
In the Matter of the Appeal of :

B A :

from a determination by the Suffolk County
Department of Social Services :

DECISION
: AFTER
FAIR
HEARING
:

JURISDICTION

This appeal is from a determination by the local Social Services Agency to discontinue Appellant's Public Assistance, Medical Assistance and Food Stamp benefits, and to deny Appellant's request for assistance to prevent eviction.

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 10, 1990, in Suffolk County before Benedict Schiraldi, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

B A, Appellant
L L, Daughter
Michael Harrin, Attorney

For the Local Social Services Agency

Christine Miluzco, Representative

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 was in receipt of Public Assistance, Medical Assistance and Food Stamp benefits.

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2. On March 15, 1990, the Agency sent a Notice of Intent to the Appellant setting forth its intention to discontinue the Appellant's Public Assistance and Medical Assistance for at least thirty days because Appellant failed to report to her Public Works Program work assignment on February 26, 1990.
3. The Notice of Intent advised the Appellant of the opportunity to respond to the Agency's claim that Appellant willfully and without good cause failed to comply with employment requirements.
4. Appellant responded to the Agency's Notice of Intent.
5. The Agency evaluated Appellant's response and a second Notice of Intent to discontinue the Appellant's grant of Home Relief and Medical Assistance was sent.
6. Appellant had not been sanctioned previously within three years for willfully and without good cause failing to comply with employment requirements.
7. On February 15, 1990, the Appellant was interviewed by the B S School District and she was advised to commence her work assignment on February 26, 1990.
8. Appellant did not report to the B S School District to commence her work assignment.
9. On March 23, 1990, the Agency sent Appellant a medical form to be completed by Appellant's physician.
10. As of the date of this hearing the Appellant did not submit a completed medical report.
11. On September 27, 1989, the Appellant was determined medically qualified for employment.
12. On January 5, 1990, the Appellant, at an employment interview at the Suffolk County Department of Labor advised the employment counselor that she has medical problems which do not prevent her from working.
13. The Suffolk County Department of Labor scheduled a medical appointment for January 10, 1990 for the purpose of determining any limitations on Appellant's ability to participate in the employment program.
14. The medical appointment was rescheduled to February 2, 1990.
15. On February 6, 1990, the Appellant was determined employable.

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16. On May 1, 1990, the Appellant requested the Agency to provide assistance to prevent eviction.

17. The landlord advised the Appellant that if she failed to pay her rent on May 1, 1990, she would have to vacate the premises.

18. On May 3, 1990, the Agency denied the Appellant's request for assistance to prevent eviction.

19. On March 23, 1990, the Agency determined to discontinue Appellant's Food Stamp benefits on the grounds that Appellant failed to register with the Food Stamp Employment and Training Program.

20. The Agency further determined that the Appellant's household could be ineligible for Food Stamp benefits for a period of two months.

21. On March 15, 1990, the Agency advised the Appellant to register with the Food Stamp Employment Training Program by March 22, 1990.

22. The Appellant did not register with the Food Stamp Employment Training Program by the designated date.

23. The Appellant is the head of her household.

24. On May 1, 1990, the Appellant requested a hearing to review the Agency's determination.

ISSUES

Was the Agency's determination that Appellant willfully and without good cause failed or refused to comply with employment requirements correct?

Was the Agency's determination to discontinue Food Stamp benefits to the Appellant's household because Appellant failed, without good cause, to comply with work registrant requirements correct?

APPLICABLE LAW

Section 164 of the Social Services Law and Section 385.5(d) of the Regulations of the State Department of Social Services provide that as a condition of eligibility for assistance, employable recipients of Home Relief are required to participate in public works projects which are intended to restore such persons to a condition of self-support or self-care. Section 385.14(e) of the Department Regulations provide that a person who without good cause fails or refuses to comply with employment requirements shall be disqualified from receiving Home Relief for at least thirty days and until such time as the recipient is willing to comply with

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the employment requirements. In case of a second violation within three years of the first instance of willful noncompliance without good cause such person is disqualified from receiving Home Relief for sixty days and until such time as the recipient is willing to comply with the requirements. There is a ninety day disqualification for the third and all subsequent violations within a three year period beginning with the date of the most recent instance of willful noncompliance without good cause.

The Regulations further provide that a person shall be deemed to have willfully refused employment services if such person fails to report to or continue in employment training or work relief.

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.

89 ADHO-21, effective June 1, 1989, provides local social services districts with information and instructions regarding new and revised mandated Public Assistance, Medical Assistance and Food Stamp client notices of eligibility decisions.

85 ADM-045, issued November 15, 1985 is effective December 2, 1985. The purpose of this directive is to address certain issues surrounding employability determinations made by local social services districts. Specifically, this directive deals with an individual's right to a fair hearing to contest the determination of employability. In addition, it provides procedures to assist the local social services districts in maintaining compliance with Department Regulations 358.4(a)(6) and 358.3.

IV, C of the ADM further provides the following:

C. Recipients Previously Determined Employable Who Now Claim They are Unemployable

1. Recipients may request a review of their employability status at recertification or at any time they have new evidence to present. All employment related requirements shall be held in abeyance until the new evidence is examined and an agency determination made.
2. The recipient's claim and the asserted reasons for the claim must be entered in the case record and dated (see Attachment B).
3. The recipient must be informed in writing at the time of the claim of any documentation required by the district in order to process the claim and must be afforded a reasonable time, based on all the circumstances of the case, to produce the required documentation (see Attachment B).

