(a)(2).

Whenever a landlord requires that he/she be secured against non-payment of rent or damages as a condition to renting a housing accommodation to a recipient of Public Assistance, the Agency may secure the landlord either by means of an appropriate security agreement between the Agency and the landlord or by depositing money in an escrow account. 18 NYCRR 352.6(b). Security deposits cannot be paid nor can money be paid into an escrow account where recipients of public assistance reside in public housing. 18 NYCRR 352.6(b)

The amount of the security deposit or broker's fees is not limited to the Agency's maximum shelter allowance.

DISCUSSION

Appellant testified that she did not return the requested form because she failed to receive the form in the mail. Appellant testified that mail to her residence is deposited into a locked mailbox, with Appellant's landlord picking up the mail and delivering it to tenants. Appellant is a holdover tenant, who was being sued for eviction after her lease expired in June, 2002. Appellant's testimony was plausible, consistent and persuasive. Appellant presented sufficient evidence for Appellant's failure to return the requested completed medical form. Therefore, the Agency's determination to discontinue Appellant's Public Assistance cannot be sustained at this time.

FH# 3800365P

The Agency had contended that Appellant was not in a program and the sanction should continue. However, the Agency's notice only apprised Appellant of a sanction for failing to return the medical form. The Agency could, in the future, determine to sanction Appellant for failing to complete rehabilitation, but only after a finding that Appellant did not have good cause for her failure to complete rehabilitation.

On October 22, 2002 Appellant requested the allowances to enable her to move to new housing. At that time Appellant's Public Assistance case was closed, and Appellant was on a 45 day sanction. As such, Appellant was ineligible for Public Assistance and the requested special grants. Therefore, the Agency's determination to deny Appellant's application for a broker's fee, security deposit, and first month's rent was correct when made on October 22, 2002.

However, in light of the foregoing, the Agency's October 11, 2002 determination has been reversed and Appellant is no longer subject to a 45 day sanction. As such, the Agency's determination that Appellant was ineligible for the requested special allowances because she was on a sanction cannot be sustained at this time.

The Agency also determined to deny Appellant's request for the special allowances because Appellant failed to verify how excess payments would be made. Appellant resides in her current residence with her mother, who would continue to reside with Appellant in the new residence. The Agency had verbally requested Appellant to verify that her mother would be able to pay the excess in the requested allowances that the Agency could not provide, totalling \$1,536.00, and to verify how payment for ongoing rent would be met. Appellant had submitted a letter from her mother's employer verifying that Appellant's mother earned approximate gross weekly employment income of \$520.00. There was nothing in Appellant's case record to indicate that Appellant ever verified that the \$1,536.00 excess claimed by the Agency was paid. However, since all information sought was requested verbally and not memorialized by the Agency, it could not be determined at the hearing precisely what documentation was sought by the Agency. Accordingly, the Agency's determination to deny Appellant's application for the requested allowances because Appellant failed to submit requested documentation also cannot be sustained at this time.

DECISION AND ORDER

The determination of the Agency to discontinue the Appellant's Public Assistance grant due to a failure of the Appellant to verify participation in an out-patient rehabilitation program for alcohol and substance abuse was not correct and is reversed.

1. The Agency is directed to continue the Appellant's grant of Public Assistance and to restore any assistance withheld as a result of the Agency's action retroactive to the date such benefits were discontinued.

The Agency's determination to deny the Appellant's application for allowances for broker's fees, a security deposit, and first month's rent was correct when made.

1. However, the Agency is directed to make a determination as to the Appellant's eligibility for allowances for broker's fees and a security

deposit, in accordance with the foregoing, and to notify Appellant in writing of its determination.

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 required, 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
November 11, 2002

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee