

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST July 19, 2002
CASE # F00xxxxxx
CENTER # Suffolk
FH # 3755901N

In the Matter of the Appeal of :
MS :

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 August 23, 2002, in Suffolk County, before James J. Dalton, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

MS, Appellant; Cheryl Keshner, Representative

For the Social Services Agency

William Schneid, Fair Hearing Representative

ISSUE

Were the Agency's determinations, that Appellant was ineligible for Public Assistance because she failed without good cause to comply with child support requirements, and to reduce the Appellant's Public Assistance benefits based on its Notice of Intent dated July 26, 2002, correct?

Was the Agency's determination to discontinue Food Stamp benefits to RS, a member of the Appellant's household, 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, age 47 years, was in receipt of Public Assistance and Food Stamps for a five person household.
2. The Appellant's household consists of herself, three children, RS, age eighteen years, DS, age eighteen years, ND, age eight years, and DD, age 51 years (the father of ND).
3. On May 24, 2002, the Agency sent a Notice of Intent to the Appellant setting forth its intention to discontinue the Appellant's Food Stamp

benefits because the Appellant's son, RS, was removed from the Food Stamps case because he was not a citizen of the United States, and was not otherwise a qualified alien.

4. The Agency did give the Appellant the opportunity to claim good cause and to attest under penalty of perjury to the information or lack of information.

5. By notice dated July 26, 2002, the Agency advised the Appellant of its determination to reduce the Appellant's Public Assistance benefits on the grounds that the Appellant failed to meet the cooperation requirements of the Child Support Enforcement Program in that she claimed to have no information about the father of her two older children, DS.

6. The Agency's Notice of Intent dated July 26, 2002 did not include the correct name of the father of the Appellant's two older children.

7. The correct name of the father of the Appellant's two older children is DS.

8. On July 19, 2002, the Appellant requested this fair hearing.

APPLICABLE LAW

Section 349-b of the Social Services Law provides as a condition of eligibility that each applicant for or recipient of Public Assistance benefits must cooperate with the Agency in:

- (1) establishing the paternity of a child born out-of-wedlock for whom assistance is being applied for or received;
- (2) obtaining support payments or any other payments or property due such person and due each child for whom assistance is being applied for or received; and
- (3) locating any absent parent.

As a condition of initial or continuing eligibility, an applicant for or recipient of public assistance must cooperate in good faith with the agency in establishing the paternity of a child born out of wedlock, in its efforts to locate an absent parent or putative father, in establishing, modifying and enforcing orders of support, and in obtaining support payments or property due such person or each child. The term cooperate includes the following:

- (a) completing the child support enforcement referral form and, at a minimum, providing verifiable information on the form sufficient to identify and locate the absent parent or putative father;
- (b) appearing at the local child support enforcement unit, as necessary, to provide the child support enforcement referral form and such oral or written information or documentary evidence, known to be possessed by or reasonably obtainable by the applicant or recipient, that is relevant to achieving the objectives of this subdivision;
- (c) appearing as a witness at court or other hearings or proceedings necessary to achieve the objectives of this subdivision;

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- (d) providing information or attesting to the lack of information under penalty of perjury;
- (e) submitting the child and herself or himself to genetic tests, pursuant to judicial order or administrative direction; and
- (f) after an assignment of support has been made, paying to the support collection unit any payments received from the absent parent which are covered by that assignment.

When a parent or stepparent of a household member under the age of 21 years is absent from the the home, or when the paternity of a child is not legally established, the local income maintenance unit must refer the applicant for or recipient of public assistance to the local child support enforcement unit, except where the applicant or recipient is found to have good cause for refusing to cooperate in establishing the paternity of a child and in establishing, modifying and enforcing a support order for the child. 18 NYCRR 369.7; 18 NYCRR 370.9.

When an applicant or recipient fails, without good cause, to provide verifiable information on the child support enforcement referral form sufficient to identify and locate the absent parent or putative father, the local child support enforcement unit must determine whether the applicant or recipient has cooperated in good faith to establish the paternity of the child and to establish, modify and enforce a support order for the child. The local child support enforcement unit must make its determination as to whether the applicant has cooperated, prior to the local income maintenance unit's approval of the application for public assistance. 18 NYCRR 369.7.

Section 131(16) of the Social Services Law and regulations at 18 NYCRR 352.30(d) provide that if the Agency determines that an individual is not cooperating in establishing paternity or in establishing, modifying, or enforcing a support order with respect to a child of the individual, and the individual does not have good cause for such failure or is not otherwise exempted from cooperating, the assistance given to the household must be reduced by 25 percent.

An applicant for, or recipient of, Public Assistance will have the opportunity to claim good cause for refusing to cooperate. The public assistance worker or an appropriate designee shall notify the applicant or recipient in writing of the right to claim good cause as an exception to the cooperation requirement and of all the requirements applicable to a good cause determination. An applicant for, or recipient of, Public Assistance who refuses to cooperate, and who claims to have good cause for refusing to cooperate, has the burden of establishing the existence of a good cause circumstance and will be required, within 20 days from the date the claim was made, to:

- (a) specify the circumstances that the applicant or recipient believes provide sufficient good cause for not cooperating;
- (b) corroborate the good cause circumstances in accordance with the regulations; and
- (c) if requested, provide sufficient information (such as the putative

father or absent parent's name and address, if known) to permit an investigation. If the applicant or recipient does not meet the above requirements, the public assistance worker or an appropriate designee shall on that basis determine that good cause does not exist.

18 NYCRR 369.2(b)(4).

Administrative Directive 91 ADM-40 provide that whenever information is sought from the parent or caretaker relative of the child, such person must be afforded the opportunity to attest under penalty or perjury to the information or lack of information as to the child's absent parent.

Section VIII-T-1.1 of the Public Assistance Source Book, dated November 30, 1998, covers compliance with the Child Support Enforcement Program. Title 6-A of Article 3 of the Social Services Law (SSL) requires applicants for and recipients of Family Assistance (FA) to assign their rights to support and directs IV-A workers to refer certain FA applicants and recipients to the IV-D unit for child support enforcement services, including paternity establishment. SSL Section 101 establishes the liability of spouses to support spouses and parents and step-parents to support children under the age of 21. SSL 132-a and 352-a require Public Assistance applicants and recipients to cooperate with local districts to establish the paternity of their children and SSL 158 and 352 require their cooperation to obtain support.

Local districts must give a copy of DSS-4148A: "What You Should Know About Your Rights and Responsibilities (When Applying for or Receiving Social Services)" to each Public Assistance household.

During the Public Assistance eligibility pre-screening or interview, local districts must give and explain DSS-4279: "Notice of Responsibilities and Rights for Support" (Attachment IV to 91 ADM-40) to each Public Assistance applicant who is required to be referred to the Child Support Enforcement Unit (CSEU) for paternity establishment and/or child support enforcement. Both the applicant and the Income Maintenance (IM) worker must sign and date the DSS-4279 to acknowledge the applicant's receipt of the notice. The original is given to the applicant and the copy is retained in the Public Assistance case record.

If a recipient indicates on the DSS-4279 that good cause for refusing to cooperate is claimed, local district staff must determine whether good cause exists using the appropriate procedures.

It is noted that recipients are not required to sign a separate attestation to the truth of any information which they have provided regarding an absent parent. Their signed application (DSS-2921) and recertification (DSS-3174) forms contain affirmations that they have given complete and true information during investigation of their initial and ongoing eligibility for Public Assistance.

IM must refer to the CSEU each Public Assistance applicant household which includes, and each recipient household which has gained, any of the following:

- (1) An FA minor (under age 21) child or minor caretaker relative who has a continuously absent, living parent.

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- (2) An FA minor child or caretaker relative whose paternity has not been legally established (i.e., adjudicated in court), including a minor whose putative father resides with the FA household.

IM must complete a separate DSS-2860: "Child Support Enforcement Referral (Rev. 5/87)" (Attachment VII to 91 ADM-40) for each absent parent and/or putative father associated with a Public Assistance household for referral to the CSEU.

Pursuant to a stipulation in settlement of the case of Vasquez v. Blum, an individual's formal written statement that he or she lacks information about the absent parent's identity or location, in the absence of any evidence to the contrary, must be accepted as cooperation in identifying or locating the absent parent. Therefore, a recipient who denies knowing the putative father's or absent parent's name, address or employer must be given the opportunity to attest to the lack of information by signing DSS-4281: "Attestation to Lack of Information" (Attachment V to 91 ADM-40). The attestation form should be signed by a recipient who denies knowing any one or more of the three facts (name, address, or employer) about the absent parent. Item #3 on the form should be completed when a recipient denies knowing all three items and also denies having any other lead information, e.g., the absent parent's alias. The original is retained in the Public Assistance case record and a copy is given to the applicant. An attestation to lack of information does not exempt the case from referral to the CSEU or preclude further investigation and action by the CSEU.

Federal and state laws and regulations require individuals who apply for Public Assistance on behalf of a minor child to cooperate with efforts to identify and locate the parent of the child, establish the paternity of a child born out-of-wedlock and obtain support payments and any other payments or property due the applicant and/or the child. In addition, state law requires a Public Assistance applicant or recipient who is pregnant with or the mother of an out-of-wedlock child to cooperate with efforts to establish paternity and pursue support for that child. This requirement applies so long as the child lives with the recipient, regardless of whether the child is included in the application for assistance. By assisting the CSEU to establish paternity and obtain support for the non-Public Assistance child, the parent can help to provide a more secure future for the child.

Cooperation includes any of the following actions related to fulfilling the above-stated requirements:

- (1) Appearing at an IM or CSEU office to provide oral, written or documentary information known to or reasonably obtainable by the recipient which will aid IM and the CSEU in establishing eligibility and securing child support;
- (2) Appearing as a witness at judicial and other hearings and proceedings;
- (3) Providing information, or attesting to the lack of information, under penalty of perjury; and

The applicant is excused from cooperating with efforts to establish paternity and secure support if such cooperation would be against the best

interests of the child, i.e., "good cause" exists for refusing to cooperate. However, the local district may proceed without the applicant's cooperation if it has determined that its actions would not risk harm to the applicant or child.

Applicants and recipients must be informed of their responsibility to cooperate with the paternity establishment and support enforcement process, and of their right to claim good cause for refusing to cooperate. While the validity of a good cause claim is pending final determination, the recipient who claims good cause is excused from cooperating with the CSEU. Good cause can be claimed at any time during the IV-A/IV-D process. For example, a recipient may claim good cause due to recent potentially harmful events or circumstances which did not exist when the individual was initially referred to the CSEU.

A determination of refusal or failure to cooperate with identifying and locating an absent parent, establishing paternity or securing support must be based on reasonable grounds showing that the individual has withheld information, knowingly has given false information or refused or failed to take a requested action to fulfill the paternity establishment and support enforcement requirements. Reasonable grounds for a finding of non-cooperation must include **objective evidence of non-compliance**, and cannot be based solely on:

- (a) A suspicion or subjective belief that the individual is withholding or falsifying information;
- (b) Failure to have information which the individual reasonably could be expected to have; or
- (c) Dissatisfaction with the individual's demeanor.

An individual who has attested to lack of information cannot be determined to have failed to cooperate in identifying or locating the absent parent/putative father unless the IM or CSEU worker:

- (d) Has credible independent evidence showing that the individual's attestation is false; or
- (e) Shows that the individual has given inconsistent information pertaining to the absent parent/putative father and has no reasonable explanation for the inconsistency.

An individual who refuses or fails to cooperate with paternity establishment or child support enforcement requirements, and who has not claimed and been found to have good cause for such failure to cooperate, is ineligible to receive Public Assistance until he or she complies with such requirements. The individual's failure to cooperate with paternity establishment and child support enforcement requirements does not result in ineligibility for Food Stamps.

The IM worker may conclude that an individual has failed to cooperate based on the worker's own interaction with the client or based on a recommendation from a CSEU worker. In both instances, the IM worker is responsible for evaluating the available evidence and imposing a sanction.

When imposing such a sanction, only the FA caretaker relative or the

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Public Assistance grantee's needs are removed from the grant.

An FA parent or caretaker relative or a Safety Net Assistance (SNA) grantee may refuse, without penalty, to cooperate with paternity establishment and child support enforcement requirements when such cooperation would be against the best interests of the child. Following are the only circumstances under which "good cause" for non-cooperation may be found to exist:

- (1) Cooperation is expected to result in physical or emotional harm of a serious nature to the child for whom support is sought;
- (2) Cooperation is expected to result in physical or emotional harm of a serious nature to the parent/caretaker relative/grantee sufficient to impair the caretaker's ability to care for the child;
- (3) The child was conceived as a result of incest or rape, and establishing paternity or seeking support would be detrimental to the child;
- (4) Adoption of the child is pending before a court, or the caretaker is receiving pre-adoption counseling services (for up to three months after the child's birth).

