

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

REQUEST: February 2, 2007
CASE #: Pxxxxxxx
AGENCY: Erie
FH #: 4720847R

In the Matter of the Appeal of
JC
from a determination by the Erie 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 March 13, 2007, in Erie County, before Katherine Volk, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

JC, Appellant
Darlene White, Atty. Neighborhood Legal Services

For the Social Services Agency

Ms. Miller, Social Welfare Examiner

ISSUE

Was the Appellant's request for a fair hearing to review the Agency's determination to deny the Appellant's application for Public Assistance, Medical Assistance and Food Stamp benefits timely?

Assuming the request was timely, was the Agency's determination to deny the Appellant's application for Public Assistance and Medical Assistance for failure to appear at a scheduled face-to-face interview correct?

Was the Agency's determination regarding the Appellant's application for Food stamp 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 applied for Public assistance, Food Stamp benefits and Medical Assistance on October 11, 2006.
2. The Appellant was advised by the Agency to appear at the Agency on October 16, 2006 to provide documentation necessary to establish eligibility for Public Assistance, Medical Assistance and Food Stamp benefits.
3. The Appellant did not report to the scheduled interview.
4. On October 24, 2006, the Agency sent a Denial Notice setting forth its determination to deny the Appellant's application for Public Assistance and Medical Assistance because of the Appellant's failure to report to the scheduled face-to-face interview.
5. The Notice further advised Appellant that he missed his food stamp application interview, that Appellant must be interviewed or he will be denied food stamp benefits; that Appellant is to call the general phone number to set up another interview ; that Appellant has the right to request that the food stamp in –office interview be waived in hardship situations, including, illness, transportation, care of a household member, residency in a rural area, prolonged severe weather or work/training hours that prevent you from coming in during regular office hours.
6. The notice advised the Appellant that a fair hearing must be requested by December 23, 2006, concerning Public Assistance and Medical Assistance.
7. The Agency mailed the notice to the Appellant's address as contained in the Appellant's case record.
8. The Appellant originally requested a fair hearing on 11/20/2006 to review the Agency's determination dated October 24, 2006.
9. Based on the original fair hearing request, a fair hearing no 4675321J was scheduled for January 29, 2007. The Appellant did not appear, either personally or by representative, at the scheduled hearing.
10. The Appellant contacted the Office of Administrative Hearings (Office) within 15 days of the scheduled hearing to request that the original hearing be rescheduled because the Appellant had not received that Office's letter setting forth the date of the scheduled hearing. The Appellant did not establish that the Office's letter was not received and the request to reschedule the hearing was therefore denied.

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11. On October 24, 2006, the Agency sent a Denial Notice setting forth its determination to deny the Appellant's application for Public Assistance, Medical Assistance and Food Stamp benefits because of the Appellant's failure to report to the scheduled face-to-face interview.

12. On February 2, 2007, the Appellant requested this fair hearing.

APPLICABLE LAW

Section 22 of the Social Services Law provides that applicants for and recipients of Public Assistance, Emergency Assistance to Needy Families with Children, Emergency Assistance for Aged, Blind and Disabled Persons, Veteran Assistance, Medical Assistance and for any services authorized or required to be made available in the geographic area where the person resides must request a fair hearing within sixty days after the date of the action or failure to act complained of. In addition, any person aggrieved by the decision of a social services official to remove a child from an institution or family home may request a hearing within sixty days. Persons may request a fair hearing on any action of the social services district relating to food stamp benefits or the loss of food stamp benefits which occurred in the ninety days preceding the request for a hearing. Such action may include a denial of a request for restoration of any benefits lost more than ninety days but less than one year prior to the request. In addition, at any time within the period for which a person is certified to receive food stamp benefits, such person may request a fair hearing to dispute the current level of benefits.

Regulations at 18 NYCRR 358-5.5 provide that the Office of Administrative Hearings of the New York State Office of Temporary and Disability Assistance (OAH) will consider a fair hearing request abandoned if neither the Appellant nor the Appellant's authorized representative appears at the fair hearing, unless either the Appellant or Appellant's authorized representative has:

- o contacted OAH within 15 days of the scheduled date of the fair hearing to request that the fair hearing be rescheduled and provided OAH with a good cause reason for failing to appear at the fair hearing on the scheduled date, or
- o contacted OAH within 45 days of the scheduled date of the hearing and established that the Appellant did not receive the notice of fair hearing prior to the scheduled hearing date.

If the Appellant or Appellant's authorized representative has met either of the above conditions, OAH will restore the case to the calendar.

Regulations at 18 NYCRR 350.3(c) provide that a personal interview is required with an applicant for Public Assistance, or such person's designated representative, in all cases to establish eligibility for Public Assistance. Interviews must ordinarily be scheduled within seven working days (five working days prior to April 16, 1997), except where there is indication of emergency need, in which case the interview must be held at once.

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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. 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 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.

Section 360-2.2(f) of the Regulations requires that a personal interview be conducted with all applicants for Medical Assistance. Such personal interview shall be conducted before a decision on Medical Assistance eligibility is authorized or reauthorized. Section 360-2.3 of the Regulations provides that the Medical Assistance applicant and recipient has a continuing obligation to provide accurate and complete information on income, resources and other factors which affect eligibility. An applicant or recipient is the primary source of eligibility information. However, the Agency must make collateral investigation when the recipient is unable to provide verification. The applicant's or recipient's failure or refusal to cooperate in providing necessary information is a ground for denying an application for a Medical Assistance Authorization or for discontinuing such benefits.

387.8 Application process.

The application process includes completing and filing an application form, being interviewed, and having certain information verified and processed in a manner appropriate to the household's needs.

(a) Expedited service.

- (1) Households are entitled to expedited service provided liquid resources (i.e., cash on hand, checking or savings accounts, savings certificates, and lump sum payments) do not exceed \$100 and either:

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- (i) the household has less than \$150 in monthly gross income, as computed by food stamp requirements; or
 - (ii) is a migrant or seasonal farm worker household who is destitute as defined in this Part.
- (2) Benefits shall be issued to households eligible for expedited service according to the following processing standards:
 - (i)
 - (a) For all households entitled to expedited service as set forth in paragraph (1) of this subdivision, the food stamp coupons must be made available to the household no later than the fifth calendar day following the day the application was filed.
 - (b) Households entitled to expedited service may include, but are not limited to, residents of shelters for battered women and children, households entitled to a waiver of the office interview, residents of drug addiction or alcoholic treatment and rehabilitation centers, residents of group living facilities, homeless individuals and residents of facilities for the homeless. However, such households must meet the requirements for expedited service set forth in paragraph (1) of this subdivision.
 - (ii) For households which receive a waiver of the office interview requirements and are interviewed at home and meet the requirements of expedited service, the local department shall conduct the interview and process the application within the regular expedited service standards detailed in subparagraph (i) of this paragraph.
 - (iii) For households which receive a waiver of the office interview requirement and meet the requirements for expedited service, but are interviewed by telephone, applicants shall be processed for expedited service as detailed in section 387.7(i) of this Part.
- (3) An expedited verification process shall be used in the certification of expedited applications. Using collateral contacts and readily available documents, the local department shall verify, in all cases, the applicant's identity. Also, by using reasonable effort within the expedited time standards, the local department shall verify the household's residency, income status, liquid resources and all other factors required in this Part through collateral contacts or readily available documentary evidence. However, benefits shall not be delayed beyond the expedited time standard solely because these eligibility factors have not been verified. Households entitled to

expedited service will be asked to either furnish a social security number (SSN) for each person or to apply for one for each person before the first full month of participation. Those households unable to provide the required SSN's or who do not have one prior to their next authorization for food stamps shall be allowed 30 days from the first day of the first full month of participation to obtain the SSN. The applicant shall comply with the work registration requirements detailed in section 385.3 of this Title, unless the household is exempt or has designated an authorized representative.

DISCUSSION

On October 24, 2006, the Agency notified the Appellant that it had determined to deny the Appellant's application for Public Assistance and Medical Assistance and that he had missed his food stamp interview.

The Appellant requested a fair hearing for review of that notice on 11/20/06 and a fair hearing was scheduled for 1/29/07. Neither the Appellant nor a representative of the Appellant appeared for the scheduled hearing.

The Appellant contacted the Office of Administrative Hearings (OAH) within 15 days of the scheduled hearing to request that the original hearing be rescheduled because the Appellant had not received that Office's letter setting forth the date of the scheduled hearing. This request was denied because the letter was properly addressed and not returned to the OAH.

At the hearing, the Appellant again claimed non receipt of the scheduling letter. While the Appellant acknowledged that to his knowledge he has not had any problems with his mail, the Appellant's testimony was nevertheless sincere and genuine. The Appellant's attorney added that she had inquired from the Appellant as to his fair hearing which prompted the Appellant to contact the Office of Administrative Hearings on 2/02/07. In sum, Appellant's claim of non receipt of the scheduling letter is accepted. Therefore, the record establishes a sufficient basis for rescheduling the original hearing. Based upon the original fair hearing request date of November 20, 2006, the Appellant's request for a hearing is timely and the Commissioner has jurisdiction to review the merits of the Agency's action.

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The Agency determined the deny the Appellant's application for Public assistance and Medical assistance on the grounds that Appellant failed to appear for a face to face interview on October 16, 2006.

At the hearing, the Appellant stated that due to the October snow storm, he was unable to keep the appointment on 10/16/06. The Appellant explained that he had no power, no lights and was in G a rural area of Erie County at the time. The Appellant also noted that he did contact his caseworker within two days of the missed appointment to request rescheduling but that Appellant was told to reapply. The Appellant noted that he reapplied and that he was recently approved for SSI.

The Appellant's testimony is fully credited; the County building was closed on Friday, October 13, 2006 due to the snow storm; many parts of the area were still without power on Monday, October 16, 2006, the date of Appellant's appointment. Appellant's claim that he was unable to keep the appointment due to the weather and resulting conditions is accepted. As such, the Appellant has established good cause for his failure to appear for the face to face interview on October 16, 2006. As for Food stamp benefits, the Appellant's attorney argues that at the time of application, the Appellant was without food and that the Agency failed to provide food stamp benefits on an expedited basis. The Appellant also noted that he had requested rescheduling of the food stamp interview (as well as his PA and MA interview), as set forth in the notice but that Appellant was simply told to reapply.

As set forth above, the Appellant's testimony establishes good cause for his failure to appear for his interview. As for the processing of the Appellant's application for Food stamp benefits, the record fails to show that the Agency complied with the regulations and policy as set forth in 05 ADM 13 "Revised LDSS-3938 Food Stamp Application Expedited Processing". All food stamp applicants including those filing jointly for temporary assistance, must be screened on the initial day of application to determine if they qualify for expedited processing; districts must use the LDSS 3938 form entitled "Food Stamp Application Expedited Processing Summary Sheet". The completed form must be maintained in every food stamp applicant's case record. When the screening process identifies a household as qualified for expedited processing, districts must determine eligibility and make such benefits available to the household no later than 5 calendar days following the date of application. The first day of the five day count is the first calendar day after the application was filed. If a household meets the expedited processing criteria from the initial screening, an eligibility interview must be conducted to process the application within the expedited processing time standards.

Here, the record failed to establish that Appellant was screened for expedited processing of his food stamp application on the day of application (10/11/06) nor did the case record show that the Agency had made use of Form 3938. The record does show that a certification interview was scheduled for 10/16/06 which was within the expedited processing standards. The Appellant established good cause for having missed the interview as discussed above. As for the Agency's failure to reschedule the missed interview, as set forth in the Food Stamp Source Book, (Section 4) the interview shall be rescheduled without requiring the household to provide good cause for

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failing to appear. The Agency must still allow 30 days from the date the application was filed to deny the application. The Agency must develop procedures to ensure that no food stamp application is denied prior to the 30th day from the application date for failure to appear for an eligibility interview. The record fails to show that the Agency complied with this process. Here the record shows that Appellant did contact the Agency but was told to reapply. No denial Notice was subsequently issued.

DECISION AND ORDER

The Agency's determination to deny the Appellant's application for Public Assistance and Medical assistance on the grounds that he failed to appear for a face to face interview is not correct and is reversed.

1. The Agency is directed to continue to process the Appellant's application and afford the applicant the opportunity to appear at a face-to-face interview and to evaluate the Appellant's eligibility. The Agency is directed to advise the Appellant in writing of its determination.

The Agency's determination regarding Appellant's application for Food stamp benefits is not correct and the case is remanded back to Agency to take the following action:

1. Immediately process the Appellant's application for Food stamp benefits, affording the Appellant the opportunity to appear for an interview and establish his eligibility, and if otherwise eligible, provide Food stamp benefits, prorated to the date of application, based upon verified degree need..

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 30, 2007

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee