

STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: September 15, 2008  
CASE #: FXXXXXXX  
AGENCY: Suffolk  
FH #: 5112113N

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In the Matter of the Appeal of  
BT  
from a determination by the Suffolk 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 January 6, 2009, in Suffolk County, before Richard S. Levchuck, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

BT, Appellant; Nora Gonzalez, Appellant's Representative; JB, Witness

For the Social Services Agency

Ken Rogers, Fair Hearing Representative

**ISSUE**

Was the Agency determination to reduce Food Stamp benefits to the Appellant's household because the Appellant failed, without good cause, to comply with work registrant requirements 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 had been in receipt of Food Stamp benefits as a part of his mother's household.
2. On May 27, 2008, the Agency sent a letter to the Appellant advising him to appear at its Department of Labor on June 12, 2008 for a registration and orientation appointment.

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3. The Appellant did not receive the letter from the Agency dated May 27, 2008.
4. The Appellant did not report to the Agency's Department of Labor on June 12, 2008 for the scheduled registration and orientation appointment.
5. On September 6, 2008 the Agency determined to reduce Food Stamp benefits to the Appellant's household on the grounds that the Appellant failed, without good cause, to comply with work registrant requirements because he did not report to the Agency's Department of Labor on June 12, 2008 for a registration and orientation appointment.
6. The Agency further determined that the Appellant would be ineligible for Food Stamp benefits for a period of two months.
7. On September 15, 2008, the Appellant requested this fair hearing.

### **APPLICABLE LAW**

Food Stamp work registrants must participate in an employment and training program when so assigned by the agency and respond to a request from the agency for supplemental information regarding employment status or availability for work 7 CFR 273.7(e), 18 NYCRR Part 385.

Local districts must develop, implement and administer a variety of food stamp employment and training services, including individual employability assessments to determine appropriateness for participation in food stamp employment and training components and to identify steps for improving long range employability; food stamp independent job search to assist persons in obtaining employment by providing job search training, job development exposure to labor market information, and supervised job referrals; employment-related training workshops and job club workshops to prepare a person to conduct an independent job search; training programs to prepare a person for a specific vocational objective; educational programs or activities to improve basic skills or otherwise improve employability including educational programs determined by the department to expand job search abilities or employability; and counseling and testing to ascertain a person's interests, aptitudes, skills and abilities in order to determine the services and programs which would best serve the individual. Local social services districts may, with the approval of the department, administer other appropriate employment and training services. 7 CFR 273.7(f); 18 NYCRR 387.23(c).

If a Food Stamp household contains a member who is exempt from work registration solely because he or she is registered for work under an unemployment compensation work requirement or subject to participation in work activities funded under Title IV of the Social Security Act, and such individual fails or refuses to comply with the work requirements of these programs, such individual must be treated as though he or she failed to comply with the requirements of 18 NYCRR Part 385, relating to Food Stamp employment requirements. 18 NYCRR 385.12(b).

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The needs of an individual who is required to work register and who has failed without good cause to comply with employment requirements will not be considered in determining the needs of the household for Food Stamps:

- for the first instance of failure to comply without good cause, a period of two months and thereafter until the individual complies with employment requirements.
- for the second instance of failure to comply without good cause, a period of four months and thereafter until the individual complies with employment requirements. Prior to August 19, 2002, such second instance must have been within a three year period prior to the effective date of ineligibility based on the first such failure in order to increase the duration of the sanction.
- for the third and subsequent instances of failure to comply without good cause, a period of six months and thereafter until the individual complies with employment requirements. Prior to August 19, 2002, such instance must have been within a three year period prior to the effective date of ineligibility based on the previous such failure in order to increase the duration of the sanction.

7 CFR 273.7(g); 18 NYCRR 385.12(e).

Prior to sending a notice of adverse action, the Agency must determine whether good cause for non-compliance with work registration requirements exists. In determining whether good cause exists, the Agency must consider the facts and circumstances, including information submitted by the individual subject to such requirement. Good cause includes circumstances beyond the member's control such as, but not limited to, illness, 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 age six but are under age 13. 7 CFR 273.7(m); 18 NYCRR 385.12(c). 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 385.12(c).

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.

**DISCUSSION**

At the hearing, the Appellant stated that he did not report to the Agency's Department of Labor on June 12, 2008 because he did not receive the letter from the Agency advising him of the time and place of this interview. This testimony was plausible, persuasive and was corroborated by the testimony of his mother, who noted that she is responsible for opening and reviewing all mail from the Agency to ensure that her son keeps his appointments.

Although the Agency described the mailing procedure and noted that the letter was properly addressed to the Appellant, the Appellant has nevertheless established that he did not receive the appointment letter and as such, had good cause for his failure to report to the Agency's Department of Labor on June 12, 2008. While the Agency's determination to reduce Food Stamp benefits to the Appellant's household was correct when made, the Agency should continue to provide the Appellant's mother with Food Stamp benefits for a household that includes the needs of the Appellant and should restore any Food Stamp benefits lost to the Appellant's household as a result of its action. It is noted however, that the Appellant must comply with Food Stamp work registration as well as Food Stamp employment and training requirements in order to continue to receive Food Stamp benefits.

**DECISION AND ORDER**

The Agency determination to reduce Food Stamp benefits to the Appellant's household because the Appellant failed, without good cause, to comply with work registrant requirements was correct when made.

1. The Agency is directed to continue to provide the Appellant with Food Stamp benefits and to restore any benefits lost to the Appellant as a result of its 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.

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DATED: Albany, New York  
January 7, 2009

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee