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1. The Appellant has been in receipt of a grant of Public Assistance, Medical Assistance and Food Stamps for herself and one child.
2. By notice dated April 25, 2007, the Agency determined to reduce the Appellant's Public Assistance and Food Stamps for 90 days due to a failure of the Appellant to comply with employment requirements.
3. The notice at issue advised the Appellant that a fair hearing regarding Public Assistance must be requested within sixty days of the date of the Agency's actions.
4. The notice at issue advised the Appellant that a fair hearing regarding Food Stamps must be requested within ninety days of the date of the Agency's actions.
5. The Agency mailed the notice to the Appellant's address as contained in the Appellant's case record.
6. On December 13, 2007, the Appellant requested this hearing to review the Agency's determination.

### **APPLICABLE LAW**

Section 22 of the Social Services Law provides that applicants for and recipients of Public Assistance, Emergency Assistance to Needy Families with Children, Emergency Assistance for Aged, Blind and Disabled Persons, Veteran Assistance, Medical Assistance and for any services authorized or required to be made available in the geographic area where the person resides must request a fair hearing within sixty days after the date of the action or failure to act complained of. In addition, any person aggrieved by the decision of a social services official to remove a child from an institution or family home may request a hearing within sixty days.

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.

Social services officials are required by Section 341 of the Social Services Law and 18 NYCRR 385.11 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 Title 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.

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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. 18 NYCRR 385.11(a)(5).

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 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. 18 NYCRR 385.12(c).

The parent or caretaker 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 18 NYCRR 385.12 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;

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- (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.

Pursuant to 7 U.S.C 2015 (Section 6 of the federal Food Stamp Act of 1977), as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), if a disqualification is imposed on a member of a household because of that member's failure to perform an action required under a federal, State or local law relating to a means-tested public assistance program, the Agency may also impose a disqualification on the household member under the Food Stamp Program.

If the Agency determines that an individual has refused or failed without good cause to comply with Food Stamp employment requirements, that individual is 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. 7 CFR 273.7(g); 18 NYCRR 385.12(e).

## **DISCUSSION**

The record establishes that on April 25, 2007, the Agency notified the Appellant of its intent to reduce the Appellant's Public Assistance and Food Stamps for 90 days due to a failure of the Appellant to comply with employment requirements. The Appellant contends that the Agency determination was not correct.

At the hearing the Agency raised the statutes of limitations as to Public Assistance and Food Stamps stating that the Commissioner is without jurisdiction as the request was made after the relevant 60 day and 90 day statutes of limitations.

The Appellant contends that she did not receive the notice of reduction dated April 25, 2007.

The Agency presented evidence at the hearing concerning its mailing practices and procedures relating to the mailing of the notice of reduction dated April 25, 2007 in the form of an affidavit sworn to by Michael D. Taber.

The Agency presented a mailing affidavit sworn to by Michael D. Taber an employee designated by OTADA to supervise mailings establishing that the notice of reduction was mailed to Appellant in the regular course of business. Therefore by the presentation of the affidavit of Michael D. Taber the Agency established the rebuttable presumption that the notice of intent was mailed and that the Appellant received it.

The Appellant offered credible testimony that she did not receive the notice of reduction

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and rebutted the presumption of receipt. She stated that she resides in a New York City Housing Authority (NYCHA) project where mail delivery is poor. Therefore the statutes of limitations as to Public Assistance and Food Stamps are tolled.

The Appellant sought review of the Agency's determination to reduce the Appellant's Public Assistance and Food Stamps for 90 days pursuant to a Notice of Intent dated April 25, 2007 due to a failure of the Appellant to comply with employment requirements.

At the hearing the Appellant stated that she had never received an employment appointment notice dated March 19, 2007 for March 28, 2007. At the hearing the Appellant also stated that she had never received a conciliation appointment notice dated April 7, 2007 for April 21, 2007.

The Agency presented evidence at the hearing concerning its mailing practices and procedures relating to the mailing of the notices of employment appointment and conciliation appointment in the form of two affidavits. The Agency presented an mailing affidavit sworn to by Monica Johnson setting forth its mailing procedures for notices of employment appointment and conciliation. The Agency presented an affidavit sworn to by Meyer Elbaz setting forth its mailing procedures for notices of employment appointment and conciliation which set forth that notices of appointment and conciliation contain a bar code or specific create date establishing the date of mailing.

Therefore by the presentation of the two affidavits the Agency established the rebuttable presumption that the notices of employment appointment and conciliation were mailed and that the Appellant received it.

The Appellant offered credible testimony that she did not receive the notice of employment appointment and conciliation and rebutted the presumption of receipt. She stated that she resides in a NYCHA project where mail delivery is poor. Therefore she had provided a good cause reason why she did not attend the employment appointment and conciliation appointment and her failure to participate was not willful.

Accordingly, the Agency's action with respect to it's determination to reduce Appellant's grant of Public Assistance and Food Stamps by notice dated April 25, 2007 is not correct.

### **DECISION AND ORDER**

The Agency's action with respect to it s determination to reduce Appellant's grant of Public Assistance and Food Stamps by notice dated April 25, 2007 is not correct and is reversed.

1. The Agency is directed to withdraw its notice of intent dated April 25, 2007 with respect to Appellant's Public Assistance benefits and Food Stamps.
2. The Agency is directed to continue to provide Public Assistance and Food Stamps to the Appellant.

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3. The Agency is directed to restore Appellant's Public Assistance and Food Stamps retroactive if necessary to the date of the Agency action.

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

DATED: Albany, New York  
03/26/2008

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink, appearing to read 'M. P. ...', is written over the 'By' line.

Commissioner's Designee