

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: January 31, 2007
CASE #: Pxxxxxxx
AGENCY: Suffolk
FH #: 4721309R

In the Matter of the Appeal of
TF
from a determination by the Suffolk County
Department of Social Services

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**DECISION
AFTER
FAIR
HEARING**

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 9, 2007, in Suffolk County, before Richard Levchuck, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

TF, Appellant; Nora Gonzalez, Appellant's Representative

For the Social Services Agency

Marlene Rund, Fair Hearing Representative

ISSUE

Was the Agency's determination to discontinue the Appellant's Public Assistance benefits on the grounds that the Appellant failed to comply with the eligibility process by failing to meet with the Agency's Office of Special Investigations on January 24, 2007 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. Appellant has been in receipt of Public Assistance benefits for herself and her two minor children.
2. The Agency scheduled an appointment for the Appellant to appear at the Agency's office in order to meet with the Agency's Office of Special Investigations on January 24, 2007.

FH# 4721309R

3. The Appellant did not receive the letter from the Agency which advised her to report to its Office of Special Investigations on January 24, 2007.

4. The Appellant did not appear at the Agency's Office of Special Investigations on January 24, 2007.

5. On January 27, 2007, the Agency sent a Notice setting forth its determination to discontinue the Appellant's Public Assistance benefits on the grounds that the Appellant failed to comply with the eligibility process by failing to meet with the Agency's Office of Special Investigations on January 24, 2007.

6. On January 31, 2007, the Appellant requested this fair hearing.

APPLICABLE LAW

Sections 351.1 and 351.2 of Title 18 NYCRR 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.

Section 351.21(a) of 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.

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

FH# 4721309R

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

DISCUSSION

At the hearing, the Appellant testified that she did not report to the Agency's Office of Special Investigations on January 24, 2007 because she did not receive the letter from the Agency notifying her to do so. Although the Agency noted that the letter was properly addressed to the Appellant and that it was mailed in accordance with established procedures, the testimony of the Appellant that she did not receive this letter was plausible and was persuasive. The Appellant has established good cause for her failure to report to the Agency's Office of Special Investigations.

While the Agency's determination to discontinue the Appellant's Public Assistance was correct when made, the Agency should continue to provide the Appellant with Public Assistance and should afford her an additional opportunity to meet with its Office of Special Investigations. It is noted that the Appellant must cooperate with the ongoing eligibility determination process in order to continue to receive Public Assistance.

DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Public Assistance benefits based upon a failure, without good cause, to comply with the eligibility process by failing to keep an appointment scheduled by the Agency to meet with the Agency's Office of Special Investigations was correct when made.

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

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.

FH# 4721309R

DATED: Albany, New York
April 12, 2007

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee