

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

**REQUEST:** May 23, 2005  
**CASE #:** XXXXX  
**AGENCY:** Monroe  
**FH #:** 4341956K

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In the Matter of the Appeal of  
LB  
from a determination by the Monroe 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 August 29, 2005, in Monroe County, before Thomas Rebhan, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

LB, Appellant; Peggy Lee, Esq., Monroe County Legal Assistance Corporation

For the Social Services Agency

Luis Zamot, Fair Hearing Representative

**ISSUE**

Was the Agency's determination to discontinue the Appellant's Public Assistance for failure to provide documentation necessary to determine the Appellant's continuing eligibility for such benefits 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, age 57, has been in receipt of Public Assistance benefits for a household consisting of herself only.
2. On April 15, 2005, the Agency determined that the Appellant was exempt from the Agency's employment requirements due to a disabling medical condition.

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3. On April 18, 2005, the Agency mailed the Appellant a “Restoration to Self Sufficiency Plan” and calendar for May 2005, and requested that the Appellant complete the documents and return them to the Agency on or before April 28, 2005.

4. The Appellant did not receive the Agency’s April 18<sup>th</sup> correspondence, and was consequently unable to respond to the Agency’s request.

5. On May 17, 2005 the Agency sent a Notice of Intent setting forth its determination to discontinue the Appellant's Public Assistance benefits because she failed to return the completed “restoration to Self Sufficiency Plan” form and calendar.

6. On May 23, 2005, the Appellant requested this fair hearing, and was granted aid continuing.

7. On June 3, 2005, the Appellant, with the assistance of her attorney, requested a new “Restoration to Self Sufficiency Plan” form and calendar, and requested that it be faxed to her attorney.

8. On June 15, 2005, the Appellant returned a completed “Restoration to Self Sufficiency Plan” form and calendar.

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

Regulations at 12 NYCRR 1300.2(e) provide that an individual exempted from participation in work activities due to disability who the social services official determines has the potential to be restored to self-sufficiency through rehabilitation, may be required to:

- o provide information from the individual's practitioner or submit to an examination by the district's practitioner to determine whether the individual can recover from the mental or physical impairment.
- o accept medical care to assist in recovery from the mental or physical impairment and in restoring self-sufficiency;
- o accept referral to and enrollment in a program of vocational rehabilitation, training and other essential rehabilitation designed to restore an individual to self-sufficiency.

## **DISCUSSION**

The Agency's May 17, 2005 determination to discontinue the Appellant's Public Assistance on the grounds the Appellant failed to return a completed "Restoration to Self Sufficiency Plan" form and calendar on or before April 28, 2005, was not correct and is reversed.

The uncontroverted evidence presented at the hearing established that the Appellant is medically exempt from participation in the Agency's employment program, and that on April 18, 2005, the Agency mailed the Appellant a "Restoration to Self Sufficiency Plan" and calendar for May 2005, requesting that the Appellant complete the documents and return them to the Agency on or before April 28, 2005. It was undisputed that the Agency did not receive the requested documentation before May 17, 2005, resulting in the notice of discontinuance at issue herein.

While the record shows that Appellant had been determined to be exempt from participation in employment related activities, the record fails to show that Appellant was ever assigned to a specific, reasonable rehabilitation plan designed to restore the Appellant to self sufficiency. The Agency did not produce any documentation showing the basis of medical exemption, the duration of such exemption, or medical recommendations for rehabilitation. While the Agency could request an updated medical evaluation of employability, along with medical provider recommendations for therapy, the document at issue when far beyond such a request, requiring

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the recipient to consult with her medical provider, obtain documentation, enroll in therapy and document compliance, all in a 10 day period with no oversight or assistance from the Agency. The Agency cannot require recipients to complete complex case management plans.

Absent an assignment to a specific rehabilitation plan which could reasonably be found to restore self sufficiency, the case planning documentation requested by the Agency cannot be required as a condition of eligibility. Accordingly, the Agency's determination is reversed as a matter of law.

Moreover, the Appellant argued good cause for her failure to return the requested documentation to the Agency on or before May 17, 2005 based on the fact she did not receive the Agency's original request for such documentation. The Appellant testified that she did not become aware of the Agency's request to complete a "Restoration to Self Sufficiency Plan" form and calendar until she received the Agency's discontinuance notice on or about May 19, 2005. It was undisputed that the Appellant requested and was provided (via fax) another "Restoration to Self Sufficiency Plan" form and calendar, which she completed, and returned to the Agency on June 15, 2005. The Appellant's testimony that she did not receive the Agency's original correspondence dated April 18, 2005 was wholly unrefuted, and coupled with her consistent testimony at the hearing, is found to be credible. Accordingly, the Appellant has established good cause for failing to comply with the Agency's original request. The Agency is directed to continue the Appellant's Public Assistance benefits unchanged.

### **DECISION AND ORDER**

The Agency's May 17, 2005 determination to discontinue the Appellant's Public Assistance on the grounds the Appellant failed to return a completed "Restoration to Self Sufficiency Plan" form and calendar on or before April 28, 2005 was not correct and is reversed.

1. The Agency is directed to continue the Appellant's Public Assistance unchanged.

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

DATED: Albany, New York  
September 6, 2005

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee