

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

REQUI May 28, 1993
June 9, 1993
August 16, 1993

CASE#
CENTER# 53
FH# 1979448Q
1984071Z
2013443K

In the Matter of the Appeal of :

M R

from a determination by the New York City
Department of Social Services :

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 the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on August 17, 1993, September 7, 1993, October 5, 1993, and March 1, 1994, in New York City, before Kenneth Luciano, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

M R , Appellant (March 1, 1994, only)
Gene Doyle, Appellant's Representative

For the Social Services Agency

Samuel Cohen, Representative (October 5, 1993 and March 1, 1994, only)
Joan Klips, Representative (September 7, 1993, only)
Helen Joyner, Representative (August 17, 1993, only)
Jack Madcen, Representative (September 7, 1993, only)
Robert Kraft, Representative (September 7, 1993, October 5, 1993, and
March 1, 1994, only)
Claude Castera, Witness (September 7, 1993, October 5, 1993, and March
1, 1994, only)
Geraldine Harris, Witness (March 1, 1994, only)

ISSUES

Was the Agency's May 28, 1993, determination to discontinue the Appellant's Home Relief, Medical Assistance, and Food Stamp benefits effective June 13, 1993, correct?

FH# 1979448Q
FH# 1984071Z
FH# 2013443K

Was the Agency's June 5, 1993, determination to discontinue the Appellant's Home Relief effective June 15, 1993, correct?

Was the Agency's May 24, 1993, determination to reduce the Appellant's Food Stamp benefits correct?

Was the Agency's August 10, 1993, determination to reduce the Appellant's Food Stamp benefits 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, who is 45 years old, has been in receipt of Home Relief, Medical Assistance and Food Stamps.
2. Immediately prior to May 1993, the Agency had categorized the Appellant as employable.
3. By notice dated May 28, 1993, the Agency notified the Appellant of its determination to discontinue the Appellant's Public Assistance, Medical Assistance, and Food Stamp benefits effective June 13, 1993, on the grounds that the Appellant did not report to a medical exam scheduled for May 20, 1993. By notice dated June 5 1993, the Agency notified the Appellant of its determination to discontinue the Appellant's Public Assistance effective June 15, 1993, on the grounds that the Appellant did not comply with the Agency's request to have a medical evaluation.
4. Before sending the Notices of Intent to the Appellant, the Agency did not send Appellant a 14-day notice of conciliation advising the Appellant of the opportunity to contest the Agency's claim of failure to comply with its request that he have a medical evaluation.
5. Immediately prior to May 24, 1993, the Appellant had been authorized to receive monthly Food Stamp benefits of \$111.00.
6. On May 24, 1993, the Agency notified the Appellant that it would provide the Appellant with monthly Food Stamp benefits of \$96.00.
7. On August 10, 1993, the Agency notified the Appellant that it would provide the Appellant with monthly Food Stamp benefits of \$96.00.
8. On May 28, 1993, June 9, 1993, and August 16, 1993, this hearing was requested.

FH# 1979448Q
FH# 1984071Z
FH# 2013443K

APPLICABLE LAW

Section 131.5 of the Social Services Law provides that no assistance or care shall be given to an employable applicant for or recipient of home relief who has failed to comply with the requirements of the Job Opportunities and Basic Skills Training Program (JOBS) which is found in Title 9-B of the Social Services Law, who has failed to comply with work relief requirements under section 164 of the Social Services Law or who has refused to accept employment in which he or she is able to engage.

All applicants for and recipients of Aid to Dependent Children, Home Relief or Veteran's Assistance must participate in JOBS as required by the agency unless they are exempt under section 385.2(b) of the Department's Regulations. 18 NYCRR 385.2, 18 NYCRR 385.4(b).

An employable applicant for or recipient of Aid to Dependent Children or Home Relief must, as required by the Agency, provide medical verification and/or undergo a medical examination or other diagnostic assessment necessary to determine any limitations on the type of employment, occupational training, or rehabilitation in which he/she is able to engage. Such medical examinations or diagnostic assessments of employable applicants/recipients will be required as indicated by the applicant's/recipient's previous health, employment history, current health problems, or the requirements of the employment or training program in which he/she is required to participate. Minors who are not emancipated will be referred to a qualified individual when appropriate, for a medical examination only with written consent of his/her parents or guardians. The purpose of the examination will be clearly explained to the applicant or recipient. Social Services Law Section 131.7(b), 18 NYCRR 385.4(b)(1)(ii).

Social services officials are required by Section 341 of the Social Services Law and Section 385.18 of the Department's Regulations to establish a conciliatory procedure to assist in resolving participant grievances and instances in which participants have failed to comply with program requirements.

The conciliation procedure must provide for at least one conference between the participant, appropriate social services district staff and a mediator. The process may last no longer than 30 days unless by mutual agreement of the social services district and the participant.

JOBS participants must be afforded an opportunity for conciliation to dispute a JOBS assignment or any action taken by the social services district in accordance with the provisions of Part 385 of the Department's Regulations.

FH# 1979448Q
FH# 1984071Z
FH# 2013443K

If the dispute is resolved to the satisfaction of the participant and the district through the conciliation process, a written document memorializing such resolution must be sent to the social services official and the participant within ten days of such resolution. Such resolution is binding on the social services district and the participant.

If the district and the participant cannot, with the assistance of the mediator, resolve the issues related to the participant's refusal or failure to comply, a written document summarizing the conciliation must be given or sent to the participant by the district within 10 days of the termination of conciliation. The social services official must incorporate such document into the participant's case record and, in the event of a fair hearing, present it as required in accordance with 18 NYCRR 358-4.3.

A social services official must issue a notice to each applicant or recipient who refuses or fails to comply with the requirements of Part 385 of the Department's Regulations. Such notice must advise the participant of his or her refusal or failure to comply and that he or she has 14 days to request conciliation with the social services district regarding any dispute related to such refusal or failure to comply.

If the participant requests conciliation within 14 days, conciliation will be commenced promptly and it will be the participant's responsibility to provide reasons for such refusal or failure to comply.

If the district and the participant cannot, with the assistance of the mediator, resolve the issues related to the participant's refusal or failure to comply, and if the district determines that the refusal or failure to comply was willful and without good cause, then the social services official must issue a 10 day notice of intent to reduce or discontinue assistance.

If the participant does not respond to the 14 day conciliation letter issued by the social services official, or if the social services official determines that the participant's refusal or failure to comply was willful and without good cause, then the social services official must issue an adequate notice to deny public assistance or a timely and adequate notice of intent to discontinue or reduce public assistance.

No sanction related to the participant's failure to comply may be imposed during the conciliation period.

The needs of an employable Aid to Dependent Children or Home Relief recipient who has willfully failed without good cause to comply with the requirements of the JOBS program will not be taken into account in determining the needs of his or her household for assistance or the amount of assistance during the sanction period. 18 NYCRR 385.19(e).

FH# 1979448Q
 FH# 1984071Z
 FH# 2013443K

Under Section 366 of the Social Services Law a person who requires Medical Assistance is eligible for such assistance where such person:

- (a) is receiving or is eligible for Home Relief or Aid to Dependent Children or Supplemental Security Income;
- (b) although not receiving or in need of public assistance or care, has not sufficient income and resources to meet all the costs of medical care and services available under the Medical Assistance Program and such person is:
 - (i) under the age of 21; or
 - (ii) 65 years of age or older; or
 - (iii) the spouse of a cash Public Assistance recipient living with him/her and essential or necessary to his/her welfare and whose needs are taken into account in determining his/her cash payments; or
 - (iv) for reasons other than income or resources, is eligible for Aid to Dependent Children or Supplemental Security Income and/or additional state payments.
- (c) is at least 21 years of age but under the age of 65 and is not receiving or eligible to receive Home Relief or aid to dependent children and:
 - (i) who is the parent of a dependent child under the age of 21; and
 - (ii) who lives with such child; and
 - (iii) whose net income, without deducting the amount of any incurred medical expenses, does not exceed the net income exemption set forth in Section 366.2(a)(8) of the Social Services Law.

Department Regulations at 18 NYCRR 360-2.2(d) provide that for a person who does not meet the criteria set forth above, other than financial, eligibility for Medical Assistance must be determined on the basis of that person's eligibility for Home Relief in accordance with the requirements of 18 NYCRR Part 352 and Part 370.

Food Stamp work registrants must participate in an employment and training program when so assigned by the agency, respond to a request from

FH# 1979448Q
 FH# 1984071Z
 FH# 2013443K

the agency for supplemental information regarding employment status or availability for work, report to an employer to whom referred by the agency if the potential employment is suitable, and accept a bona fide offer of suitable employment. 7 CFR 273.7(e), 18 NYCRR 387.13(d).

Persons required to register for work and not exempted by the agency from placement in an employment and training program who fail to comply, without good cause, with the requirements imposed by the agency will be disqualified as specified in 7 CFR 273.7(g). 7 CFR 273.7(f), 18 NYCRR 387.13(a).

