

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST October 29, 2002
CASE # PXXXXXX
CENTER # Nassau
FH # 3803979K

In the Matter of the Appeal of :

P H

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 November 27, 2002, in Nassau County, before Jonathan M. Kastoff, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

P H, Appellant
Douglas Ruff, Representative

For the Social Services Agency

William Denson, Fair Hearing Representative
Ellen Fishman, Witness

ISSUE

Was the Agency's determination to deny the Appellant's application for Public Assistance and Medical Assistance benefits for failure to provide documentation necessary to determine the Appellant's eligibility for such benefits correct?

Was the Agency's failure to make a determination of the Appellant's eligibility for Food Stamp benefits 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 applied for Public Assistance, Medical Assistance and Food Stamp benefits for a household of one person.

2. The Appellant was advised by the Agency on September 23, 2002 to submit several documents, including the following documentation, to the Agency by October 8, 2002:

Completed medical form 279.

3. Appellant submitted all requested documents except for the medical form.

4. On October 30, 2002, the Agency sent a Denial Notice setting forth its determination to deny the Appellant's application for Public Assistance and Medical Assistance benefits because the Appellant had failed to return to the Agency with certain documentation necessary to determine Appellant's eligibility for Public Assistance and Medical Assistance benefits.

5. The Agency has failed to act on the Appellant's application and has provided no written notification of its determination either to accept or deny such application.

6. On October 29, 2002, the Appellant requested this fair hearing.

APPLICABLE LAW

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. These obligations also apply to non-legally responsible caretaker relatives of children receiving public assistance, as well as minor siblings of such children residing in the same household. 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.

An applicant for or recipient of public assistance is exempt from complying with any requirement concerning eligibility for public assistance if the applicant or recipient establishes that good cause exists for failing to comply with the requirement. Except where otherwise specifically set forth in regulations, good cause exists when the applicant or recipient has a physical or mental condition which prevents compliance; the applicant's or recipient's failure to comply is directly attributable to Agency error; or other extenuating circumstances, beyond the control of the applicant or recipient, exist which prevent the applicant or recipient from being reasonably expected to comply with an eligibility requirement. 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

FH# 3803979K

and evidence provided and make a determination of whether the information and evidence supports a finding of good cause. 18 NYCRR 351.26.

Section 332-b of the Social Services Law, effective November 1, 1997 and regulations at 12 NYCRR 1300.2(d), effective November 25, 1997, 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.

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

Appellant testified that submitted eight items of documentation to the Agency but that she did not submit the requested medical form because she did not receive the form from the Agency in the mail. Appellant testified that she thought the 279 medical form was the form that was sent to the Agency after she was seen at the medical center. The form that was returned was a

medical form 280. When Appellant reported to the Agency on another matter on October 28, 2002, she provided the Agency with verification of scheduled medical appointments. In response to a question from her worker, Appellant advised the worker that she had not received the medical form in the mail. Appellant's testimony was consistent with statements made to the Agency prior to its determination and made to the Department in requesting this hearing, plausible and persuasive. Therefore, the Agency's determination to deny Appellant's application for Public Assistance cannot be sustained.

At the hearing the Agency agreed to withdraw its Notice of Denial of Medical Assistance and Food Stamp benefits dated October 30, 2002, to determine Appellant's eligibility to receive Medical Assistance and Food Stamp benefits and to notify Appellant, in writing, of the Agency's determination.

At the hearing the Appellant accepted the terms of the Agency stipulation as a complete resolution of the Appellant's request for a fair hearing regarding Medical Assistance and Food Stamps. There are no further issues left to be decided.

DECISION AND ORDER

The Agency's determination to deny the Appellant's application for Public Assistance benefits is not correct and is reversed.

1. The Agency is directed to continue to process the Appellant's application, to afford the applicant the opportunity to submit any other documents necessary to establish eligibility, and then to determine Appellant's eligibility to receive Public Assistance.

2. The Agency is further directed to notify the Appellant in writing of its determination.

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

1. Withdraw its Notice of Denial of Medical Assistance and Food Stamp benefits dated October 30, 2002.
2. Determine Appellant's eligibility to receive Medical Assistance and Food Stamps.
3. Notify 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 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
December 3, 2002

FH# 3803979K

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee