

STATE OF NEW YORK
DEPARTMENT OF LABOR

REQUEST May 22, 2003
CASE # PXXXXXX
CENTER # Nassau
FH # 3914371R

In the Matter of the Appeal of :

CM

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 July 16, 2003, in Nassau County, before Jonathan M. Kastoff, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

CM Appellant
DJ, Douglas Ruff, Representatives

For the Social Services Agency

William Denson, Fair Hearing Representative

ISSUE

Was the Agency's determination to discontinue the Appellant's Safety Net Assistance on the grounds that Appellant refused to comply with work experience requirements by failing to report to a Work Experience Program (WEP) 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 a grant of Safety Net Assistance for a household of one person.
2. Appellant is not the parent or caretaker of a dependent child.
3. Appellant was scheduled to report to a WEP interview at RH on April 28, 2003 at 10:30 A.M.
4. Appellant failed to report to the scheduled WEP interview at RH on April 28, 2003.

5. On May 17, 2003 the Agency notified the Appellant of its intent to discontinue the Appellant's Safety Net Assistance for 180 days and until Appellant is willing to comply with work experience requirements on the grounds that Appellant refused to cooperate with work experience requirements by failing to report to a scheduled WEP interview.

6. Before sending the Notice of Intent, the Agency sent Appellant a notice of conciliation advising this individual of the opportunity to take part in conciliation regarding the Agency's claim.

7. Appellant responded to the notice of conciliation and scheduled a conciliation with the Agency but failed to attend such conciliation. The Agency then issued the Notice of Intent.

8. Appellant had been sanctioned previously for failing to comply with assigned work activities.

9. On May 22, 2003, 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.

Pursuant to Section 336-c of the Social Services Law and 12 NYCRR 1300.9, work experience programs meeting State and federal requirements may be established by social services districts. Work experience programs may include the performance of work for a federal office or agency, county, city, village or town or for the State or in the operation of or in an activity of a nonprofit agency or institution.

Work experience opportunities are limited to projects which serve a useful public purpose in fields such as health, social services, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, operation of public facilities, public safety, and child day care.

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

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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 individual who is a member of a household without dependent children applying for or in receipt of safety net assistance 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 such failure or refusal to comply, a period of ninety days and thereafter until willing to comply;
- (b) For the second such failure or refusal to comply, a period of 150 days and thereafter until willing to comply; and

- (c) For the third and all subsequent such failures or refusals, a period of 180 days and thereafter until willing to comply.

Willing to comply means that an individual, as required by a district, reports to an assigned work activity site or other location as assigned by the district on time and prepared to engage in the assigned activity.

DISCUSSION

Appellant testified that he did not report to the scheduled WEP interview because he did not receive the Agency's appointment notice in the mail. Appellant testified that he does not have a problem with mail delivery at his residence, that the mail is delivered to a locked mailbox, that his landlord picks up the mail, and that the landlord then gives Appellant any mail addressed to Appellant. Appellant further testified that if his landlord had given him the appointment notice, he would have reported to the scheduled appointment on April 28, 2003. Appellant also testified that he reports to his scheduled appointments. Appellant had reported to conciliation at 1:00 P.M. on May 13, 2003, the time he thought he heard over the telephone when the conciliation was scheduled, only to find out that it had been scheduled for 10:00 A.M. Appellant had also reported to another Agency appointment earlier that day. Appellant acknowledged that he did receive the conciliation appointment notice late and submitted a statement from his landlord to verify that the landlord gave him the conciliation appointment notice late. Appellant's testimony was plausible, documented in part, and persuasive. Appellant presented sufficient evidence to establish good cause for Appellant's failure to report to a scheduled WEP interview. Therefore, the Agency's determination to discontinue Appellant's Public Assistance cannot be sustained at this time.

DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Safety Net Assistance on the grounds that Appellant refused to comply with work experience requirements was not correct and is reversed.

1. The Agency is directed to continue the Appellant's grant of Safety Net Assistance and to restore any assistance withheld as a result of the Agency's action retroactive to the date of discontinuance.

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

DATED: Albany, New York
July 28, 2003

NEW YORK STATE DEPARTMENT
OF LABOR

By

Commissioner's Designee