A recipient who claims good cause for refusing to cooperate must sign the (DSS-4279). The good cause claimant has the burden of proving that good cause exists, by specifying the circumstances which the claimant believes constitute good cause, providing corroborative evidence, and cooperating with IM's investigation of the claim.

A recipient of Public Assistance, Medical Assistance or Services has a right to an adequate notice when the Agency proposes to discontinue, suspend, reduce or change the manner of payment of such benefits. 18 NYCRR 358-3.3(a). In addition, 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 discontinue, suspend or 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;

- o the specific reasons for the action;
- o the specific laws and/or regulations upon which the action is based;

18 NYCRR 358-2.2

DISCUSSION

The evidence establishes that the Agency sent a Notice of Intent to the Appellant, dated May 24, 2002, advising the Appellant that it had determined to reduce the Appellant's Food Stamp benefits because the Appellant's son, RS, was removed from the Food Stamps case because he was not a citizen of the United States, and was not otherwise a qualified alien.

At the hearing the Agency agreed to withdraw its May 24, 2002 Notice of Intent to reduce the Appellant's Food Stamp benefits. The Agency also agreed to restore any Food Stamps benefits lost by the Appellant based on such action retroactive to the date of the Agency's action and to continue to provide Food Stamps benefits to the Appellant.

Based on the Agency's agreements made at the hearing, no issue remains to be decided about the reduction of the Appellant's Food Stamps benefits.

The evidence also shows that the Appellant completed two affidavit forms with respect to DS in August, 2001 and July, 2002. In both of those affidavit forms, the Appellant stated that she is not receiving support for her two older children. The Appellant further stated that DS was not residing in the United States.

The Agency, in making its determination to sanction the Appellant, concluded that the Appellant's claim was not credible. In doing so, the Agency relied upon the foregoing provisions of the Social Services Law and Department Regulations. The Agency stated that the Appellant did not provide complete and accurate information. It is noted that the Agency provided the Appellant an opportunity to claim good cause, and an opportunity to attest to information or lack of information as to the absent parent.

The Appellant requested this hearing to review the Agency's determination to reduce the Appellant's Public Assistance benefits based on its Notice of Intent dated July 26, 2002.

The Appellant and her representative contested the Agency's determination. According to the Appellant, she has not seen DS since the late 1980s. The Appellant's representative also contended that the Agency does not have sufficient objective evidence, pursuant to the foregoing provisions of the Public Assistance Source Book, to reject the Appellant's affidavit forms.

The Agency offered no evidence to contradict the Appellant's testimony or affidavit forms. The Agency stated that it had a belief that the Appellant was not being forthcoming with the Agency. That in and of itself is not sufficient to sanction the Appellant.

In addition, the Agency's notice did not contain the correct name of the absent parent as required by 18 NYCRR 358-2.2 mandates that the specific reason for an Agency action be stated on the appropriate Notice.

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The name of the father of Appellant's two older children is DS. The Agency stated, in its July 26, 2002 notice, that the father was DS. No person by that name lives in the Appellant's household. It is noted that DD, the father of the Appellant's youngest child, resides in the household. His child support obligations are not in issue for this fair hearing.

The above-noted defect in the Agency's notice, even absent any other problems with the merits of the Agency's determination, would render the July 26, 2002 notice void. Therefore, the Agency's determination to reduce the Appellant's Public Assistance benefits cannot be sustained.

DECISION AND ORDER

The July 26, 2002 determination of the Agency to reduce Public Assistance is not correct and is reversed.

1. The Agency is directed to continue the Appellant's Public Assistance.

2. In the event that the Agency determines to implement its previously contemplated action, the Agency is directed to provide the Appellant with a notice that meets the requirements set forth in 18 NYCRR 358-2.2.

With respect to the Agency's Notice of Intent dated May 24, 2002, 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 of Intent dated May 24, 2002.
2. Take no further action on its Notice of Intent dated May 24, 2002.
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 action.
5. If the Agency determines to implement its previously contemplated action, issue a new timely and adequate Notice of Intent.

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

DATED: Albany, New York
September 17, 2002

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee