

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

REQUEST: September 12, 2006
CASE #: P0xxxxxxx
AGENCY: Suffolk
FH #: 4629088J

In the Matter of the Appeal of
L P
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 April 5, 2007, in Suffolk County, before Thelma Lee, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

L P, Appellant

Cheryl Keshner, Appellant's Representative, Nassau Suffolk Law Services

For the Social Services Agency

Ken Rogers, Fair Hearing Representative

ISSUE

Was the Agency's determination to reduce the Appellant's Public Assistance on the grounds that she refused to cooperate and participate in the assessment process correct?

Was the Agency's determination to discontinue the Appellant's day care services on the grounds that she failed to report to a DOL (Department of Labor) assessment 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 is a thirty-seven year old woman in of Public Assistance for a household of two, consisting of herself and a twelve month old child.

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2. The Appellant's Public Assistance benefits includes shelter benefits pursuant to the Shelter Supplement Program.
3. On or about June, 2006, the Agency authorized day care services to the Appellant to facilitate participation on work activities.
4. The vendor for the Appellant's day care services was S S of Y S Day Care.
5. By letter dated August 10, 2006, the Agency advised the Appellant that she was required to report to the Department of Labor (DOL) on August 30, 2006 at 8:45AM for an assessment.
6. The Agency mailed its August 10, 2006, letter to the Appellant's address of record.
7. The Appellant did not report to DOL on August 30, 2006.
8. The Appellant appeared at the Agency's conciliation on September 14, 2006, to explain her absence from DOL.
9. At conciliation, the Appellant stated that she was "in the process of getting a job, going for a physical and currently has a job." It was asserted that these circumstances were the reasons why she was absent from DOL .
10. In or about September 2006, the Agency received information from B C that the Appellant's start date was on September 7, 2006, and that she worked on September 8th, as a home health aide.
11. The Agency received B C's Employee Profile stating that August 29, 2006, was the date of the Appellant's employment, professional evaluation, and completion of hospice training.
12. At the conclusion of conciliation, the Agency determined that the Appellant did not have good cause to excuse this absence.
13. By notice dated October 13, 2006, the Agency advised the Appellant of its determination to reduce Family Assistance on the grounds that she failed to report to the August 30, 2006 DOL assessment.
14. By notice dated September 8, 2006, the Agency discontinued the Appellant's day care on the grounds that "you are not programmatically eligible for PA day care, you are in non-compliance with DOL" The notice stated that day care was authorized from September 7, 2006, to September 8, 2006, only.
15. The Agency's September 8, 2006, notice did not notify the Appellant of an effective date for that notice.

16. On September 12, 2006, the Appellant requested this fair hearing.

APPLICABLE LAW

Section 131.5 of the Social Services Law provides that no Public Assistance shall be given to an applicant for or recipient of Public Assistance who has failed to comply with the requirements of the Social Services Law, or has refused to accept employment in which he or she is able to engage. Section 131(7)(b) of the Social Services Law provides that where a person is judged employable or potentially employable, a social services official may require such person to receive suitable medical care and/or undergo suitable instruction and/or work training. A person who refuses to accept such care or undergo such instruction or training is ineligible for Public Assistance and care.

Section 335 of the Social Services Law and 18 NYCRR 385.6 require that each recipient of Public Assistance who is a member of a household with dependent children and is eighteen years of age or older, or who is sixteen or seventeen years of age and is not attending secondary school and has not completed high school or a high school equivalency program, receives an assessment of employability based on his or her educational level, including literacy and English language proficiency, basic skills proficiency, child care and other supportive services needs; and the skills, prior work experience, training and vocational interests. The assessment must include a review of family circumstances including a review of any special needs of a child. The assessment must be completed within 90 days of the date on which such person is determined eligible for Public Assistance. An applicant for or recipient of Public Assistance may be assigned to work activities prior to completion of such assessment. Applicants and recipients are required to participate in an assessment as assigned by the social services official.

Based on the assessment, the social services official will develop a written employability plan in consultation with the recipient, which shall set forth:

- (a) the services which the district will provide, including child care;
- (b) the work activities to which the recipient will be assigned;
- (c) the recipient's employment goal, which shall reflect, to the extent possible, the recipient's preferences to the extent they are consistent with the assessment.

In developing the plan, the social services official shall take into account:

- (a) the recipient's supportive services needs;
- (b) the available program opportunities;
- (c) the local employment opportunities;

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- (d) if the recipient is assigned to an education program, the recipient's liability for student loans, grants and scholarship awards.

If a recipient's preferences cannot be accommodated in the employability plan, the plan shall record the reasons.

Notwithstanding the requirement that the employability be based on the assessment, in developing the employability plan, the social services official must consider the needs of the social services district to meet federal and state work activity participation rates before completing an individual's employability plan.

The entire household of an applicant who fails or refuses to participate with the requirements for assessments shall be ineligible for Public Assistance. Recipients who fail or refuse to participate with the requirements of this section shall be subject to the sanctions set forth in section 342 of the Social Services Law and 18 NYCRR 385.12.

Social services officials are required by Section 341 of the Social Services Law and 18 NYCRR 385.11 to establish a conciliation procedure for applicants and recipients of Public Assistance.

The parent or care taker relative of a child under thirteen years of age shall not be subject to the ineligibility provisions of Section 342 of the Social Services Law if the individual can demonstrate, in accordance with the regulations of the Office of Children and Family Services, that lack of available child care prevents such individual from complying with the work requirements. The parent or caretaker relative shall be responsible for locating the child care needed to meet the work requirements; provided, however, that the relevant social services district shall provide a parent or caretaker relative who demonstrates an inability to obtain needed child care with a choice of two providers, at least one of which will be a regulated provider.

Section 342 of the Social Services Law and 18 NYCRR 385.12 provides that in the case of an applicant for or recipient of Public Assistance who is a parent or caretaker of a dependent child the Public Assistance benefits otherwise available to the household of which such individual is a member shall be reduced pro-rata:

- (a) For the first instance of failure to comply without good cause until the individual is willing to comply;
- (b) For the second instance of failure to comply without good cause, for a period of three months and thereafter until the individual is willing to comply;
- (c) For the third and all subsequent instances of failure to comply without good cause, for a period of six months and thereafter until the individual is willing to comply.

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Willing to comply means that an individual, as required by a district, reports to an assigned work activity site or other location as assigned by the district on time and prepared to engage in the assigned activity.

The local social services districts were notified through the General Information System GIS 05 TA/ DC032 dated September 14, 2005 that districts must revise their conciliation and sanction procedures so that in most cases, a sanction is only imposed for non-compliance with employment requirements when the refusal or failure to comply was both willful and without good cause. The determination of when such conduct is willful and without good cause may include but is not necessarily limited to, identifying a pattern of the recipient's failure to take reasonable steps to address issues within the recipient's control that may prevent the recipient from complying with employment requirements. Such a determination must be made on a case by case basis and the steps that the recipient took to address issues within the recipient's control which prevented him or her from complying with the employment requirement need to be explored in each instances of non-compliance.

Section 332-a of the Social Services Law and regulations at 12 NYCRR 1300.4 provide that a social services district shall, subject to the availability of federal and state funds, provide supportive services, including but not limited to transportation, work related expenses, child care for children up to age thirteen, case management, and medical assistance, to enable an individual to participate Public Assistance Employment Program activities. Social services districts may continue such services for persons who lose eligibility for Public Assistance if funds for the activity are obligated or expended, or for up to ninety days if necessary or appropriate to assist individuals to become self-sufficient. A district shall guarantee child care to each individual participating in work activities, including orientation and assessment, who requires child care to participate in such activities. To the extent that local resources permit, case management shall be provided for pregnant adolescents, adolescent parents and at-risk youth under eighteen years of age, persons whose employability plan indicates a need for two or more concurrent activities and persons with limited English proficiency. The social services district may also provide any other supportive services which are deemed necessary to allow individuals at risk of needing Public Assistance to improve their opportunities for employment or to maintain their employment, or to assist employed Public Assistance recipients to improve their opportunities for employment which will move them to self-sufficiency.

The Department's Regulations at 18 NYCRR Section 358-3.3 governs Notice Requirements. Section 358-3.3(A)(1) states that you have a right to timely and adequate notice when a Social Services Agency proposes to:

- (i) take any action to discontinue suspend or reduce your Public Assistance grant, Medical Assistance authorization or services or
- (ii) change the manner or form of payment of your Public Assistance grant or
- (iii) restrict your Medical Assistance authorization or

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(iv) make changes in the manner of payment for your child care services and such change results in the discontinuance, suspension, reduction or termination of benefits or forces you to make changes in child care arrangements.

DISCUSSION

The Appellant acknowledged that she did not appear at DOL on August 30, 2006. The Appellant completed training as a home health aide on August 29, 2006, and was required to be available for work the following day (August 30th). It was asserted that on August 30th, she stayed at home and expected a call from B C. This employer did not contact the Appellant on August 30th. The Appellant also testified that she does not have a cell phone. The Appellant eventually was assigned to O L OC, through B C, as of early September 2006. The Appellant has worked continuously with B C as of this Fair Hearing.

The Appellant's representative, Miss Keshner, presented an August 4, 2007, letter from B C, which substantiated the above testimony. This April 4, 2007, letter stated that "due to the nature of the home health care business, it is not always possible for us to provide employment on a daily basis".

Ken Rogers, the Agency's Fair Hearing Representative, stated that the Appellant was required to appear at DOL on August 30th. Since the September, 2006, form signed by B C stated that she did not began work until September 7th and 8th, the Appellant lacked good cause for not reporting to DOL.

The Agency's decision to reduce the Appellant's Public Assistance on the grounds that she refused to cooperate and participate in the assessment process was correct when made. The Agency referred the Appellant to an August 30, 2006, DOL assessment. The Agency issued its October 13, 2006 notice after the Appellant did not report. However, the Appellant's testimony regarding this absence was credible and persuasive. The April 7, 2007, letter from B C and the Employee Profile substantiated this testimony. There was no evidence that the Appellant has engaged in a pattern of behavior or conduct to intentionally avoid compliance with the work rules. Her absence from DOL on August 30, 2006, was not both willful and without good cause as required by GIS 05 TA/DC 032. Thus, the Agency's notice of October 13, 2006, should not be implemented.

With respect to day care, Miss Keshner noted that the September 8, 2006, notice was not timely as required by the Department's Regulations. The Agency's discontinuance of these benefits took place as of September 8th, the same date of this notice.

Miss Keshner contended that the Agency failed to provide aid to continue as directed by the Office of Administrative Hearings (OAH) for this September, 2006, notice. This directive was issued by OAH after the Appellant's claimed non-receipt of this notice. The Appellant's day care provider, S S , has not receive any payments or reimbursement for her services since early September, 2006.

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Ken Rogers, the Agency's Fair Hearing Representative, contended that the Appellant was entitled to supportive services, including day care, as long as she was engaged in work activities. The Agency asserted that since the Appellant was absent from the August 30, 2006, assessment, day care was appropriately terminated.

The Agency's decision to discontinue day care services on the grounds that the Appellant failed to report to a DOL (Department of Labor) assessment was not correct and is reversed. The Agency did not comply with 18 NYCRR Section 358-3.3 (a)(1)(iv) which requires adequate and timely notice if there are changes in day care services and such change results in the discontinuance, suspension, reduction or termination of benefits or forces the recipient of an authorization for these services to make changes in child care arrangements. The Appellant was entitled to both timely and adequate notice of these changes to her day care. The Agency discontinued these services on the same date that its notice was issued. The effective date of this Agency action should have occurred at least ten days after September 8, 2006, to comply with these regulations. Thus, this determination cannot be sustained.

DECISION AND ORDER

The Agency's determination to reduce the Appellant's Public Assistance on the grounds that she refused to cooperate and participate in the assessment process was correct when made.

1. The Agency is directed to continue the Appellant's Public Assistance benefits.
2. The Agency is direct to give the Appellant another reasonable opportunity to report to a DOL assessment.

The Agency's determination to discontinue the Appellant's day care services on the grounds that she failed to report to a DOL (Department of Labor) assessment was not correct and is reversed.

1. The Agency is directed to withdraw its September 8, 2006, notice and to restore any day care benefits lost by the Appellant as the result of that notice.

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
April 24, 2007

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee