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In the Matter of the Appeal of  
HD  
from a determination by the Erie County  
Department of Social Services

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**DECISION  
AFTER  
FAIR  
HEARING**

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**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 January 2, 2008, in Erie County, before Susan Hutchison, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant  
HD, Appellant;  
Traserra Adams, Representative, Neighborhood Legal Services

For the Social Services Agency  
Mr. Nicosia, Fair Hearing Representative

**ISSUE**

Was the Agency's determination to discontinue the Appellant's Public Assistance for failure to pursue potentially available resources correct?

**FINDINGS OF FACT**

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, age 20, has been in receipt of Public Assistance for a household of three, consisting of herself and her two children, ages 2 and 11 months.
2. Pursuant to the Agency's evidentiary packet, the Appellant was terminated from her employment on her first day of work (September 11, 2007).

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3. Pursuant to a letter dated November 19, 2007 from BBL, the Appellant was offered a job as a Bus Aid on 9/10/07 and reported to work on 9/11/07 “but left shortly after coming in. Phone calls to her contact number...were not returned. Ms. D was terminated on 09/11/07.”

4. Before sending the Notice of Intent, the Agency sent the Appellant a notice of conciliation advising this individual of the opportunity to take part in conciliation regarding the Agency's claim that she willfully quit her job/reduced her work hours on September 11, 2007.

5. The Appellant responded to the notice of conciliation. The issue was not resolved and, according to the Agency's handwritten notes, “Failed to report for employment at BBL on 9/11/07.”

6. On September 29, 2007 the Agency sent a Notice of Intent setting forth its determination to discontinue the Appellant's Public Assistance because the Appellant had failed to pursue potentially available resources. Specifically, the Notice states, “H did not apply for or complete all the application steps for BONA FIDE EMPLOYMENT OFFER FROM BBL even though told to do so. We were not told a good reason why this was not done.” [capitalization as in original]

7. On October 12, 2007, the Appellant requested this fair hearing.

### APPLICABLE LAW

A recipient of Public Assistance, Medical Assistance or Services has a right to a timely and adequate notice when the Agency proposes to discontinue, suspend, reduce or change the manner of payment of such benefits. 18 NYCRR 358-3.3(a).

An adequate notice is a notice of action, an adverse action notice or an action taken notice which sets forth the action that the Agency proposes to take or is taking, and if a single notice is used for all affected assistance, benefits or services, the effect of such action, if any, on a recipient's other assistance, benefits or services. In addition, the notice must contain:

o **the specific reasons for the action;**

18 NYCRR 358-2.2

Regulations at 18 NYCRR 352.23(a) provide that resources shall be so used as to eliminate or reduce the need for public assistance, rehabilitate the client and conserve public funds through assignment and recovery. Applicants and recipients shall generally be required to use available resources and to apply for and otherwise pursue potentially available resources.

Regulations at 18 NYCRR 352.12(c) provide that the agency shall explore eligibility for work-related benefits, require presumptively eligible persons to make application therefor, and verify the receipt of benefits in accordance with the applicable board rules, department

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regulations, and the procedures and forms required by the department or administrative agency for clearance of such benefits.

Regulations at 18 NYCRR 351.1 and 351.2 require that to demonstrate eligibility, applicants for and recipients of Public Assistance must present appropriate documentation of such factors as identity, residence, family composition, rent payment or cost of shelter, income, savings or other resources and, for aliens, of lawful residence in the United States. These obligations also apply to non-legally responsible caretaker relatives of children receiving public assistance, as well as minor siblings of such children residing in the same household. Section 351.5 of the Regulations provides that if the applicant or recipient has previously verified necessary information which is not subject to change and the Agency possesses documentation of such verification in its files, the applicant or recipient is not required to resubmit verification of such information. Section 351.6 of the Regulations provides that verification of data is an essential element of the eligibility investigation process. The applicant or recipient is the primary source of the required information. However, when the applicant or recipient is unable to provide the required verification, the Agency must assist the applicant or recipient in obtaining the verification or make collateral investigation. 18 NYCRR 351.5 and 351.6. If a third party seeks to impose a charge or fee for providing required information to the applicant or recipient, the Agency must pay such fee or must assist the applicant or recipient in obtaining the information by other means. 18 NYCRR 351.5. The applicant's or recipient's failure or refusal to cooperate in providing necessary information is a ground for denying or discontinuing Public Assistance.

