

STATE OF NEW YORK
DEPARTMENT OF LABOR

REQUEST June 22, 2001
CASE #
CENTER # Suffolk
FH # 3548378Q

In the Matter of the Appeal of :
LG

DECISION
: **AFTER**
FAIR
HEARING

from a determination by the Suffolk 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 August 1, 2001, in Suffolk County, before Irene Biggs, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

LG, Appellant; Antonia Ezechi, Esq., Representative
AH, Case Manager, Witness

For the Social Services Agency

William Schneid, Fair Hearing Representative

ISSUE

Was the Agency's determination to discontinue the Appellant's Safety Net Assistance and Food Stamps on the ground that Appellant refused to cooperate or participate in the reassessment process 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, age nineteen, has been in receipt of Public Assistance and Food Stamp benefits for herself only. The Appellant resides alone.

2. By notice dated April 10, 2001, the Suffolk County Department of Health (DOL), advised the Appellant to report on April 27, 2001, at 8:30 a.m. for a reassessment.

3. The Appellant did not appear on April 27, 2001, because she did not receive the April 10, 2001, letter.

4. On June 13, 2001, the Agency notified the Appellant of its intent to discontinue the Appellant's Safety Net Assistance for at least 90 days

and until willing to comply and to discontinue the household's Food Stamp benefits for at least two months on the grounds that Appellant refused to cooperate or participate in the assessment process.

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

6. The Appellant responded to the notice of conciliation and had a conciliation with the Agency to give reasons for the failure to comply. After evaluating the Appellant's reasons, the Agency issued the Notice of Intent.

7. On June 22, 2001, 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.

Section 335-a of the Social Services Law and 12 NYCRR 1300.7 requires that to the extent resources are available, social services official shall, within a reasonable period of time not to exceed one year following application for safety net assistance conduct an assessment of employability of applicants and recipients in households without dependent children who are not exempt from assignment to work activities. Such assessment shall include, but not be limited to a review of the individual's educational level, including literacy and English language proficiency; basic skills proficiency; supportive services needs; and the skills, prior work experience, training and vocational interests of each participant. This assessment shall include a review of family circumstances.

An applicant or recipient may be assigned to work activities prior to the completion of the assessment.

Notwithstanding the requirement that the employability be based on the assessment, in developing the employability plan, the social services official must consider the needs of the social services district to meet state work activity participation rates before completing an individual's employability plan.

Each applicant for or recipient of Public Assistance must participate in an assessment as required by the social services district. Entire households of applicants who fail or refuse to participate with the requirements of this section shall be ineligible for Public Assistance. Recipients who fail or refuse to participate with the requirements of this section have the right to a conciliation pursuant to Section 341 of the Social Services Law and 12 NYCRR 1300.11 and shall be subject to the

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sanctions set forth in section 342 of the Social Services Law and 12 NYCRR 1300.12.

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 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 if 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).

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.

Pursuant to 7 U.S.C 2015 (Section 6 of the federal Food Stamp Act of 1977), as amended by the 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 within a three-year period from the last such failure. 7 CFR 273.7(g); 12 NYCRR 1300.12(e).

DISCUSSION

The record establishes that on April 10, 2001, DOL sent a letter to the Appellant advising her to report on April 27, 2001, for a reassessment. The Agency's representative stated that it was mailed in the normal course of business and was not returned by the United States Post Office.

The Appellant stated that she did not receive the appointment letter and that if she had she would have immediately called her case manager, Ms. H, to tell her and to seek assistance. Ms. H stated that she has been the Appellant's intensive case manager since August 2000. The Appellant's witness testified that the Appellant always calls her when the Appellant gets mail to inform her and to get assistance and support relating to paperwork, appointments, etc. Ms. H testified that the Appellant did not call her in April 2001 to advise of the April 10, 2001, letter or the April 27, 2001, appointment. Because the Appellant did not call her, it was the Appellant's witness's belief that the Appellant had not received the April 10, 2001, letter and was unaware of her obligation to report on April 27, 2001. The Agency submitted no evidence of prior non-compliance except once in January 2001, which was not acted on by the Agency because the Appellant had been moving at or about the time the December 2000 appointment letter was mailed.

The Appellant's current landlord, who was also her landlady in April 2001, wrote that all the mail sent to her tenants is mailed to her address and that she distributes it. The Appellant's landlady did not state whether or not she recalled receiving the April 2001 letter on behalf of the Appellant. The record indicates that the Appellant's landlady owns numerous properties and that the Agency places homeless recipients into

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said housing.

The Appellant's testimony that she did not receive the April 10, 2001, letter was plausible, persuasive and supported in part by her intensive case manager's testimony as to the Appellant's normal practice regarding receipt of mail. Therefore, the Agency's determination to discontinue the Appellant's Public Assistance and Food Stamp benefits cannot be affirmed at this time.

DECISION AND ORDER

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

1. The Agency is directed to withdraw the June 13, 2001, Notice of Intent to discontinue the Appellant's Public Assistance benefits and Food Stamp benefits.

2. The Agency is directed to continue the Appellant's Public Assistance and Food Stamp benefits and to restore any lost benefits.

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

DATED: Albany, New York
August 7, 2001

NEW YORK STATE DEPARTMENT
OF LABOR

By

Commissioner's Designee