

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

REQUEST April 2, 1990
CASE No.
CENTER No. Monroe
FH No. 1518846R

In the Matter of the Appeal of :
I K :
from a determination by the Monroe County : **AMENDED**
Department of Social Services : **DECISION**
: **AFTER**
: **FAIR**
: **HEARING**
:
:
:

JURISDICTION

This appeal is from a determination by the local Social Services Agency to reduce appellant's Public Assistance, Medical Assistance and to discontinue appellant's Food Stamp Benefits on the grounds that appellant voluntarily terminated her employment.

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 May 17, 1990, in Monroe County, before Daniel Molik, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

I K , appellant

For the Local Social Services Agency

P. Michniewicz, Paralegal

FACT FINDINGS

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 in receipt of Aid To Dependent Children, Medical Assistance and Food Stamp Benefits.
2. On March 16, 1990, the Agency determined to reduce appellant's Public Assistance and to discontinue the household's food stamp benefits on the grounds that appellant had voluntarily terminated her employment for the purpose of qualifying for or increasing her Public Assistance benefits.

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3. The Agency further determined that appellant would be ineligible for Public Assistance benefits for a period of 30 days and food stamp benefits for 90 days.

4. The appellant had been employed by the R City School District as a Teacher Aide, 30 hours per week, \$7.62 per hour.

5. On October 20, 1989, the R City School District removed the appellant's name from the paraprofessional list because appellant failed to report to the Central office on August 22, 1989 and failed to call E High School on October 2, 1989.

6. On April 2, 1990, the Appellant requested a hearing to review the Agency's determination.

7. A fair hearing decision was issued on June 22, 1990 which affirmed the Agency determination as to the Food Stamps and reduction of Public Assistance but reversed as to Medical Assistance. The Appellant consulted with an attorney who by letter dated August 29, 1990 requested that so much of the decision which affirmed the discontinuance of Food Stamp benefits be amended. The fair hearing record, including the electronic recording has been reviewed and it has been determined that the Agency action regarding Food Stamps was based upon a defective notice. Accordingly, the prior fair hearing decision is vacated, and this amended decision is substituted therefor.

ISSUE

Was the Agency determination that appellant voluntarily terminated her employment for the purpose of qualifying for Public Assistance or for a larger amount of Public Assistance correct?

Was the Agency's determination to discontinue Appellant's household's Food Stamp benefits because appellant voluntarily quit her job without good cause correct?

Was the Agency's determination to discontinue Appellant's Medical Assistance correct?

APPLICABLE LAW

Social Services Law Section 131.10 provides that applicants or recipients who voluntarily terminate employment or reduce their earning capacity for the purpose of qualifying for Home Relief or Aid to Dependent Children, or for a larger amount of such assistance, shall be disqualified from receiving any assistance. Section 385.15 of the Regulations of the State Department of Social Services provides that Home Relief applicants shall be disqualified for a period of seventy-five days from the date of the voluntary termination of employment or reduction in earning capacity. Aid to Dependent Children applicants shall be disqualified for thirty days from the date of the voluntary termination of employment or reduction in earning capacity. Home Relief recipients shall be disqualified for seventy-five days from the effective date of a timely Notice of Intent to discontinue or

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reduce assistance. Aid to Dependent Children recipients shall be disqualified for thirty days from the effective date of a timely Notice of Intent to discontinue or reduce assistance. Pursuant to Section 131.10 of the Social Services Law, unless he/she presents evidence to the contrary, an applicant who applies for assistance, or a recipient who requests an increase in assistance benefits, within seventy-five days of his/her termination of employment or reduction in earning capacity is considered to have done so for the purpose of qualifying for or increasing his/her assistance.

Section 385.15 of the Regulations requires the Agency to comply with certain procedures prior to implementing any disqualification based upon a voluntary termination of employment or voluntary reduction in earning capacity. These procedures require the Agency to give the applicant or recipient the opportunity to provide reasons for his/her termination of employment or reduction in earning capacity. The Agency must evaluate those reasons offered by the applicant or recipient. If the Agency determines that the applicant or recipient has failed to furnish sufficient information to show that the termination of employment or reduction in earning capacity was for a purpose other than qualifying for or increasing the amount of assistance, the Agency must so notify the applicant or recipient of its determination and of the effect such determination will have on the applicant's application or on the recipient's Public Assistance grant.

It is the responsibility of the applicant or recipient to provide reasons or to otherwise demonstrate that the termination of employment or reduction in earnings was not for the purpose of qualifying for assistance or increased benefits. If no reasons are provided, then the Agency must conclude that such action was accomplished with the intent to qualify for Public Assistance or increased benefits.

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.

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- (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.

Federal Regulations at 7 CFR 273.7(n) and Department Regulations at 18 NYCRR 387.13(h) and (i) provide that a household whose principal wage earner (head of household) voluntarily quits a job without good cause shall not be eligible for participation in the Food Stamp Program. The principal wage earner is the household member with the greatest source of earned income in the two months prior to the quit. No person of any age, living with a parent or person acting as parent, who is work registered, a Work Incentive Program participant, a recipient of unemployment insurance benefits or registered for work as part of the unemployment compensation application process, employed a minimum of thirty hours a week or receiving weekly earnings equal to the federal minimum wage multiplied by thirty hours, shall be considered the head of household.

A voluntary quit will be determined to have occurred where:

- the employment involved twenty hours or more per week or provided weekly earnings at least equivalent to the Federal minimum wage multiplied by twenty hours;
- the quit occurred within sixty days prior to the date of application or any time thereafter;
- the quit was without good cause;
- the person who quit was the primary wage earner; and
- the person was not exempt from full-time work registration provisions.

7 CFR 273.7(n)(1); 18 NYCRR 387.13(h) and (i).

Where a voluntary quit without good cause of a head of household exists, an application for Food Stamps shall be denied and the household shall be disqualified for a period of ninety days from the date of the quit. (7 CFR

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273.7(n)(1)(v); 18 NYCRR 387.13(1)(4).) Where a voluntary quit without good cause of a head of household exists in the case of a household in receipt of Food Stamp benefits, the household's benefits shall be discontinued and the household disqualified from receiving Food Stamp benefits for 90 days or three calendar months beginning on the first of the month after all normal procedures for taking adverse action have been taken. 7 CFR 273.7(n)(1)(vi); 18 NYCRR 387.13(1)(5). The period of ineligibility runs continuously.

If the voluntary quit occurs in the last month of a certification period or is determined in the last 30 days of a certification period, the household will be denied recertification for a period of 90 days beginning with the day after the last certification period ends. If such household does not apply for Food Stamp benefits by the end of the certification period, a claim shall be established for benefits received by the household for up to 90 days beginning the first of the month after the month in which the quit occurred. If there are fewer than 90 days from the first of the month after the month in which the quit occurred to the end of the certification period, a claim must be imposed, and the household will remain ineligible for benefits for a prorated number of days. 7 CFR 273.7(n)(1)(vi); 18 NYCRR 387.13(1)(5).

Federal Regulations at 7 CFR 273.7(n)(3) and Department Regulations at 18 NYCRR 387.13(j)(1) provide that good cause for terminating employment includes:

- resignation from a job that does not meet the suitability criteria specified in 7 CFR 273.7(i); or 18 NYCRR 387.13(k);
- discrimination by an employer;
- work demands or conditions that render continued employment unreasonable;
- acceptance by the primary wage earner of employment or enrollment at least half-time in any recognized school, training program or institution of higher education that requires the primary wage earner to leave employment;
- acceptance by any other household member of employment or enrollment at least half-time in any recognized school, training program or institution of higher education in another county or similar political subdivision which requires the household to move and thereby requires the primary wage earner to leave employment;
- resignations by persons under the age of sixty which are recognized by the employer as retirement;
- acceptance of bona fide offer of full-time employment which, because of circumstances beyond the control of the primary wage earner, subsequently does not materialize or results in employment which is less than full-time;

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- leaving a job in connection with patterns of employment in which workers frequently move from one employer to another such as migrant farm labor or construction work;
- circumstances beyond person's control such as illness of primary wage earner or another household member requiring the presence of the primary wage earner, unavailability of transportation, lack of adequate child care for children who have reached age six but are under age twelve.

Eligibility may be re-established during a disqualification period if the member who caused the disqualification leaves the household or secures new employment which is comparable in salary or hours to the job which he/she quit. Eligibility may also be re-established if the violator becomes exempt from work registration requirements, unless the exemption is based upon participation in Work Incentive Program or application for or receipt of Unemployment Insurance Benefits. In addition, a household determined ineligible due to a voluntary quit without good cause may reestablish eligibility if a new and otherwise eligible member joins as its head of household. 7 CFR 273.7(n)(5); 18 NYCRR 387.13(1).

DISCUSSION

The appellant's contention that she quit her job because she did not want to work in a High School situation where there are older children is not good cause for quitting employment. The appellant failed to go to two interviews and should have at least explored the situation to see what was involved before quitting her job. She, therefore, has not rebutted the presumption that her quitting was for the purpose of qualifying for greater public assistance benefits.

Accordingly, the agency's determination to reduce the appellant's public assistance benefits is correct; however, the agency's determination to discontinue the appellant's Medical Assistance and Food Stamp benefits is not correct.

There is no employment requirement or sanction for quitting employment regarding Medical Assistance eligibility for federally related persons, such as those who are Aid To Dependent Children related. Therefore, the Agency had no authority to delete the Appellant from the household's Medical Assistance authorization. As far as Food Stamp benefits are concerned, the Agency's notice was defective in that it failed to cite any regulatory authority for its action or what the Appellant could do to have the sanction lifted.

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DECISION AND ORDER

The Agency's determination that appellant voluntarily terminated her employment for the purpose of qualifying for Public Assistance or increasing the amount of Public Assistance she received was correct.

The agency's determination to discontinue the appellant's household's Food Stamp Benefits because appellant had quit her job without good cause is not correct and is reversed.

The Agency is directed to continue the Appellant's Food Stamp benefits and to restore all lost benefits.

The agency's determination to discontinue the appellant's medical assistance is not correct and is reversed.

The agency is directed to continue to provide medical assistance to the appellant.

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

SEP 24 1990

CESAR A. PERALES
COMMISSIONER

By



Commissioner's Designee