

STATE OF NEW YORK
DEPARTMENT OF LABOR

REQUEST August 19, 2002
CASE # P00XXXXXX
CENTER # Suffolk
FH # 3770956J

In the Matter of the Appeal of :

M R

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 January 8, 2003, in Suffolk County, before Richard S. Levchuck, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

M R, Appellant; Cheryl Keschner, Appellant's Representative; D R, Witness; (by telephone)

For the Social Services Agency

Eileen Alheidt, Fair Hearing Representative

ISSUE

Was the Agency's determination to discontinue the Appellant's Safety Net Assistance and Food Stamps on the grounds that Appellant refused to cooperate or participate in the assessment 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. The Appellant has been in receipt of a grant of Safety Net Assistance and Food Stamps for a household of one person.
2. Appellant is not the parent or caretaker of a dependent child.
3. On July 9, 2002 the Agency mailed a letter to the Appellant advising her to report to its Department of Labor on July 19, 2002 for an assessment appointment.
4. The Appellant did not receive the letter from the Agency advising her to report to its Department of Labor on July 19, 2002.

5. The Appellant failed to report to the Agency's Department of Labor on July 19, 2002.

6. On August 10, 2002 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.

7. 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.

8. 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.

9. On August 19, 2002, 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.

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

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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.

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 of 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. For the period prior to August 19, 2002, a subsequent failure had to be within three years of the previous such failure in order to increase the duration of the sanction. 7 CFR 273.7(g); 12 NYCRR 1300.12(e).

DISCUSSION

At the hearing, the Appellant testified that she did not report to the Agency's Department of Labor because she did not receive the letter from the Agency advising her of the time and place of this appointment. This testimony was plausible, persuasive and was corroborated by the testimony of a co-tenant of the Appellant. The co-tenant testified as to numerous problems with mail delivery resulting from the mail not being distributed by the former landlord of the Appellant. She stated that mail for all thirteen residents of the house was often thrown on the living room floor. This witness testified as to deliberate, abusive behavior on the part of the landlord toward the tenants in an effort to force out recipients of Public Assistance that she deemed undesirable. The witness testified as to incidents of theft on the part of this landlord as well. This was also alluded to by the Appellant at her conciliation meeting when she stated that she had repeatedly tried to get the Agency to move her. It is noted that the Appellant did eventually move in October, 2002.

Accordingly, the Appellant has established good cause for her failure to report to the Agency's Department of Labor for the scheduled assessment appointment. The Agency's determination to discontinue her Safety Net Assistance and Food Stamp benefits cannot be sustained.

DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Safety Net Assistance and Food Stamps on the grounds that Appellant refused to cooperate or participate in the assessment process was not correct and is reversed.

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

2. The Agency is directed to continue the Appellant's Food Stamp benefits and to restore benefits withheld as a result of the Agency's action retroactive to the date of discontinuance.

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
January 23, 2003

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NEW YORK STATE DEPARTMENT
OF LABOR

By

Commissioner's Designee