

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: September 29, 2015

AGENCY: F-54
FH #: 7138157L

In the Matter of the Appeal of
[REDACTED]

from a determination by the New York City
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 November 6, 2015, 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

Colin Beswick, Representative

ISSUES

Was the Appellant's request for a fair hearing to review the Agency's May 8, 2015, determination to deny the Appellant's application for SNAP benefits timely?

Assuming the Appellant's request was timely, was the Agency's May 8, 2015, determination to deny the Appellant's application for SNAP benefits correct?

Was the Agency's July 21, 2015, determination to deny the Appellant's application for SNAP benefits 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. On April 6, 2015, the Appellant applied for SNAP benefits.
2. On May 8, 2015, the Agency denied the Appellant's April 6, 2015, application for SNAP benefits on the grounds that the Appellant failed to submit requested documents to the Agency.
3. On June 18, 2015, the Appellant applied for SNAP benefits.
4. On July 21, 2015, the Agency denied the Appellant's June 18, 2015, application for SNAP benefits on the grounds that the Appellant failed to submit requested documents to the Agency.
5. On September 29, 2015, this hearing was requested.

APPLICABLE LAW

Section 22 of the Social Services Law provides that applicants for and recipients of Public Assistance, Emergency Assistance to Needy Families with Children, Emergency Assistance for Aged, Blind and Disabled Persons, Veteran Assistance, Medical Assistance and for any services authorized or required to be made available in the geographic area where the person resides must request a fair hearing within sixty days after the date of the action or failure to act complained of. In addition, any person aggrieved by the decision of a social services official to remove a child from an institution or family home may request a hearing within sixty days. Persons may request a fair hearing on any action of the social services district relating to SNAP benefits or the loss of SNAP benefits which occurred in the ninety days preceding the request for a hearing. Such action may include a denial of a request for restoration of any benefits lost more than ninety days but less than one year prior to the request. In addition, at any time within the period for which a person is certified to receive SNAP benefits, such person may request a fair hearing to dispute the current level of benefits.

The SNAP application process includes filing and completing the application form, being interviewed and having certain information verified. If the household refuses to cooperate with the Agency in completing this process, the application shall be denied. In order for a determination of refusal to be made, the household must be able to cooperate but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. 7 CFR 273.2(d); 18 NYCRR 387.5, 387.6, 387.7.

FH# 7138157L

For households initially applying for SNAP benefits mandatory verification shall be completed regarding: gross nonexempt income, alien status, shelter expenses, medical expenses, residency, household size, Social Security number, identity, date of birth, utility expenses, resources, disability and, if questionable, household composition and citizenship and any other questionable information that has an effect on the household's eligibility and benefit level. 7 CFR 273.2(f); 18 NYCRR 387.8(b).

To be considered questionable, the information on the application must be inconsistent with statements made by the applicant, or inconsistent with other information on the application or previous applications. The local department shall determine if information is questionable based on the household's individual circumstances. 7 CFR 273.2(f); 18 NYCRR 387.8(b).

Written documentary evidence is to be used as the primary source of verification of all items except residency and household size. Residency and household size may be verified either through readily available documentary evidence or through a collateral contact. Residency is to be verified except where verification cannot reasonably be accomplished such as in homeless cases. 7 CFR 273.2(f); 18 NYCRR 387.8(b).

The household has the primary responsibility for providing documentary evidence to support its application and to resolve any questionable information. The local Agency, however, is obligated to offer assistance in situations where the household cannot obtain the documentation in a timely manner. Such assistance may include using a collateral contact or home visit unless otherwise required by Federal or State Regulations. 7 CFR 273.2(f); 18 NYCRR 387.8(b).

If the Agency determines to verify a deductible expense and such verification has not been obtained and obtaining the verification may delay the household's certification, then the Agency may determine eligibility and benefit level without providing a deduction for the claimed but unverified expense, including medical expense. If the household subsequently provides verification, benefits shall be redetermined. 7 CFR 273.2(f).

When a household's eligibility cannot be determined within thirty days of filing of the application, the Agency must determine the cause of the delay. If the delay is the fault of the household, then the application must be denied. However, if the household takes the required action within sixty days of the filing of the application, the case must be processed without

FH# 7138157L

requiring a new application. Prorated benefits must then be provided to the household from the date the necessary verification was provided. If the delay is the fault of the Agency, then the Agency must notify the household as to what action it must take to complete the application. The cause of the delay in failing to complete verification shall be considered the household's fault only if the Agency has assisted the household in trying to obtain the verification and allowed the household at least ten days to obtain the missing verification. If the household is found to be eligible during the second thirty-day period, prorated benefits must be provided from the date of application. 7 CFR 273.2(h); 18 NYCRR 387.14(a)(4).

If, due to the Agency's fault, the application process is not completed by the end of the second thirty-day period, the Agency must continue to process the application until an eligibility decision is reached. If the household is found eligible and the Agency was at fault for the delay in the initial thirty days, the household must receive benefits retroactive to the day of application. However, if the initial thirty-day delay was the household's fault, the household must receive benefits retroactively to the date final verification of all required eligibility factors was received. If the household was at fault for not completing the application process by the end of the second thirty-day period, the application must be denied and the household will not be entitled to any lost benefits, even if the delay in the initial thirty days was the fault of the Agency. 18 NYCRR 387.14(a)(4).

DISCUSSION

The Hearing Officer who conducted the hearing recommended a decision that misapplied the facts and the law, such that the Commissioner's Designee has not adopted the Hearing Officer's recommend decision, and this Decision has been issued in its stead.

For example, the Hearing Officer concluded that the Appellant did not timely request this hearing to contest the Agency's May 8, 2015, notice. Yet, the Agency did not present any evidence that the Limited English Proficient (LEP) Appellant was provided with an appropriate May 8, 2015, notice. Also, the Hearing Officer did not establish when, even approximately, the Appellant received the Agency's May 8, 2015, notice. Further, the Agency's May 8, 2015, notice has defects, including, but not limited to, suggesting that the Appellant failed to provide documents to the Agency, while then making a claim of what the Agency failed do to in the case.

On April 6, 2015, the Appellant applied for SNAP benefits. On May 8, 2015, the Agency denied the Appellant's April 6, 2015, application for SNAP benefits on the grounds that the Appellant failed to submit requested documents to the Agency.

FH# 7138157L

While the Agency claimed that the Appellant did not timely request this hearing to challenge the Agency's May 8, 2015, notice, for the reasons mentioned above, the statute of limitations is tolled.

On June 18, 2015, the Appellant applied for SNAP benefits. On July 21, 2015, the Agency denied the Appellant's June 18, 2015, application for SNAP benefits on the grounds that the Appellant failed to submit requested documents to the Agency.

For the Agency's May 8, 2015, and July 21, 2015, determinations, the Agency had contended that the Appellant did not submit all requested documents to the Agency. The record fails to establish that the Appellant did not submit all requested documents to the Agency; this does not mean that the Agency asked for all documents that it should have asked for, or that the Agency received all documents that it needed to make a determination of eligibility. The submission of requested documentation is but one of numerous criteria to establish eligibility for SNAP benefits, and the mere act of submitting documentation does not in and of itself establish an individual's eligibility for SNAP benefits. The record fails to establish whether the Appellant is eligible or ineligible for SNAP benefits. The Agency's determinations to deny the Appellant's applications for SNAP benefits cannot be sustained.

DECISION AND ORDER

The Agency's May 8, 2015, determination to deny the Appellant's application for SNAP benefits is not correct and is reversed.

The Agency's July 21, 2015, determination to deny the Appellant's application for SNAP benefits is not correct and is reversed.

1. The Agency is directed to continue to process the Appellant's April 6, 2015 and June 18, 2015, applications for SNAP benefits.
2. The Agency is directed to notify the Appellant as to what additional documentation is necessary, if any.
3. The Agency is directed to provide the Appellant with an opportunity to provide any required documentation.

FH# 7138157L

4. The Agency is directed to notify the Appellant in writing of its new determinations, and to provide the Appellant with any SNAP benefits for which the Appellant is eligible.

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

DATED: Albany, New York
11/17/2015

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink that reads "Kenneth Luciano". The signature is written in a cursive, slightly slanted style.

Commissioner's Designee