

**STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE**

**REQUEST:** March 8, 2007  
**CASE #:** PXXXXXX  
**AGENCY:** Nassau  
**FH #:** 4744817H

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In the Matter of the Appeal of  
DJ  
from a determination by the Nassau County  
Department of Social Services

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**DECISION  
AFTER  
FAIR  
HEARING**

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**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 April 23, 2007, in Nassau County, before Jonathan Kastoff, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

DJ, Appellant;  
Herb Harris, Appellant's Representative

For the Social Services Agency

J. Mougiannis, Fair Hearing Representative

**ISSUE**

Was the determination of the Agency to discontinue the appellant's Public Assistance benefits because the Appellant failed to provide the agency with medical documentation to assess the Appellant's ability to participate in work activities correct?

Was the Agency's computation of the Appellant's Public Assistance benefits for the period October 2006 to December, 2006 correct?

**FINDINGS OF FACT**

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 Public Assistance benefits for a household of three persons.
2. The Appellant advised the Agency of the existence of a medical impairment which limits the Appellant's ability to participate in work activities.
3. The Agency advised the Appellant on November 28, 2006 to submit a medical form 279 completed by the Appellant's treating practitioner to the agency by December 11, 2006.
4. The Appellant failed to provide the Agency with the required documentation in a timely manner.
5. By notice dated December 22, 2006, the Agency determined to discontinue the Appellant's Public Assistance benefits on the grounds that the Appellant failed to provide the Agency with medical documentation necessary to assess the Appellant's ability to participate in work activities.
6. On March 8, 2007, the Appellant requested this fair hearing to review the agency's determination and to review the Agency's computation of the Appellant's Public Assistance benefits from October, 2006 to December, 2006. The Appellant also requested a fair hearing to review the Agency's determination to discontinue the Appellant's Food Stamps without prior notice effective March, 2007. However, at the hearing, the Appellant withdrew her request for review of such issue.

**APPLICABLE LAW**

Section 332-b of the Social Services Law and regulations at 18 NYCRR 385.2(d), provide that the Agency must, at application and recertification or whenever there is reason to believe that an applicant for or recipient of Public Assistance might have a physical or mental impairment, inquire whether such individual has any medical condition which would limit his/her ability to participate in work activities.

If the applicant or recipient declares that he or she has a mental or physical impairment, the Agency must notify the individual of the opportunity to present to the Agency, within ten calendar days of such notification, any medical documentation, including but not limited to, drug prescriptions and reports of the individual's treating health care practitioner. Such documentation must contain a specific diagnosis resulting from any medically appropriate tests and specify any work limitation of the individual.

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The Agency may also, either in addition to or instead of the above, refer the individual to a health care practitioner certified by the New York State Office of Disability Determinations or, if applicable, to the contracted agency or institution by or with which such health care practitioner is employed or affiliated, for a determination of the individual's medical condition. If the Agency refers an individual to the district's practitioner prior to such individual submitting documentation from the individual's practitioner, the individual shall make his or her best efforts to bring the documentation to the examination by the district's practitioner, so that it may be reviewed as a part of the examination. In such instances, any documentation available from the individual's practitioner must be submitted to the district's practitioner no later than four days after the examination, provided that in no instance shall such time period exceed ten calendar days from the notification set forth above, or the district's practitioner will not be required to consider it as a part of the evidence used to determine the individual's medical condition.

In evaluating an individual's claim of a physical or mental impairment, the Agency shall have sole discretion in determining whether any documentation provided by the individual's practitioner is sufficient to make such a determination.

In evaluating the initial claim of a mental or physical impairment made by an applicant, or the continuing claim of a medical impairment made by a recipient who has been previously determined exempt from participation in work activities, the social services official may require the individual to submit medical documentation as a condition of eligibility for public assistance and food stamps in accordance with the requirements of Parts 351 and 387 of 18 NYCRR.

## **DISCUSSION**

The Appellant was requested to submit a completed medical form 279. The Appellant failed to submit the requested form in a timely manner and failed to request additional time within which to submit the document. Therefore, the Agency's determination to discontinue the appellant's Public Assistance was correct when made on December 26, 2006.

However, the Appellant testified that she did not submit the requested medical form because she failed to receive the form in the mail from the Agency. The agency contended that proof of mailing is established when the worker enters into a comment sheet in the appellant's case record that the form was generated for the Appellant, and a copy of the print screen showing the date of the mailing and mailing address used. The agency entered into the record a comment sheet indicating that the worker initiated the medical form on November 28, 2006, and a copy of the print screen, dated November 28, 2006, indicating that the form was sent to the appellant's address of record. A copy of the print screen is acceptable evidence to establish the date of mailing. The copy can also be evidence as to the address to which the form was mailed as the date of the copy of the print screen would indicate the current address for the Appellant. The copy of the print screen for the Appellant, dated as of the date of mailing, was sufficient to establish that the form was mailed to the Appellant's proper address of record. The Appellant further testified that she contacted the Agency after receiving the Agency's December 26, 2006 notice, and advised her worker that she had not received the medical form in the mail. The Appellant was hand given a new medical form on December 29, 2006, which the appellant

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returned to the Agency on January 9, 2007 after a January 5, 2007 examination date. Agency records corroborated this portion of the Appellant's testimony. The Appellant's testimony was consistent as to detail, documented in part by Agency records, and persuasive. The appellant presented sufficient evidence to establish good cause for the Appellant's failure to submit requested documentation to the Agency in a timely manner. Therefore, the Agency's determination to discontinue the Appellant's Public Assistance cannot be sustained at this time.

At the hearing, the Agency agreed to determine the Appellant's eligibility to receive Public Assistance for the period October, 2006 to December, 2006, and to notify the Appellant in writing of the Agency's determination. The Appellant accepted the Agency's agreement as a complete resolution of the request for the fair hearing regarding this issue. There are no further issues left to be decided.

### **DECISION AND ORDER**

The Agency's determination to discontinue the appellant's the Appellant's Public Assistance benefits was correct when made.

1. The Agency, however, is directed to reinstate the Appellant's grant of Public Assistance benefits and to restore any assistance and benefits withheld as a result of the Agency's action retroactive to the date of its action.

In accordance with its agreements made at the hearing, the Agency is directed to take the following action, if it has not yet already done so:

1. Determine the Appellant's eligibility to receive Public Assistance for the period October, 2006 to December, 2006, and notify the Appellant in writing of the Agency's 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 requested, 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.

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DATED: Albany, New York  
April 26, 2007

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee