

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: June 19, 2013

██████████
AGENCY: Rensselaer
FH #: 6407689J

In the Matter of the Appeal of
██████████

from a determination by the Rensselaer County
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 July 18, 2013, in Rensselaer County, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

████████████████████████████████████████

For the Social Services Agency

Sandra Walthousen, Social Welfare Examiner

ISSUE

Was the Agency's determination to provide the Appellant with one bus token in response to the Appellant's request for 2 bus tokens in relation to her Fair Hearing transportation 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. On June 19, 2013, the Appellant had a Fair Hearing and at its conclusion, requested 2 bus tokens to cover her transportation costs to and from the Agency.

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2. The Agency determined to give the Appellant 1 bus token to cover her transportation cost from the Agency only.

3. On June 19, 2013, the Appellant requested this fair hearing.

APPLICABLE LAW

18 NYCRR Section 358-3.4.
Rights in the fair hearing process.

As an appellant you have the right:

(a) To the continuation or reinstatement of your public assistance, medical assistance authorization, SNAP benefits or services until the issuance of a decision in your fair hearing, to the extent authorized by section 358-3.6 of this Subpart. You have the right to request that your assistance, benefits or services not be continued or reinstated until the fair hearing decision is issued;

(b) to examine your case record and to receive copies of documents in your case record which you need to prepare for the fair hearing, upon your request, to the extent authorized by and within the time periods set forth in section 358- 3.7 of this Subpart;

(c) to examine and receive copies of all documents and records which will be submitted into evidence at the fair hearing by a social services agency, upon your request, to the extent authorized by and within the time periods set forth in section 358-3.7 of this Subpart;

(d) to the rescheduling (adjournment) of your hearing, to the extent authorized by section 358-5.3 of this Part;

(e) to be represented by an attorney or other representative at any conference and hearing, or to represent yourself;

(f) to have an interpreter at any fair hearing, at no charge to you, if you do not speak English or if you are deaf. You should advise OAH prior to the date of the fair hearing if you will need an Interpreter;

(g) to appear and participate at your conference and fair hearing, to explain your situation, to offer documents, to ask questions of witnesses, to offer evidence in opposition to the evidence presented by the social services agency and to examine any documents offered by the social services agency;

(h) to bring witnesses to present written and oral evidence at any conference or fair hearing;

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(i) at your request to the social services agency, to receive necessary transportation or transportation expenses to and from the fair hearing for yourself and your representatives and witnesses and to receive payment for your necessary child care costs and for any other necessary costs and expenditures related to your fair hearing;

(j) to have the fair hearing held at a time and place convenient to you as far as practicable, taking into account circumstances such as your physical inability to travel to the regular hearing location;

(k) to request removal of a hearing officer in accordance with section 358-5.6 of this Part; and

(l) to seek review by a court if the decision is not in your favor.

DISCUSSION

The Appellant requested this Fair Hearing in regard to the amount of bus tokens she was reimbursed after attending a Fair Hearing on June 19, 2013.

It should be noted that the Agency addressed the issue, but noted on its Fair Hearing summary that the date in question regarding the amount of bus tokens was in regard to a Fair Hearing on June 28, 2013. Verification with the Office of Temporary and Disability Assistance indicated that the Appellant did not have a scheduled Fair Hearing on June 28, 2013. Accordingly, the date as indicated on the Agency's Fair Hearing summary will be disregarded and the direct issue itself will be addressed.

The Appellant stated that when she was leaving her Fair Hearing on June 16, 2013, she requested 2 bus tokens to cover her roundtrip service to and from the Fair Hearing. The Agency determined to reimburse the Appellant 1 token, not 2.

The Agency stated that it based its determination to only reimburse the Appellant 1 bus token on its interpretation of the Fair Hearing Instructions to Parties, statement number 4 which states, "The local agency must provide for transportation for you, your representatives and witnesses and for child care and other costs related to attending this hearing, if necessary. Please be prepared to present verification of these costs including medical verification of inability to travel by public transportation, to the local agency." The portions of this statement on which the Agency representative relied was whether the transportation cost was "necessary" and that the Appellant failed to provide any verification of her travel expense. The Appellant responded that when traveling by bus for public transportation, they do not provide receipts to its clients, and so she was not able to provide any receipts.

The Agency stated that since the Appellant got herself to the hearing on her own, since the Appellant failed to provide any receipted verification of her taking public transportation, and since the Appellant is in receipt of \$91.50 semi-monthly for Public Assistance, she should not have to be reimbursed a bus token for the Appellant's trip to the Agency for the Fair Hearing.

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This interpretation of the transportation guidelines relating to the Fair Hearing process cannot be sustained.

The fact remains that the Appellant attended her Fair Hearing, requested reimbursement for her travel to and from the Agency and should have been reimbursed 2 bus tokens to cover the most basic form of transportation available to the Appellant to commute to and from the Agency for her Hearing as the Regulations permit. Accordingly, the Agency is directed to reimburse the Appellant the additional bus token in relation to the Appellant's June 19, 2013 hearing.

It should be noted that at the conclusion of this Hearing, the Appellant stated that she would be requesting 2 bus tokens in relation to this Fair Hearing and wanted to know whether both would be provided to her. She was informed that since her question is directly related to the issue of this Fair Hearing, the Agency would be directed to issue the Appellant 1 bus token for this Fair Hearing and that based on the outcome of this decision, the Appellant may or may not be reimbursed for the additional token for today's hearing. Since the Agency's determination has been reversed, the Agency is also directed to reimburse the Appellant the additional bus token in relation to this Fair Hearing.

DECISION (AND ORDER)

The Agency's determination to provide the Appellant with 1 bus token in response to the Appellant's request for 2 bus tokens in relation to her Fair Hearing transportation was not correct and is reversed.

1. The Agency is directed to reimburse the Appellant 1 bus token in relation to her June 16, 2013 Fair Hearing transportation request; and

2. The Agency is directed to reimburse the Appellant 1 bus token in relation to this Fair Hearing's transportation request.

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

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DATED: Albany, New York
08/23/2013

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink, reading "Daniel C. McGinn". The signature is written in a cursive style with a large initial 'D' and 'M'.

Commissioner's Designee