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4. The recipient must be provided with written notice of the agency's determination within fifteen working days of the receipt of the necessary documents. When no documents are required, or the recipient brings the required documents when he/she requests a reassessment, the local district may be able to make an immediate determination. If the Agency determines that the recipient continues to be employable, the notice of this determination must contain or be accompanied by language advising of the right to a fair hearing to contest the continued determination of employability (See Attachment A).

Federal Regulations at 7 CFR 273.7(b) and Departmental Regulations at 18 NYCRR 307.13(b) provide that each household member who is not exempt from the work registration requirements of the Food Stamp Program must register for employment unless they are:

physically or mentally unfit for employment;

7 CFR 273.7(b); 18 NYCRR 307.13(b)(1)

If the Agency determines that an individual other than the head of household (principal wage earner) 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).

The head of household is the principal wage earner. 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 compensation benefits or registered for work as part of the unemployment compensation application process, or is employed or self-employed and working a minimum of 30 hours weekly or receiving weekly earnings equal to the Federal minimum wage multiplied by 30 hours shall be considered the head of household. If there is no principal source of earned income in the household, the household may designate the head of household. 7 CFR 273.1(b)(2).

Eligibility may be re-established if the household member who caused the disqualification leaves the household, becomes exempt other than by participation in the Work Incentive Program or receipt of Unemployment Insurance Benefits, or complies with the requirements as follows:

for refusal to register - register;

7 CFR 273.7(h).

In addition, a sanctioned household may reestablish eligibility if a new and eligible person joins the household as its head of household. 7 CFR 273.7(g)(1).

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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).

Section 370.3 of the Department's Regulations provides that Agencies shall authorize emergency and short term assistance to provide for the effective and prompt relief of identified needs which cannot be met under Emergency Assistance to Needy Families with Children (EAF), Aid to Dependent Children (ADC), the Home Energy Assistance Program (HEAP) or Home Relief (HR) and the emergency did not arise because the applicant failed to comply with the requirements of Part 385 of this Title relating to employment and training and was disqualified from receiving assistance pursuant to subdivision (e) of section 385.14 of this Title. In cases where need is determined to be temporary, the grant may be limited to those items for which there is immediate need. The amount of such assistance is not limited to the maximum Public Assistance shelter schedule. Emergency Home Relief can only be provided where there is an identified emergency need and where the applicant is without income or resources immediately available to meet the emergency need. An emergency is defined as a serious occurrence or situation needing prompt attention. State and federal reimbursement is not available to the local district for any allowance for shelter arrears issued more than once in a 12-month period.

DISCUSSION

The uncontroverted evidence in this case establishes that the Agency sent the Appellant a Notice of Intent informing the Appellant of its determination to discontinue the Appellant's grant of Home Relief and Medical Assistance benefits due to a failure, without good cause, to comply with employment requirements. This notice advised the Appellant of the opportunity to respond to the Agency's claim of willful non-compliance, without good cause, with employment requirements. The Appellant responded to the notice and the Agency evaluated the Appellant's response. A second Notice of Intent was subsequently provided to the Appellant.

Appellant had not been sanctioned previously within three years for willfully and without good cause failing to comply with employment requirements.

The Appellant's representative contended at the hearing that the Agency failed to comply with employment notice requirements by not sending

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Appellant a Notice of Employment Program Sanction with the notices dated March 16, 1990 and March 27, 1990 (second notice). The Appellant's representative's contention is without merit. The two notices in question have been mandated by the New York State Department of Social Services since June 1, 1989, in accordance with 89 ADM-21. The first notice (March 15, 1990) clearly advises the Appellant of the opportunity to respond to the Agency's claim of willful non-compliance without good cause, with employment requirements. Notices of Employment Program Sanction are no longer required since the mandated notices set forth all of the requirements of Section 131.5 of the Social Services Law and Section 385.14(c) of the Regulations.

The Appellant's representative further contended that the Agency failed to provide Appellant with a notice of her right to a fair hearing to contest her employability and such failure to do so invalidated the proposed employment sanction. In support of his contention, the Appellant's representative cites 85 ADM-45 for his authority.

In this case, the Appellant has been determined employable since September 27, 1989, but the Agency was unable to present a notice of employability at the hearing, although given an opportunity to present such notices at the fair hearing from the case record.

Accordingly, the Agency has failed to establish that Appellant was ever given her due process right to challenge the employability determination, thus invalidating the proposed employment sanction.

With regard to the discontinuance of the Appellant's Medical Assistance and Food Stamp benefits, in light of the above, the determinations are not proven.

Since the basis of the Agency denial of emergency housing assistance was based on the employment sanction, the Agency denial must also fall.

DECISION

The Agency's determination to discontinue Appellant's Public Assistance, Food Stamps and Medical Assistance because Appellant willfully and without good cause failed or refused to comply with employment requirements is not correct.

The Agency's determination to deny the Appellant's request for assistance to prevent eviction is not correct.

The Agency is directed to:

1. continue all assistance unchanged.
2. provide emergency housing assistance if eligible without regard to the employment sanction.

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- 3. reassess Appellant's employability and issue appropriate written notice of its determination.

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

CESAR A. PERALES,
COMMISSIONER

MAY 24 1990

By *[Handwritten Signature]*
Commissioner's Designee