
In the Matter of the Appeal of :

M R

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 Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on August 27, 2002, in New York City, before Lori Ann Romeo, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Eugene Doyle, P.O.O.R.

For the Social Services Agency

M. Sams, Fair Hearing Representative

ISSUE

Was the Agency's determination that the Appellant was not disabled but only work limited and able to participate in work activities with limitations 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 Safety Net Assistance for a household of one person.

2. By a notice dated March 21, 2001, the Agency advised the Appellant that he was exempt from work activities.

3. In or about January 2002, the Agency scheduled the Appellant for an HS Medical appointment.

4. The Agency sent the Appellant a notice dated February 16, 2002, discontinuing the Appellant's Public Assistance for failing to comply with the eligibility process.

5. On April 9, 2002, the Agency withdrew its February 16, 2002 determination pursuant to a stipulation made at Fair Hearing Number 3678415L.

6. On or about May 20, 2002, the Agency determined that the Appellant was employable.

7. On August 2, 2002, 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 332-b of the Social Services Law and 12 NYCRR 1300.2(d) provide that upon application and recertification for Public Assistance benefits, or whenever a district has reason to believe that a physical or mental impairment may prevent the individual from fully engaging in work activities, the district must determine whether the individual has any medical condition which would limit the individual's ability to participate in work activities. Should the individual declare that he has a mental or physical impairment, the social services official shall:

- 1) notify the individual verbally or in writing that the individual within 10 days may provide any relevant medical documentation, including but not limited to drug prescriptions and reports of the individual's treating health care practitioner (individual's practitioner). Such documentation must contain a specific diagnosis as evidenced by medically appropriate tests or evaluations and must specify any work related limitations; and/or
- 2) refer the individual to a health care practitioner (district's practitioner) certified by the New York State Office of Disability Determinations for a determination of the individual's medical condition. If the social services official refers an individual to the district's practitioner prior to the individual submitting documentation from the individual's practitioner, the individual should make best efforts to bring the documentation to the examination by the district's practitioner. Any documentation available from the individual's practitioner must be submitted to the district's practitioner no later than four days after the examination, provided that in no instance shall such time period exceed ten calendar days from the notification set forth in (1) above, or the district's practitioner will not be required to consider it as a part of the evidence used to determine the individual's medical condition.

The social services official shall have sole discretion in determining whether any documentation provided by the individual or the individual's practitioner is sufficient to make such a determination on an individual's claim of a physical or mental impairment.

In evaluating the initial claim of a mental or physical impairment made by an applicant, or the continuing claim of a medical impairment made by a recipient who has been previously determined exempt from participation in work activities, the social services official may require the individual to cooperate with measures to verify such claim and/or submit documentation as a condition of eligibility for public assistance and food stamps. Failure of such documentation to substantiate the claimed impairment shall not itself cause the individual to be ineligible for Public Assistance.

In evaluating the ongoing claim of a mental or physical impairment made by an individual who has been determined by the social services official not to be exempt, the social services official may require the individual to provide additional documentation from the individual's practitioner. Such individual remains non-exempt until and unless a different determination is made by the social services official.

In the absence of any claim of mental or physical impairment on the part of the individual, if the social services official suspects that such individual has a mental or physical impairment, the social services official shall:

- (1) refer the individual to the district's health care practitioner for an examination and determination of his or her medical condition.
- ii) notify the individual of an opportunity to present any medical documentation available from the individual's practitioner at the time of the examination, or in any event no later than four days from the date of that examination if the individual wishes such documentation to be considered by the district's practitioner in the determination of the individual's medical condition.

At the time that the social services official or the district's practitioner makes a determination of an individual's medical condition, the social services official shall notify the applicant or recipient in writing of such determination and of the right to request a fair hearing to contest such determinations within ten days of such notification.

If the individual requests a fair hearing within the ten day period, the social services official shall not assign the individual to work activities pending the fair hearing determination, except that the social services official may, during the pendency of a determination assign an individual, with the agreement of such individual, to a limited work assignment which would be consistent with any limitations associated with the mental or physical impairments alleged by the individual.

An individual shall not have the right to a fair hearing to contest such determination if he or she requests a fair hearing after the ten day period.

If the social services official refers an applicant or recipient to the district's practitioner for an examination as a result of a mental or physical impairment claim by the applicant or recipient the examiner shall:

- i) review and consider all records or information timely provided by the individual or his or her treating health care practitioner that are pertinent to the claimed medical condition;
- (ii) provide to the social services official in writing a specific diagnosis as evidenced by medically appropriate tests or evaluations in determination of the individual's claimed condition ;
- (iii) indicate to the social services official and the individual in writing, a medical opinion which specifies whether the medical condition alleged by the individual is present or absent; the social services official shall be responsible for ensuring that the applicant or recipient does receive such written medical opinion;
- (iv) report to the social services official the presence of any condition other than that which was alleged by the individual, but which was discovered in the course of the examination, which may interfere with the individual's ability to fully engage in work activities;
- v) determine whether the individual is:
 - (a) disabled and exempt from participation from work activities. Such determination shall specify the duration of time for which the disability shall prevent the social services official from making an assignment to work activities;
 - (b) work limited, having specific identified limitations affecting the type of work activity to which the individual may be assigned; provided, however, that such determination shall specify the duration of time for which such work limitations shall apply to such individual;
 - (c) neither disabled nor work limited

The social services official shall not assign to work activities any individual for whom a medical determination is pending, either as the result of a request by an applicant or recipient or direction of the social services official, until such a determination is rendered unless the individual agrees to a limited work assignment consistent with the individual's alleged medical condition.

An individual who is eligible to receive comprehensive health services through a special needs plan set forth in paragraph (364-j(1)(m) or (n) of the Social Services Law regardless of whether such a plan is operating in the social services district in which the individual resides, shall be considered to be either disabled or work limited, as determined by the social services official.

Section 335-b of the Social Services Law and 12 NYCRR 1300.2(d) provide that individuals in receipt of Public Assistance and who are work limited shall be assigned to work activities only if such assignment:

- (a) is consistent with the individual's treatment plan when such plan is prescribed by the individual and/or district's practitioner;
- (b) Where no treatment plan exists, is consistent with the individual's mental and physical limitations; and
- (c) is determined to be appropriate by the social services official who is satisfied that such individual is able to perform the work assigned and that such assignment will assist the individual's transition to self-sufficiency.

Regulations at 12 NYCRR 1300.2(e) provide that an individual exempted from participation in work activities due to disability who the social services official determines has the potential to be restored to self sufficiency through rehabilitation, may be required to:

- o provide information from the individual's practitioner or submit to an examination by the district's practitioner to determine whether the individual can recover from the mental or physical impairment.
- o accept medical care to assist in recovery from the mental or physical impairment and in restoring self-sufficiency;
- o accept referral to and enrollment in a program of vocational rehabilitation, training and other essential rehabilitation designed to restore an individual to self-sufficiency.

DISCUSSION

The Appellant requested this hearing to contest the Agency's determination finding the Appellant employable.

The Appellant's Representative contended that the Appellant suffers from physical and mental problems, that he had been exempt from work activities and that the Agency then changed the Appellant's status from work exempt to work eligible without justification or notification to the Appellant.

The Agency did not submit the Appellant's case record but did submit an activity record. The record seems to indicate that in or about May 2002, the Agency changed the Appellant's status from work exempt to work eligible, code 20. The Agency did not produce any medical evidence to support its determination to change the Appellant's work status from work exempt to work eligible, code 20, and the Agency produced no evidence to indicate it notified the Appellant of his change in status. Accordingly, the Agency's determination finding the Appellant to be work eligible, code 20 is not correct.

It is noted that if the Agency's determination to change the Appellant's status was based on the Appellant's failure to attend an HS Systems appointment in January, that determination would be incorrect as the Agency stipulated to withdraw its determination that Appellant failed to comply with the Agency's eligibility process pursuant to Fair Hearing Number 3678415L.

DECISION AND ORDER

The Agency's determination that the Appellant was not disabled but only work limited and able to participate in work activities with limitations was 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 whether the Appellant should be exempt is made.
2. The Agency is directed to provide Appellant with written notice of any new determination regarding his employability.

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

DATED: Albany, New York
September 12, 2002

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By



Commissioner's Designee