

STATE OF NEW YORK
DEPARTMENT OF LABOR

REQUEST November 28, 1997
CASE #
CENTER # OES
FH # 2801383J

In the Matter of the Appeal of :

S K :

from a determination by the New York City :
Department of Social Services :

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 June 30, 1998, in New York City, before Ann Marie Connelly, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Eugene Doyle, representative

For the Social Services Agency

Marcia Nissenson, Fair Hearing Representative; William Ash, Fair Hearing Representative, Richard Kahn, Agency Representative

ISSUE

Was the Agency's determination regarding the Appellant's employability status correct?

Was the Agency's determination of November 21, 1997 to reduce the Appellant's Public Assistance and Food Stamp benefits correct?

Was the Agency's determination to change the payee of the assistance and benefits received by 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 has been in receipt of Public Assistance and Food Stamp benefits.

2. On July 22, 1997, the Agency sent the Appellant a "Temporarily Unemployable Initial Appointment" notice, advising the Appellant to report to the Office of Employment Services intake section on August 8, 1997.

3. On November 21, 1997, the Agency sent a Notice of Intent to the Appellant setting forth its intention to reduce the Appellant's Public Assistance and Food Stamp benefits because the Appellant failed or refused to report to the intake section on August 8, 1997 as scheduled.

4. On November 21, 1997 the Agency also determined to change the payee of the assistance and benefits received by the Appellant's household from the Appellant to her husband, J K .

5. On November 28, 1997, 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 persons 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 332 of the Social Services Law and 12 NYCRR 1300.2 provides that an applicant for or recipient of Public Assistance shall not be required to participate in work activities if such individual is determined by the social services district to be exempt because such individual is:

- (1) ill or injured to the extent that he/she is unable to engage in work activities for up to three months, as verified by medical evidence;
- (2) 60 years of age or older;
- (3) under 16 years of age or under the age of 19 and attending full-time a secondary, vocational or technical school
- (4) disabled or incapacitated in accordance with 12 NYCRR 1300.2(c);
- (5) needed in the home because another member of the household requires his/her presence due to a verified mental or physical impairment, and the social services official has determined that no other member of the household is appropriate to provide such care. "Verified" means that a licensed physician or certified psychologist has made the determination that such an impairment exists and that the household member is in need of care;

- (6) pregnant beginning thirty days prior to the medically verified date of delivery of her child.
- (4) the parent or other caretaker relative in a one parent household of a child who is under 12 months of age who is personally providing care for such child. This exemption must last no longer than twelve months for any parent or caretaker relative's life. The exemption can last no longer than three months for any one child, unless extended up to the total twelve month maximum for the life of such parent or caretaker relative by the social services official;

To the extent that the total of 12 months of exemption have not been exhausted by such parent or caretaker relative, the social services official is required to apply the exemption to the parent or caretaker in the case of a child under two months of age, but shall determine whether to apply such exemption for children more than three months old.

Regulations at 18 NYCRR 358-3.3(a)(2)(vii) provide that an individual has the right to adequate notice when the Agency determines that such individual is employable.

Regulations at 18 NYCRR 381.1(a) provide that assistance grants may be made payable to the recipient or his or her legally appointed committee; the grantee in family assistance; or an adult member of the household in safety net assistance.

DISCUSSION

The Agency submitted documentation, marked as Appellant's Exhibit #1, that the Appellant was sent a "Temporarily Unemployable Initial Appointment" notice, which advised the Appellant to report to the Office of Employment Services intake section on August 8, 1997, for a review of her employability status. As a result of the Appellant's failure to attend the appointment, the Agency determined, by Notice of Intent dated November 21, 1997 to sanction the Appellant by reducing the household's Public Assistance and Food Stamp benefits.

At the hearing the Agency agreed to withdraw its Notice of Intent dated November 21, 1997 to reduce the Appellant's Public Assistance and Food Stamp benefits. The Agency also agreed to restore any assistance and benefits lost by the Appellant based on such action retroactive to the date of the Agency's action and to continue to provide assistance and benefits to the Appellant.

Regarding the Appellant's employability status, the evidence establishes that the Appellant was previously determined to be temporarily unemployable. The Agency issued the Notice of Intent dated November 21,

1997 because the Appellant did not attend the appointment scheduled by the Agency to review such status. Although the Agency has now determined not to sanction the Appellant for her failure to attend the August 8, 1997 appointment and withdrew the November 21, 1997 Notice of Intent at this hearing, documentation was presented at the hearing that the Appellant is now coded "20" by the Agency. Code "20" is an internal code used by the Agency which indicates that the Appellant is employable.

The evidence in this case therefore establishes that the Agency now considers the Appellant employable. At the hearing, the Agency presented no evidence to support this determination. The evidence in this case also establishes that the Agency determined that the Appellant is employable without first sending notice of such determination to the Appellant as required by 18 NYCRR 358-3.3(a)(2)(vii) of the Regulations. Under the circumstances, the Agency's determination cannot be sustained.

It is also noted that on May 13, 1998, the Agency again determined to reduce the Appellant's Public Assistance and Food Stamp benefits on the grounds that the Appellant failed or refused to cooperate with the Work Experience Program Intake Section. Although the Appellant's representative stated that he did not want the issue of the Notice of Intent dated May 13, 1998 addressed, this Agency determination was incorrect because the Appellant had not been previously sent a notice of employability as required by 18 NYCRR 358-3.3(a)(2)(vii). Therefore, the Agency must withdraw its Notice of Intent dated May 13, 1998 and restore all assistance and benefits lost as a result of such notice.

On November 21, 1997, the same day that the Agency initially determined to sanction the Appellant and reduce the household's Public Assistance and Food Stamp benefits as a result thereof, the Agency also determined to change the payee of the assistance and benefits received by the household from the Appellant to her husband, J K . At the hearing, the only evidence presented by the Agency to support this determination was that such determination was the result of the Agency's determination to sanction the Appellant from receipt of assistance and benefits. However, inasmuch as the Agency has withdrawn the Notice of Intent dated November 21, 1997 to sanction the Appellant and has agreed to restore all assistance and benefits lost as a result of such Notice, the Agency's determination to change the payee of the household's assistance and benefits cannot now be sustained.

Lastly, it is noted that at the hearing, the Appellant's representative contended that the Agency's determinations in issue should be reversed pursuant to the judgement in the case of Rivera v. Bane, because the Agency failed to send the Appellant's representative all documents that were requested in order to prepare for this fair hearing. However, inasmuch as the Agency's determinations are either withdrawn or being reversed for the reasons set forth above, that issue need not be decided at the present time.

DECISION AND ORDER

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 November 21, 1997.
2. Take no further action on its Notice of Intent dated November 21, 1997.
3. Continue to provide Public Assistance and Food Stamp benefits to the Appellant.
4. Restore the Appellant's Public Assistance and 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.

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

1. The Agency is directed to exempt the Appellant from work activities until such time as a proper determination of the Appellant's employability is made, and notice of such determination is sent to the Appellant as required by 18 NYCRR 358-3.3(a)(2)(vii).

2. The Agency is also directed to withdraw its Notice of Intent dated May 13, 1998 to reduce the Appellant's Public Assistance and Food Stamp benefits and to restore all assistance and benefits lost by the Appellant as a result of such determination.

The Agency's determination to change the payee of the assistance and benefits received by the household from the Appellant to her husband J K is not correct and is reversed.

1. The Agency is directed to immediately restore the Appellant as the payee of the assistance and benefits received by the Appellant's household.

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

DATED: Albany, New York
July 27, 1998

NEW YORK STATE DEPARTMENT
OF LABOR

By



Commissioner's Designee