
In the Matter of the Appeal of :

W R

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 May 23, 2002, in Nassau County, before James J. Dalton, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

W R , Appellant
Herbert Harris, Esq., Representative; A , Witness

For the Social Services Agency

William Denson, Fair Hearing Representative; Joseph Hyland, Witness

ISSUE

Was the determination of the Agency to discontinue the Appellant's Public Assistance benefits due to a failure of the Appellant to attend a screening for alcohol and/or substance abuse 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, a single individual, age 39 years, has been in receipt of Public Assistance benefits.
2. The Agency requested that Appellant attend the Agency's screening for alcoholism and/or substance abuse.
3. The Agency scheduled a screening for alcoholism and/or substance abuse for April 1, 2002.

FH# 3712979N

4. Appellant did not attend the Agency's screening for alcoholism and/or substance abuse.

5. The Appellant did not receive the appointment letter for the assessment.

6. By notice dated April 23, 2002, the Agency determined to discontinue the Appellant's Public Assistance benefits because the Appellant failed to attend a screening for alcohol and/or substance abuse.

7. On April 29, 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 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.

A person who fails to participate in the screening or in the assessment is ineligible for Public Assistance and Medical Assistance. Other members

FH# 3712979N

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).

DISCUSSION

The evidence establishes that the Appellant was scheduled to report to a Work Experience Program interview on February 28, 2002. The Appellant reported to that interview, but appeared to be under the influence of controlled substances. Therefore, the Agency referred the Appellant to a drug and alcohol assessment on April 1, 2002. The Appellant failed to report to that assessment. Accordingly, the Agency determined to discontinue the Appellant's assistance.

The Appellant contested the Agency's determination. According to the Appellant, he did not receive the appointment letter for the April 1, 2002 drug and alcohol assessment.

The Agency presented evidence establishing that the appointment letter was mailed in the normal course of business to the mailing address of record. The Agency's representative stated that the mail was not returned to the Agency. This creates presumption of receipt of mail.

The Appellant and his representative do not dispute that the appointment letter was correctly mailed. They do contend, however, that the appointment letter could easily be misplaced. The Appellant testified that his mail is often missing. The Appellant lives in a group housing arrangement, and the mail for all the tenants is left in a common area. The Appellant's testimony is supported by that of another tenant, who also spoke of missing mail.

The Appellant's contention is credible. Therefore, he has presented a valid reason for his failure to report to a drug and alcohol assessment on April 1, 2002. Accordingly, the Agency's determination to discontinue the Appellant's assistance was not correct. The Agency shall continue the Appellant's assistance. Furthermore, the Agency shall reschedule a drug and alcohol assessment for the Appellant.

DECISION AND ORDER

The determination of the Agency to discontinue the Appellant's Public Assistance benefits due to a failure of the Appellant to attend a screening for alcohol and/or substance abuse was not correct and is reversed.

1. The Agency is directed to continue the Appellant's Public Assistance benefits and to restore any assistance withheld as a result of the Agency's action retroactive to the date such benefits were discontinued.
2. The Agency is further directed to reschedule a drug and alcohol assessment for the Appellant.

FH# 3712979N

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
June 19, 2002

NEW YORK STATE DEPARTMENT
OF LABOR

By


Commissioner's Designee