An applicant for or recipient of public assistance is exempt from complying with any requirement concerning eligibility for public assistance if the applicant or recipient establishes that good cause exists for failing to comply with the requirement. Except where otherwise specifically set forth in regulations, good cause exists when the applicant or recipient has a physical or mental condition which prevents compliance; the applicant's or recipient's failure to comply is directly attributable to Agency error; or other extenuating circumstances, beyond the control of the applicant or recipient, exist which prevent the applicant or recipient from being reasonably expected to comply with an eligibility requirement. The applicant or recipient is responsible for notifying the Agency of the reasons for failing to comply with an eligibility requirement and for furnishing evidence to support any claim of good cause. The Agency must review the information and evidence provided and make a determination of whether the information and evidence supports a finding of good cause. 18 NYCRR 351.26.

## **DISCUSSION**

The Agency's determination to discontinue the Appellant's Public Assistance benefits is not correct and is reversed

The Agency's September 29, 2007 Notice proposed to discontinue the Appellant's Public Assistance on the grounds that the Appellant "did not apply for or complete all the application steps" for a bona fide employment offer from BBL. However, at the hearing, the Agency submitted into evidence a letter from BBL and a handwritten and type summary and a Notice of Conciliation, all asserting that the grounds for the proposed discontinuance was due to the

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allegation that the Appellant had been fired/had caused her own job termination on 9/11/2007. Given that the Agency offered no evidence in support of the allegation in its discontinuance notice (i.e., that the Appellant failed to apply for or complete all of the application steps for a job with BBL), the Agency failed to meet its burden of proof to substantiate the proposed discontinuance and its determination must be reversed as a matter of law.

In addition, at the fair hearing, the Appellant presented detailed testimony as to the events surrounding this matter, as well as presenting her contemporaneous log of events. Essentially, the Appellant presented testimony which disputes both possible grounds, that she failed to apply and/or complete all of the application steps **or** that she accepted a bona fide job and was then terminated from employment. The Appellant testified that there was no bona fide offer of a job communicated to her from BBL. She stated that she attended a job fair on August 23rd and an orientation on August 29<sup>th</sup> (both held at Agency offices) and was told that BBL would call with a job offer that weekend. She stated that when she finally spoke with the manager of BBL on September 5, 2007, she was told that all positions had been filled. The Appellant stated that on September 10<sup>th</sup>, the Agency's employment worker told her to report to BBL the next day, as a position had opened up and that she should call BBL directly for directions. The Appellant testified that she called BBL's offices several times on September 10<sup>th</sup>, to ask for directions, but was unable to talk with the manager. She testified that she did not report to their offices on September 11<sup>th</sup>, because she did not have directions. The Appellant stated that when she finally connected with the manager at BBL on September 11th, she was told that she should check back with him in October.

The reason set forth in the discontinuance notice was that the Appellant did not apply for or complete all of the application steps in applying for a job with BBL. No evidence was presented to support this reason. Rather, the evidence presented by the Agency was solely that the Appellant had been terminated from her employment. As the Court noted in Cruz v. Lavine, 45 A.D.2d 720, 356 N.Y.S.2d 334 "A notice that a welfare recipient's grant is to be reduced is required by regulation to inform the recipient 'of the issues which are to be the subject of the hearing' (18 NYCRR 358.11, subd. (e)). Notice to a recipient which specifies the wrong charge as the basis of a welfare grant reduction does not comply with the regulatory standard or the constitutional standards of due process, because 'even in \* \* \* (the administrative) forum no person may lose substantial rights because of wrongdoing shown by the evidence, but not charged' (Matter of Murray v. Murphy, 24 N.Y.2d 150, 157, 299 N.Y.S.2d 175, 181, 247 N.E.2d 143, 147 (bracketed matter supplied))." Accordingly, the Agency's determination to discontinue the Appellant's Public Assistance benefits cannot be sustained.

### **DECISION AND ORDER**

The Agency's determination to discontinue Appellant's Public Assistance is not correct and is reversed.

1. The Agency is directed to continue the Appellant's Public Assistance.

Should the Agency need additional information from the Appellant in order to comply with the above directives, it is directed to notify the Appellant promptly in writing as to what

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documentation is needed. If such information is requested, the Appellant must provide it to the Agency promptly to facilitate such compliance.

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

DATED: Albany, New York  
January 10, 2008

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee