

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

REQUEST: February 1, 2006
CASE #: PXXXXXXX
AGENCY: Suffolk
FH #: 4485016P

In the Matter of the Appeal of
P G
from a determination by the Suffolk 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 June 2, 2006, in Suffolk County, before Richard S. Levchuck, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

P G, Appellant; Barbara Liese, Esq., Appellant's Representative

For the Social Services Agency

Eileen Alheidt, Fair Hearing Representative

ISSUES

Was the Appellant's request for a fair hearing to review the Agency determination to discontinue the Appellant's Safety Net Assistance, Medical Assistance and Food Stamp benefits on the grounds that the Appellant failed to report to a face to face recertification interview timely?

Assuming the request was timely, was the Agency's determination to discontinue the Appellant's Safety Net Assistance, Medical Assistance and Food Stamp benefits for failure to appear at a face-to-face recertification interview correct?

Was the Agency's determination to deny the Appellant's application for Public Assistance benefits for failure to appear at a scheduled face-to-face interview with the Agency's Case Management Project 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 Safety Net Assistance, Medical Assistance and Food Stamp benefits.
2. The Agency notified the Appellant to appear for a face-to-face recertification interview on May 16, 2005.
3. The Appellant did not appear at the face-to-face recertification interview because the Appellant did not receive the appointment letter.
4. On February 28, 2005, a police report was filed by a co-resident of the Appellant alleging that mail was stolen from the mailbox at the Appellant's residence during the period from February 1, 2005 through February 28, 2005.
5. By Notice of Intent dated May 17, 2005, the Agency determined to discontinue the Appellant's Public Assistance, Medical Assistance and Food Stamps effective May 27, 2005, on the grounds that the Appellant failed to appear for the face-to-face recertification interview.
6. The notice advised the Appellant that a fair hearing must be requested within sixty days of the Agency's action concerning Public Assistance and Medical Assistance and within ninety days of the Agency's action concerning Food Stamps.
7. The Agency mailed the notice to the Appellant's address as contained in the Appellant's case record.
8. On December 12, 2005, the Appellant re-applied for Public Assistance for a household of one.
9. The Appellant is not the parent or caretaker of a dependent child.
10. The Appellant was advised by the Agency to appear at the Agency on January 11, 2006 at 10:45am to provide documentation of any pertinent medical or employment-related information necessary to establish eligibility for Public Assistance benefits.
11. The Appellant reported to the scheduled interview at 1:40pm.
12. On January 20, 2006, the Agency sent a Denial Notice setting forth its determination to deny the Appellant's application for Public Assistance benefits because of the Appellant's failure to report to the scheduled interview with its Case Management Project on January 11, 2006.

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13. On February 1, 2006, the Appellant requested this fair hearing. On May 5, 2006, the Appellant and his representative requested that the Agency's determination dated May 17, 2005 to discontinue Public Assistance, Medical Assistance and Food Stamp benefits be added as an issue for review.

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 351.20 provide that continuing eligibility for Public Assistance must be established through the process of face-to-face recertification interviews. From time to time recipients of Public Assistance are required personally to appear at the recertification interviews and to present appropriate documentation to demonstrate their continuing eligibility for such assistance.

Section 351.22 of the Regulations provides that if a recipient fails to appear at a scheduled interview without good cause, the Agency must send a notice of proposed discontinuance to the recipient. If the recipient appears at the Agency during the ten day period, an interview must be scheduled. If the recipient is found to be eligible as a result of such interview, the ten day notice of proposed discontinuance must be cancelled and the recipient's Public Assistance must be continued.

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

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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.

Federal Regulations at 7 CFR 273.14 and Regulations at 18 NYCRR 387.17 provide that the Agency shall deny a reapplication for Food Stamp benefits if the household fails to attend any interview scheduled on or after the deadline for timely filing of the recertification application or to submit all necessary verification within the time frame established by the State.

The Agency must provide the household with a notice of expiration of benefits prior to the first day of the last month of the certification period. The notice must contain the following information:

- (a) the consequences of failure to comply with the expiration notice;
- (b) the date the current certification period ends;
- (c) the date by which the recipient's household must reapply to receive uninterrupted benefits;
- (d) the date of any scheduled interview, and a statement that the recipient is responsible for rescheduling a missed interview;
- (e) the number of days the recipient has for submitting missing verification after the interview or after the recertification form is received by the local social services district if no interview is required;
- (f) the specific regulation upon which the action is based;
- (g) the household's right to request an application for food stamp benefits and the obligation of the local social services district to accept the application, provided that the application is signed and contains a legible name and address;
- (h) the address where the application must be filed;
- (i) the household's right to apply for food stamp benefits by mail or through an authorized representative;
- (j) information that any household consisting only of Supplemental Security Income (SSI) applicants or recipients is entitled to apply for food stamp recertification at any office of the Social Security Administration (SSA); and
- (k) the household's right to a fair hearing.

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- (l) the procedure for requesting an agency conference or fair hearing, including an address and telephone number where a request for a fair hearing may be made and the time limits within which the request for a fair hearing must be made;
- (m) the right of the recipient to review the recipient's case record. The notice must contain an address and telephone number where the recipient can obtain additional information about the recipient's case; how to request a fair hearing; access to the case file; and/or obtaining copies of documents;
- (n) the right to representation by legal counsel, a relative, friend or other person or to represent oneself, and the right to bring witnesses to the fair hearing and to question witnesses at the hearing; and
- (o) the right to present written and oral evidence at the hearing;

18 NYCRR 358-2.11

Households which are initially certified for one or two months must receive a notice of expiration at the time of certification and will have fifteen days from the date that the notice of expiration is received to file a timely application for recertification. All other households must submit an application for recertification by the fifteenth day of the last month of certification. 18 NYCRR 387.17(f).

The recipient must be interviewed and must submit all verification prior to the end of the final month of the certification period to be entitled to uninterrupted benefits. The Agency must allow the household at least ten calendar days from the interview to submit any additional or missing verification. If the household fails to appear for the interview, fails to file the recertification application prior to the required time period or fails to provide missing verification by the end of the 10-day time period, the Agency must deny the recertification application. 18 NYCRR 387.17(f).

A personal interview is not required as part of the redetermination of eligibility for Medical Assistance. Social Services Law 366-a(5). In addition, no personal interview is required to recertify eligibility for Family Health Plus. Social Services Law 369-ee.

Regulations at 18 NYCRR 360-7.5(a)(1) provide that payment for services or care under the Medical Assistance Program may be made to a recipient or the recipient's representative at the Medical Assistance rate or fee in effect at the time such care or services were provided when an erroneous determination by the Agency of ineligibility is reversed. Such erroneous decision must have caused the recipient or the recipient's representative to pay for medical services which should have been paid for under the Medical Assistance Program. Note: the policy contained in the regulation limiting corrective payment to the Medical Assistance rate or fee at the time such care or services were provided has been enjoined by Greenstein et al. v. Dowling et al. (S.D.N.Y.).

DISCUSSION

On May 17, 2005, the Agency notified the Appellant that it had determined to discontinue the Appellant's Safety Net Assistance, Medical Assistance and Food Stamp benefits on the grounds that the Appellant failed to report to a face to face recertification interview.

Although the Agency's notice advises the Appellant that a fair hearing must be requested within sixty days of its action concerning Public Assistance or Medical Assistance and within ninety days of its action concerning Food Stamp benefits, the Appellant failed to request a fair hearing to review this determination until May 5, 2006, which was more than ninety days after the Agency's determination.

At the hearing, the Appellant testified that he did not request a fair hearing sooner because he did not receive the notice intent dated May 5, 2006. In addition, the Appellant also testified that he did not report to the scheduled face to face recertification interview on May 16, 2005 because he did not receive the letter from the Agency advising him of the time and place of this interview.

The Agency, for its part, cited the mailing procedure that it utilizes to send out letters such as the appointment letter for the Appellant's scheduled recertification interview. The Agency noted that the appointment letter was not returned by the post office.

The Appellant's evidence included a police report dated February 28, 2005 that was filed by a co-resident of the Appellant alleging that mail was being stolen. As such, the Appellant's testimony was plausible, persuasive and was corroborated by the police report. In addition, it is noted that the Agency's Notice of Intent did not contain a regulatory citation for the discontinuance of the Appellant's Public Assistance.

Accordingly, the record establishes a sufficient basis for tolling the statute of limitations. In addition, the Appellant has established that he had good cause for not appearing for the scheduled interview in that he did not receive the appointment letter.

Accordingly, while the Agency's determination to discontinue the Appellant's Public Assistance, Medical Assistance and Food Stamp benefits was correct when made, the Agency should continue to provide the Appellant with such assistance and restore any assistance lost to him as a result of its action.

In view of the fact that the Agency is being directed to restore Public Assistance, Medical Assistance and Food Stamp benefits to the Appellant for a period prior to the date that the Appellant re-applied for such its assistance, the subsequent determination of the Agency dated January 20, 2006 to deny the Appellant's application for Public Assistance is moot and need not be decided.

DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Public Assistance benefits for failure to appear at a face-to-face recertification interview is not correct and is reversed.

1. The Agency is directed to restore the Appellant's Public Assistance benefits retroactive to the date of the discontinuance.
2. The Agency is directed to reschedule a recertification interview with the Appellant.

The Agency's determination to discontinue Appellant's Medical Assistance is not correct and is reversed.

1. The Agency is directed to continue the Appellant's Medical Assistance benefits unchanged.
2. The Agency is directed to restore the Appellant's Medical Assistance benefits retroactive to the date of the discontinuance of such benefits.

The Agency's determination to discontinue the Appellant's Food Stamp benefits is not correct and is reversed.

2. The Agency is directed to provide the Appellant with an opportunity to recertify the Food Stamp benefits and to restore any lost benefits pursuant to Section 387.18 of the Regulations.

It is noted that the Appellant must cooperate in the recertification process in order to continue to receive assistance and/or benefits.

The Agency's determination dated January 20, 2006 to deny the Appellant's application for Public Assistance benefits dated December 12, 2005 is moot and need not be decided.

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
July 13, 2006

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee