

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

REQUEST December 3, 1992
CASE#
CENTER# Nassau
FH# 1905263P

In the Matter of the Appeal of :

C W

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 the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on February 24, 1993, in Nassau County, before Karen Miller, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

C W Appellant

For the Social Services Agency

Evelyn Boykins, Fair Hearing Representative

ISSUE

Was the Agency's determination to discontinue Appellant's Public Assistance, Medical Assistance and Food Stamp benefits for failure to return to the Agency with documentation correct?

Was the Agency's determination not to provide aid to continue 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. Appellant has been in receipt of a grant of Public Assistance, Medical Assistance and Food Stamp benefits.

FH# 1905263P

2. The Appellant was advised by the Agency on October 30, 1992 to report to the Agency on November 9, 1992 with the following documentation:

(a) Verification of employment.

(b) Verification of application/ receipt of UIB if no longer employed.

(c) If employment began prior to January 1, 1992, verification of date and amount of 1991 income tax returns.

3. The Appellant did not submit the documentation because she did not receive the appointment notice.

4. On November 12, 1992, the Agency sent a Notice of Intent setting its determination to discontinue Appellant's Public Assistance, Medical Assistance and Food Stamp benefits because the Appellant had failed to submit documentation.

5. The Appellant requested a hearing to review the Agency's determination that the Appellant was no longer eligible for Public Assistance, Medical Assistance and Food Stamp benefits because the Appellant had failed to submit documentation and the Agency's failure to provide aid to continue.

APPLICABLE LAW

Department Regulations at 18 NYCRR 351.1 and 351.2 require that to demonstrate eligibility, applicants for and recipients of Public Assistance must present appropriate documentation of such factors as identity, residence, family composition, rent payment or cost of shelter, income, savings or other resources and, for aliens, of lawful residence in the United States. Section 351.5 of the Regulations provides that if the applicant or recipient has previously verified necessary information which is not subject to change and the Agency possesses documentation of such verification in its files, the applicant or recipient is not required to resubmit verification of such information. Section 351.6 of the Regulations provides that verification of data is an essential element of the eligibility investigation process. The applicant or recipient is the primary source of the required information. However, when the applicant or recipient is unable to provide the required verification, the Agency must assist the applicant or recipient in obtaining the verification or make collateral investigation. 18 NYCRR 351.5 and 351.6. If a third party seeks to impose a charge or fee for providing required information to the applicant or recipient, the Agency must pay such fee or must assist the applicant or recipient in obtaining the information by other means. 18 NYCRR 351.5. The applicant's or recipient's failure or refusal to cooperate in providing necessary information is a ground for denying or discontinuing Public Assistance.

Section 351.21(a) of Department Regulations provides that contacts with recipients and collateral sources shall include face-to-face contacts, correspondence, reports on resources, eligibility mailouts and other documentation. Contacts with or concerning recipients shall be made as frequently as individual need, change in circumstances or the proper administration of assistance or care may require.

Under section 366 of the Social Services Law a person who requires Medical Assistance is eligible for such assistance where such person:

- (a) is receiving or is eligible for Home Relief or Aid to Dependent Children or Supplemental Security Income;
- (b) although not receiving or in need of public assistance or care, has not sufficient income and resources to meet all the costs of medical care and services available under the Medical Assistance Program and such person is:
 - (i) under the age of 21; or
 - (ii) 65 years of age or older; or
 - (iii) the spouse of a cash Public Assistance recipient living with him/her and essential or necessary to his/her welfare and whose needs are taken into account in determining his/her cash payments; or
 - (iv) for reasons other than income or resources, is eligible for Aid to Dependent Children or Supplemental Security Income and/or additional state payments.
- (c) is at least 21 years of age but under the age of 65 and is not receiving or eligible to receive home relief or aid to dependent children and:
 - (i) who is the parent of a dependent child under the age of 21; and
 - (ii) who lives with such child; and
 - (iii) whose net income, without deducting the amount of any incurred medical expenses, does not exceed the net income exemption set forth in section 366.2(a)(8) of the Social Services Law.

Department Regulations at 18 NYCRR 360-2.2(d) provide that for a person who does not meet the criteria set forth above, other than financial, eligibility for Medical Assistance must be determined on the basis of that person's eligibility for Home Relief in accordance with the requirements of 18 NYCRR Part 352 and Part 370.

DISCUSSION

The Appellant was advised by the Agency on October 30, 1992 to report to the Agency on November 9, 1992 with verification of employment, if no longer employed, verification of application/ receipt of UIB and if employment began prior to January 1, 1992, verification of date and amount of 1991 income tax returns. At the hearing, the Appellant testified that she did not receive the appointment notice in the mail. The Appellant further stated that she does not usually have problems with her mail but she did not receive this document. The Appellant's testimony was credible since she was clear and consistent. Accordingly, the Appellant established good cause for her failure to provide documentation.

The Agency determined to discontinue Appellant's Public Assistance and Medical Assistance because the Appellant had failed to return to the Agency with certain documentation which is necessary to determine Appellant's continuing eligibility for Public Assistance.

At the hearing, the Appellant contended that she did not receive the notice of intent and, therefore, although she did not request a fair hearing within ten days of the effective date of the notice, she should be entitled to aid to continue. Since the Agency's determination to discontinue Appellant's Public Assistance, Medical Assistance and Food Stamp benefits is being reversed, there is no issue to be decided concerning the Agency's failure to provide aid to continue.

DECISION AND ORDER

The Agency's determination to discontinue Appellant's Public Assistance and Medical Assistance is not correct and is reversed.

1. The Agency is directed to continue the Appellant's grant of Public Assistance and Medical Assistance.
2. The Agency is further directed to restore lost benefits retroactive to the date of discontinuance.
3. The Agency is directed to provide the Appellant with another opportunity to submit the documentation.

There is no issue to be decided concerning the Agency's failure to provide aid to continue.

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

FH# 1905263P

DATED: Albany, New York

MAR 24 1993

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

By

Susan M. Miele
Commissioner's Designee