

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: February 5, 2011

AGENCY: New York City
FH #: 5720656Y

In the Matter of the Appeal of
[REDACTED]

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 25, 2011, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[REDACTED]

For the Social Services Agency

Carol Barrios, Fair Hearing Representative

ISSUES

Was the Appellant's request for a hearing concerning the Agency's determination that the Appellant was not exempt from employment requirements, but was work-limited timely?

Assuming the request was timely, was the Agency's determination that the Appellant was not fully disabled, but able to participate in work activities with limitations correct?

Was the Agency's determination to provide the Appellant with \$200.00 in Food Stamp benefits, 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 has been in receipt of Public Assistance and Food Stamp benefits.
2. The Appellant advised the Agency of health-related conditions which the Appellant claimed prevented participation in the employment-related activities required by the Agency, in order to receive assistance.
3. By notice dated September 24, 2010, the Agency informed the Appellant that the Appellant had been found to be non-exempt from employment requirements but was only work-limited and therefore required to participate in the Agency's employment-related programs in order to receive assistance.
4. The notice of September 24, 2010, which the Agency provided to the Appellant, advised the Appellant that a request for a fair hearing concerning this determination must be made within ten days of the Agency's determination.
5. On February 5, 2011, 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 18 NYCRR 385.2(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.

Section 332-b of the Social Services Law and 18 NYCRR 385.2(d) further provide that, after the determination of an individual's medical condition has been made, the Agency must notify the applicant or recipient in writing of such determination and of the right to request a fair hearing to contest such determination within ten days of such notification. 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.

Section 332-b of the Social Services Law and 18 NYCRR 385.2(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:

- 1) shall 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; or
- 2) may refer the individual to a health care practitioner (district's practitioner) certified by the New York State Office of Disability Determinations of the Office of Temporary and Disability Assistance, or if applicable, to the contracted agency or institution by or with which such health care practitioner is employed or affiliated 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 evidence of the claimed or declared impairment.

Pursuant to paragraph (5) of Section 385.2(d), 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.

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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:

- (i) 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 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;

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- (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.

Pursuant to the provisions of Administrative Directive 06 ADM-06, dated May 16, 2006, if a district finds that a TA applicant or recipient reasonably appears to be eligible for SSI, the district must require the applicant or recipient to apply for SSI benefits, follow through on the application for such benefits and accept such benefits, if eligible. Individuals whose application for SSI benefits are denied, but are still unable to participate in work activities including employment because of a medical condition that reasonably appears to qualify the individual for SSI must be required to file an appeal to maintain his/her eligibility for public assistance benefits. Individuals who are required by the district to pursue SSI benefits as a condition of eligibility are exempt from participation in work requirements and cannot be assigned to work activities until the district determines, based on the documentation available, that the individual is no longer exempt from work requirements and is not required to pursue SSI benefits as a condition of eligibility for public assistance. Individuals who are required by the district to appeal a denial of SSI benefits continue to be exempt from participation in work requirements while the appeal is pending a decision unless additional medical information is received which indicates that the individual is no longer exempt from work requirements and the district determines that the individual is no longer required to pursue SSI benefits as a condition of eligibility for public assistance.

DISCUSSION

The Appellant has been in receipt of Public Assistance and Food Stamp benefits. By notice dated September 24, 2010, the Agency informed the Appellant that the Appellant had been found to be non-exempt from employment requirements but was only work-limited and therefore required to participate in the Agency's employment-related programs in order to receive assistance.

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The September 24, 2010 notice which the Agency provided to the Appellant advised the Appellant that a request for a fair hearing concerning this determination must be made within ten days of the Agency's determination. However, the Appellant requested the present hearing to review such determination on February 5, 2011, which was more than ten days after the Agency's determination.

The Appellant contended that the hearing was not requested within ten days of the Agency's notice because he did not receive the September 24, 2010, in Spanish. At the hearing the Agency presented a copy of the September 24, 2010, notice that was signed by the Appellant. The Appellant testified that the content of the English notice was not explained to him. The Appellant claims that he was simply instructed to sign the document and he complied. The Appellant's testimony is found to be credible because it was detailed, consistent, and persuasive. The record fails to establish that the Appellant was aware of the ten-day statute of limitations. Therefore, the record of this hearing establishes a sufficient basis for tolling the ten-day statute of limitations.

With respect to the Agency's determination that the Appellant is not exempt from participating in employment-related activities, the Agency failed to present evidence at the hearing to support its determination that the Appellant is work-limited. Therefore, the Agency's determination cannot be deemed proper.

The Appellant who is forty-seven years old testified that he resides alone. The record establishes that the Appellant is currently unemployed. The Appellant testified that he is in receipt of Food Stamp benefits in the amount of \$200.00. The Appellant also requested this fair hearing alleging that the Agency's computation of his Food Stamps benefit is incorrect.

The record reflects that the Appellant is receiving the maximum allowable for the Appellant's household. The Appellant failed to meet his burden of establishing that he is eligible for additional assistance or benefits. Therefore, the Agency's determination provide the Appellant with Food Stamp benefits in the amount of \$200.00, is correct.

DECISION AND ORDER

The Agency's determination to provide the Appellant with \$200.00 in Food Stamp benefits is correct.

The determination of the Agency that the Appellant is work-limited and must therefore engage in work activities to be eligible for Public assistance is not correct and is reversed.

1. The Agency is directed to immediately reevaluate the Appellant's work-exempt status in accordance with the provisions of 18 NYCRR 385.2.

2. After such evaluation, the Agency is directed to provide the Appellant with written notification of its determination.

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3. The Agency is directed to exempt the Appellant from work activities until such time as the Agency determines that the Appellant is not work-exempt.

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
05/11/2011

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink, appearing to read "Sigel Markes". The signature is written in a cursive, somewhat stylized font.

Commissioner's Designee