
In the Matter of the Appeal of :

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AMENDED
DECISION
: AFTER
FAIR
HEARING

from a determination by the New York City
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 the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on March 19, 1996, in New York City, before Gail Watson, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Eugene Doyle, Appellant's Representative

For the Social Services Agency

No Fair Hearing Representative

ISSUE

Has the Agency acted correctly with respect to its determination to reduce the Appellant's Public Assistance benefits?

Was the Agency's determination that the Appellant was employable 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 has been in receipt of Public Assistance benefits.*
2. On September 19, 1995, the Agency sent a Notice of Intent to the Appellant setting forth its intention to reduce the Appellant's Public Assistance benefits because the Appellant willfully and without good cause failed to report to BEGIN intake section.

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3. The Agency has not made a written determination by notice of the Appellant's employability.

4. On October 20, 1995, the Appellant requested this fair hearing.

5. On March 22, 1996, a prior fair hearing decision was issued which held, in part, that there was no issue to be decided concerning the issue of the Appellant's employability status. Subsequently, the Appellant's representative and requested review and reconsideration of that issue. Our review of the hearing record indicates that the Agency had, in fact, determined the Appellant to be employable, although the Agency did not provide the Appellant with a written notice of such finding as required. Accordingly, the March 22, 1996 Decision has been vacated and this Amended Decision is being issued which addresses this issue and reverses the Agency's determination.

APPLICABLE LAW

Department Regulations at 18 NYCRR 358-3.7(a) provide that an appellant has the right to examine the contents of the case record at the fair hearing. At the fair hearing, the agency is required to provide complete copies of its documentary evidence to the hearing officer. In addition, such documents must be provided to the appellant and appellant's authorized representative where such documents were not provided otherwise to the appellant or appellant's authorized representative in accordance with 18 NYCRR 358-3.7. 18 NYCRR 358-4.3(a). In addition, a representative of the agency must appear at the hearing along with the case record and a written summary of the case. 18 NYCRR 358-4.3(b).

Pursuant to the settlement in the case of Rodriguez v. Blum, the New York City Agency is required to produce the Appellant's complete relevant case record at any fair hearing that involves the discontinuance, reduction, or restriction of Public Assistance benefits. If the Agency appears at the hearing without the complete relevant case record, the Agency is required to withdraw its Notice of Intent.

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).

Section 385.2(g) and section 385.4(b)(2) of the Department's Regulations provide that in order to establish or maintain eligibility for Aid to Dependent Children, Home Relief or Veteran's Assistance, an applicant or recipient of such assistance determined not to be employable, who in the judgment of the social services official is potentially employable, will be required when appropriate to:

- (1) provide/and or undergo a medical or any other diagnostic examination to determine the applicant's or recipient's potential to become employable or his/her suitability for training to restore employability and self-support;

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- (2) accept medical care provided by the social services district or made available through other agencies to assist in restoring an applicant/recipient to a condition of self support;
- (3) accept referral to and enrollment in a program of vocational rehabilitation, training and other essential rehabilitation if deemed necessary; and
- (4) give evidence as requested, that he/she is participating fully in a rehabilitative program.

A potentially employable recipient who fails to comply with the requirements of 18 NYCRR 385.2 is ineligible to receive public assistance until such time as such recipient is willing to comply with such requirements. 18 NYCRR 385.19(b).

Section 358-3.3 (a)(2)(vii) of the Department Regulations provides for a right to adequate notice when a social services agency determines that an applicant for or recipient of public assistance or medical assistance is determined employable.

DISCUSSION

The evidence establishes that the Agency sent a Notice of Intent to the Appellant advising the Appellant that it had determined to reduce the Appellant's Public Assistance benefits because the Appellant willfully and without good cause failed to report to BEGIN intake section.

Although duly notified of the time and place of the hearing, the Agency failed to appear at this hearing and produce the Appellant's complete relevant case record at the hearing on the issue of the Agency's determination to reduce the Appellant's Public Assistance grant and failed to withdraw its Notice of Intent as required by Rodriguez v. Blum.

The evidence further establishes that the Agency has not made a written determination by adequate notice of the Appellant's employability. The evidence demonstrates that the Agency has determined that the Appellant is employable without providing the Appellant with a written determination by notice of the Appellant's employability. The Appellant's Representative asserts that the Appellant would contest any determination of the Appellant's employability. However, as noted, there has been no written determination of the Appellant's employability by the Agency as required.

DECISION AND ORDER

The question of the correctness of the Agency's determination to reduce the Appellant's Public Assistance benefits cannot be reached in this case.

1. The Agency is directed to withdraw its Notice of Intent dated September 19, 1995 with respect to the Appellant's Public Assistance benefits.

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2. The Agency is directed to continue to provide Public Assistance benefits to the Appellant.

3. The Agency is directed to restore the Appellant's Public Assistance benefits retroactive to September 19, 1995, the date of the Agency action.

Should the Agency in the future determine to implement its previous action, it is directed to procure and review the Appellant's complete relevant case record with respect to a determination relating to the Appellant's Public Assistance benefits, to issue a new Notice of Intent and to appear and produce the required case record(s) at any subsequent fair hearing.

The Agency's determination that the Appellant is employable is not correct and is reversed.

1. The Agency is directed to conduct an employability review of the Appellant, and to provide adequate written notice of its employability determination to the Appellant.

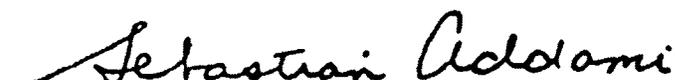
2. The Agency is directed to exempt the Appellant from the employment requirements, until adequate written notice of the Appellant's employability has been provided to the Appellant.

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
April 26, 1996

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

By


Commissioner's Designee