

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: October 19, 2006
CASE #:
AGENCY: Nassau
FH #: 4653435N

In the Matter of the Appeal of _____ :
: **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 December 8, 2006, in Nassau County, before Jonathan Kastoff, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

G _____, Appellant
Herb Harris, Representative
_____, Witness

For the Social Services Agency

Helene Mergentheimer, Fair Hearing Representative
K. Omotosho, Witness

ISSUE

Was the Agency's determination that the Appellant was ineligible for Public Assistance and Food Stamps because Appellant' failed to cooperate with the Agency's Special Investigation Unit 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 has been in receipt of Public Assistance and Food Stamps for a household of one person.

FH# 4653435N

2. On September 13, 2006, a worker in the Agency's Special Investigation Unit made an unannounced visit to the Appellant's address of record. The Appellant was not present and the worker left notice for the Appellant to contact the worker. The Appellant failed to contact the worker.

3. On September 21, 2006, the worker wrote to the Appellant asking the Appellant to contact the worker within five days so that a home visit could be scheduled. The Appellant failed to contact the worker.

4. On October 5, 2006, the Agency sent a Notice of Intent to the Appellant setting forth its determination to discontinue the Appellant's Public Assistance and Food Stamps on the grounds that the Appellant failed to cooperate with the Agency's Special Investigation Unit..

5. The Appellant continues to reside at the address listed in the Agency's records.

6. On October 19, 2006, the Appellant requested this fair hearing.

APPLICABLE LAW

Regulations define an investigation of eligibility and degree of need as a continuous process concerned with all aspects of eligibility for Public Assistance and care, including Medical Assistance, from the period of initial application to case closing. Investigation means the collection, verification, recording and evaluation of factual information on the basis of which a determination of eligibility and the degree of need is made. As part of this investigation, it is the responsibility of an applicant or recipient of Public Assistance and care to verify his/her place of residence. 18 NYCRR 351.1, 351.2 and 360-1.2, 360-2.3.

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.
18 NYCRR 351.21(a)

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

FH# 4653435N

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.

Households receiving Food Stamp benefits have a continuing responsibility to report changes in residence. 7 CFR 273.12, 18 NYCRR 387.17(e).

A household which has been determined eligible for Food Stamp benefits is certified as eligible for a specified time period. When the certification period ends, entitlement to Food Stamp benefits expires and the household is not entitled to Food Stamp benefits until it submits a new application and is redetermined to be eligible for Food Stamp benefits. 7 CFR 273.10, 18 NYCRR 387.17(a).

Where Food Stamp benefits are lost due to an error by the Agency, the Agency is required to restore lost benefits. However, lost benefits shall be restored for not more than twelve months prior to whichever of the following occurred first:

1. The date the Agency received a request for restoration from a household; or
2. The date the Agency is notified or otherwise becomes aware that a loss to a household has occurred.

7 CFR 273.17; 18 NYCRR 387.18 and Food Stamp Source Book, Section 10.

DISCUSSION

The Agency commenced its investigation to verify Appellant's residence after mail addressed to the Appellant had been returned to the Agency by the postal authorities, some of which indicated a forwarding address in Brooklyn. The Agency worker left one notice and mailed a second notice to the Appellant to have the Appellant contact the worker to schedule a home visit. The Appellant failed to contact the worker. Therefore, the Agency's determination to discontinue the Appellant's Public Assistance and Food Stamps was correct when made on October 5, 2006.

However, at the hearing, the Appellant's landlord testified that she was present on September 13, 2006, when the Agency worker made his unannounced visit, that she acknowledged to the worker that the Appellant resided there, and that she forgot to give the Appellant the request that the worker had left after the visit. The Appellant's landlord further testified that she collects the mail for the residence and that she did not recall receiving the worker's September 21, 2006, letter or giving it to the Appellant. Such testimony was consistent as to detail and persuasive.

The Appellant testified that he has resided at his present address for about ten years. The Appellant further testified that he did not contact the worker because he failed to receive the worker's written requests. The Appellant also testified that he went to the local post office in November, 2006, regarding delivery mail problems and was advised of a June 30, 2006, change

FH# 4653435N

of address form submitted for the Appellant. The Appellant submitted verification that the postal authorities rescinded the change of address because the signature on the form did not match the Appellant's signature. The Appellant's testimony was consistent as to detail and persuasive. The Appellant presented sufficient evidence to establish good cause for the Appellant's failure to contact and cooperate with the Agency's Special Investigation Unit. Therefore, the Agency's determination to discontinue the Appellant's Public Assistance and Food Stamps, while correct when made, cannot be sustained at this time.

DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Public Assistance and Food Stamps was correct when made.

1. The Agency is directed to continue the Appellant's Public Assistance and Food Stamps and to restore any assistance 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 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.

DATED: Albany, New York
12/18/2006

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink that reads "Susan M. Grimes". The signature is written in a cursive, flowing style.

Commissioner's Designee