

**STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE**

REQUEST: January 27, 2010
CASE #:
CENTER #: 54
FH #: 5453409M

In the Matter of the Appeal of
F M
from a determination by the New York City
Department of Social Services

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**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 March 10, 2010, in New York City, before Raymond Tucker, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

F M Appellant

For the Social Services Agency

Stephen Asante, Fair Hearing Representative

ISSUE

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

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 has been in receipt of Public Assistance benefits.
2. On January 20, 2010, the Agency sent a Notice of Intent to the Appellant setting forth its intention to discontinue Appellant's Public Assistance benefits because the Appellant did not attend an employment or work activity appointment on December 31, 2009.

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3. On January 27, 2010, the Appellant requested this fair hearing.

4. On or about February 23, 2010, which was five or more business days before date of the hearing, the Appellant requested that the Agency provide copies of documents which the Appellant specifically identified as necessary in order to prepare for the hearing but the Agency did not provide such documents to the Appellant.

APPLICABLE LAW

Regulations at 18 NYCRR 358-3.7(b), which summarize an Appellant's rights regarding examination of a case record before the hearing, provide as follows:

- (1) Upon request, you have a right to be provided at a reasonable time before the date of the hearing, at no charge, with copies of all documents which the social services agency will present at the fair hearing in support of its determination. If the request for copies of documents which the social services agency will present at the hearing is made less than five business days before the hearing, the social services agency must provide you with such copies no later than at the time of the hearing. If you or your representative request that such documents be mailed, such documents must be mailed within a reasonable time from the date of the request; provided however, if there is insufficient time for such documents to be mailed and received before the scheduled date of the hearing such documents may be presented at the hearing instead of being mailed;
- (2) Upon request, you have the right to be provided at a reasonable time before the date of the hearing, at no charge, with copies of any additional documents which you identify and request for purposes of preparing for your fair hearing. If the request for copies of documents is made less than five business days before the hearing, the social services agency must provide you with such copies no later than at the time of the hearing. If you or your representative request that such documents be mailed, such documents must be mailed within a reasonable time from the date of the request; provided however, if there is insufficient time for such documents to be mailed and received before the scheduled date of the hearing such documents may be presented at the hearing instead of being mailed;
- (3) Your request for copies of documents pursuant to paragraphs (1) and (2) of this subdivision may at your option be made in writing, or orally, including by telephone.
- (4) If the social services agency fails to comply with the requirements of this subdivision the hearing officer may adjourn the case, allow a brief recess for the appellant to review the documents, preclude the introduction of the documents where a delay would be prejudicial to the appellant, or take other appropriate action to ensure that the appellant is not harmed by the agency's failure to comply with these requirements.

For New York City cases, the term "reasonable time" referred to in Section 358-3.7(b) is defined by the terms of the Stipulation and Order of Settlement in the case of Rivera v. Bane,

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signed on February 22, 2005. With respect to requests for an evidence packet made seven or more business days before the scheduled date of the hearing, the evidence packet must be mailed within five business days after the request is made. If a request for an evidence packet is made less than seven business days before the scheduled date of the hearing, the packet must be provided by the date of the hearing or at the hearing. If the request is made five or more business days before the scheduled hearing date and the applicable standard is not met, the New York City Human Resources Administration (HRA) is required to withdraw its notice.

With respect to requests for specifically identified documents necessary to prepare for a hearing, the Stipulation and Order provides that a reasonable time for providing the requested documents will be before the date of the hearing, except that for requests made less than five business days before the hearing, the documents may be provided at the hearing. If HRA fails to produce the specifically identified documents within the applicable time frames, the hearing officer must either allow a brief recess to review the documents, adjourn the case if necessary to allow sufficient time to review the documents, direct HRA to withdraw its notice, or take other appropriate action to ensure that the Appellant is not harmed. In taking any action, the hearing officer must consider the nature and size of the request and the date the request was made. If HRA does not provide a requested document on the grounds that it is not necessary for preparing for the hearing, HRA must notify the Appellant of its objection in writing within the above time frames. The hearing officer must determine whether or not the documents are necessary. If the hearing officer determines that they are necessary, the requirements set forth above regarding a failure to provide necessary documents will apply.

DISCUSSION

The evidence establishes that the Agency sent a Notice of Intent to the Appellant advising the Appellant that it had determined to discontinue the Appellant's Public Assistance benefits because the Appellant did not attend an employment or work activity appointment on December 31, 2009. The Appellant requested a hearing to review the Agency's determination on 01/27/10.

On or about February 23, 2010, which was five or more business days before date of the hearing, the Appellant requested that the Agency provide a key to the codes (or similar explanatory document) for any identified computer printouts, including abbreviations, and or any documents sent with computer codes.

DECISION AND ORDER

The Agency is directed to take the following actions if it has not already done so:

1. Withdraw its Notice of Intent dated January 20, 2010.
2. Take no further action on its Notice of Intent dated January 20, 2010.
3. Continue to provide Public Assistance benefits to the Appellant.

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4. Restore Appellant's Public Assistance benefits retroactive to the date of the Agency action.

Should the Agency in the future determine to implement its previous action, it is directed to issue a new Notice of Intent and, in the event that the Appellant requests a fair hearing to review such determination, to comply with the requirements contained in 18 NYCRR 358-3.7(b) concerning the timely provision of documents.

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 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
04/06/2010

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By



Commissioner's Designee