A Food Stamp employment and training program offered by the agency must offer one or more of the following components:

- (i) A job search program comparable to that required for the AFDC program under Title IV of the Social Security Act.
- (ii) A job search training program that includes reasonable job search training and support activities. Such a program may consist of job skills assessments, job finding clubs, training in techniques for employability, job placement services, or other direct training or support activities.
- (iii) A workfare program.
- (iv) A program designed to improve the employability of household members through actual work experience or training, or both, and to enable individuals employed or trained under such programs to move promptly into regular public or private employment.
- (v) A project, program or experiment such as a supported work program, or a JTPA or State or local program aimed at accomplishing the purpose of the employment and training program.

7 CFR 273.7(f) (1).

A household containing a member who was exempt from work registration because he or she was registered for work under a Title IV or unemployment compensation who fails to comply with a Title IV or unemployment compensation requirement comparable to a food stamp work registration or employment and training program requirement must be treated as though the member had failed to comply with the corresponding food stamp requirements. Household members who fail to comply with a noncomparable Title IV or unemployment compensation requirement will lose their exemption and must register for work if required. 7 CFR 273.7(g) (2), 18 NYCRR 387.13(e) (2) (ii).

FH# 1979448Q
 FH# 1984071Z
 FH# 2013443K

A public assistance, Title IV or unemployment compensation work requirement is comparable to food stamp work requirements if it does not place responsibilities on the household which exceed those imposed by the food stamp work requirements. 7 CFR 273.7(g)(2)(i), 18 NYCRR 387.13(e)(2)(iii).

If the Agency determines that an individual other than the head of household has refused or failed without good cause to comply with work registration requirements, including employment and training programs, that individual is ineligible to receive Food Stamp benefits for two months. If the head of household fails to comply, the entire household is ineligible for Food Stamp benefits for the two month period. 7 CFR 273.7(g); 18 NYCRR 387.13(e)(1).

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 household member involved and the employer. Good cause shall include 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, the unavailability of transportation, or the lack of adequate child care for children who have reached age six but are under age 12. 7 CFR 273.7(m); 18 NYCRR 387.13(g).

In most circumstances, a Food Stamp recipient has a right to an adequate adverse action notice when the Agency proposes to take any action to reduce the recipient's Food Stamp benefits during the certification period. 18 NYCRR 358-2.3; 18 NYCRR 358-3.3(b). However, pursuant to 18 NYCRR 358-3.3(e), there is no right to an adverse action notice when, for example, the change is the result of a mass change, the Agency determines that all members of the household have died or the household has moved from the district or when the household has failed to reapply at the end of the certification period.

An adequate notice is a notice of action, an adverse action notice or an action taken notice which sets forth the action that the Agency proposes to take or is taking, and if a single notice is used for all affected assistance, benefits or services, the effect of such action, if any, on a recipient's other assistance, benefits or services. In addition, the notice must contain:

- o for reductions, the previous and new amounts of assistance or benefits provided;
- o the effective date of the action;

FH# 1979448Q
FH# 1984071Z
FH# 2013443K

- o the specific reasons for the action;
- o the specific laws and/or regulations upon which the action is based;
- o the recipient's right to request an agency conference and fair hearing;
- o 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;
- o an explanation that a request for a conference is not a request for a fair hearing and that a separate request for a fair hearing must be made;
- o a statement that a request for a conference does not entitle one to aid continuing and that a right to aid continuing only arises pursuant to a request for a fair hearing;
- o the circumstances under which public assistance, medical assistance, food stamp benefits or services will be continued or reinstated until the fair hearing decision is issued;
- o a statement that a fair hearing must be requested separately from a conference;
- o a statement that when only an agency conference is requested and there is no specific request for a fair hearing, there is no right to continued public assistance, medical assistance, food stamp benefits or services;
- o a statement that participation in an agency conference does not affect the right to request a fair hearing;
- o the right of the recipient to review the case record and to obtain copies of documents which the agency will present into evidence at the hearing and other documents necessary for the recipient to prepare for the fair hearing at no cost;
- o 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;
- o 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;

FH# 1979448Q
FH# 1984071Z
FH# 2013443K

- o the right to present written and oral evidence at the hearing;
- o the liability, if any, to repay continued or reinstated assistance and benefits, if the recipient loses the fair hearing;
- o information concerning the availability of community legal services to assist a recipient at the conference and fair hearing; and
- o a copy of the budget or the basis for the computation, in instances where the social services agency's determination is based upon a budget computation.

18 NYCRR 358-2.2.

DISCUSSION

The Appellant has been in receipt of Home Relief, Medical Assistance and Food Stamps.

By notice dated May 28, 1993, the Agency notified the Appellant of its determination to discontinue the Appellant's Public Assistance, Medical Assistance, and Food Stamp benefits effective June 13, 1993, on the grounds that the Appellant did not report to a medical exam scheduled for May 20, 1993. By a second notice, dated June 5 1993, the Agency notified the Appellant of its determination to discontinue the Appellant's Public Assistance effective June 15, 1993, on the grounds that the Appellant did not comply with the Agency's request to have a medical evaluation.

The Agency contends that it notified the Appellant on May 4, 1993, that he was to report to a medical examination, scheduled for May 20, 1993. The Agency also contends that the Appellant did not report to the May 20, 1993, medical examination.

The record establishes that immediately prior to May 1993, the Agency had categorized the Appellant as employable. Based upon the Appellant's employment status immediately prior to the Agency's action, the Appellant, even assuming that the Agency's contentions were correct, was entitled to participate in the conciliation process. Before sending the Notices of Intent to the Appellant, the Agency did not send Appellant a 14-day notice of conciliation advising the Appellant of the opportunity to contest the Agency's claim of failure to comply with its request that he have a medical evaluation; for this reason, the Agency's determinations to discontinue the Appellant's assistance cannot be sustained.

It is noted that it is undisputed that the Appellant attended a medical examination later in 1993.

FH# 1979448Q
FH# 1984071Z
FH# 2013443K

Immediately prior to May 24, 1993, the Appellant had been authorized to receive monthly Food Stamp benefits of \$111.00. On May 24, 1993, the Agency notified the Appellant that it would provide the Appellant with monthly Food Stamp benefits of \$96.00. The record establishes that the Agency's May 24, 1993, notice had the effect of reducing the Appellant's Food Stamp benefits.

At the hearing the Agency agreed to withdraw its May 24, 1993, notice; the Agency also agreed to restore any assistance lost by the Appellant based on such action retroactive to the date of the Agency's action and to continue to provide assistance to the Appellant. Based on the Agency's agreements made at the hearing, no issue remains to be decided regarding the Agency's May 24, 1993, notice.

On August 10, 1993, the Agency notified the Appellant that it would provide the Appellant with monthly Food Stamp benefits of \$96.00. The record establishes that the Agency's August 10, 1993, notice had the effect of reducing the Appellant's Food Stamp benefits. Although the Agency's determination is based upon a computation of the Appellant's budget, the Agency's notice did not set forth or include a copy of the budget or the basis for such computation as required by 18 NYCRR 358-2.2, above. In addition, the Agency's notice did not contain any reason or explanation for the Agency's intended action as required by 18 NYCRR 358-2.2. The Agency's notice had other defects which are not detailed here as the above-noted defects in the Agency's notice render such notice void. Therefore, the Agency's August 10, 1993, determination to reduce the Appellant's Food Stamp benefits cannot be sustained.

DECISION AND ORDER

The Agency's May 28, 1993, determination to discontinue the Appellant's Home Relief, Medical Assistance, and Food Stamp benefits effective June 13, 1993, is not correct and is reversed.

The Agency's June 5, 1993, determination to discontinue the Appellant's Home Relief effective June 15, 1993, is not correct and is reversed.

1. The Agency is directed to cancel its May 28, 1993, notice, and to take no adverse action based upon the notice.
2. The Agency is directed to cancel its June 5, 1993, notice, and to take no adverse action based upon the notice.
3. The Agency is directed to continue to provide Public Assistance, Medical Assistance, and Food Stamp benefits to the Appellant, and to restore any assistance lost by the Appellant as a result of the Agency's May 28, 1993 and June 5, 1993 determinations.

FH# 1979448Q
FH# 1984071Z
FH# 2013443K

In accordance with its agreement at the hearing, the Agency is directed to take the following actions if it has not already done so:

1. Withdraw its notice dated May 24, 1993.
2. Take no further action on its notice dated May 24, 1993.
3. Continue to provide Food Stamp benefits to the Appellant.
4. Restore the Appellant's Food Stamp benefits retroactive to the date of the Agency's action.
5. If the Agency determines to implement its previously contemplated action, issue a timely and adequate Notice of Intent.

The Agency's August 10, 1993, determination to reduce the Appellant's Food Stamp benefits is not correct and is reversed.

1. The Agency is directed to cancel its August 10, 1993, notice in regards to the Appellant's Food Stamp benefits, and to take no adverse action based upon the notice.
2. The Agency is directed to continue to provide Food Stamp benefits to the Appellant, and to restore any assistance lost by the Appellant as a result of the Agency's August 10, 1993, notice.
3. If the Agency determines to implement its previously contemplated action, the Agency is directed to issue a timely and adequate Notice of Intent.

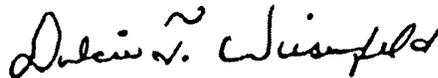
As required by Department Regulations at 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York

MAR - 7 1994

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

By



Commissioner's Designee