

STATE OF NEW YORK
OFFICE OF CHILDREN AND FAMILY SERVICES

REQUEST: February 2, 2016

AGENCY: Albany

FH #: 7231731Z

In the Matter of the Appeal of
[REDACTED]

from a determination by the Albany County
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 April 4, 2016, in Albany County, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[REDACTED]

For the Social Services Agency

Patty McDonnell, Fair Hearing Representative

Interpreter

Hasim, Language Line (by telephone)

ISSUE

Was the Appellant's request for a fair hearing to review the Agency determination to deny his application for child day care services timely?

Assuming the request was timely, was the Agency's determination to deny the Appellant's application for child day care services on the grounds that his household is not programmatically eligible because his wife's present medical condition does not fulfill childcare eligibility requirements 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 October 30, 2015, the Appellant, age 52, and his spouse, age 44, applied for child day care services for their four children, [REDACTED].
2. The Appellant's household is not in receipt of Family Assistance.
3. The Appellant works on a full-time basis. The Appellant is unable to provide care or supervision to his children after school due to his employment.
4. The Appellant submitted a May 26, 2015 Disability Certificate to the Agency from his spouse's primary care physician stating that his spouse has been deemed totally incapacitated and is "unable to independently care for herself, her children and her home".
5. On November 2, 2015, the Agency denied the Appellant's application for child day care services on the grounds that the household is not programmatically eligible because the Appellant's wife's present medical condition does not fulfill child care eligibility requirements.
6. The notice advised the Appellant that a fair hearing must be requested within sixty days of the Agency's action concerning supportive services.
7. The Agency mailed the notice to the Appellant's address as contained in the Appellant's case record.
8. On February 2, 2016, the Appellant requested this fair hearing.

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.

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Office regulations at 18 NYCRR 415.2 govern eligibility for child care services. This section provides, in part, as follows:

Eligibility. The following families are eligible for child care services under the specified child care programs when such care is not otherwise available from a legally responsible relative or caretaker of the child in need of services and the care is a necessary part of a plan for self support. For two-parent or two- caretaker families, each parent or caretaker must meet one of the eligibility criteria set forth in this subdivision.

- (a) New York State Child Care Block Grant program. A family will be eligible for child care services under the New York State Child Care Block Grant program, if the family meets one or more of the following criteria:
 - (1) Families which are guaranteed child care services. A social services district must guarantee child care services to a family which meets the criteria set forth in any subparagraph of this paragraph regardless of whether the social services district has any State or federal funds available under this program to pay for all or a portion of such costs. In accordance with subdivision (d) of this section, a district may set aside funds and/or establish priorities for families eligible for a child care guarantee.
 - (i) A social services district must guarantee child care services to a family who has applied for or is receiving public assistance when such services are needed for a child under 13 years of age in order to enable the child's parent(s) or caretaker relative(s) to participate in activities required by a social services official including orientation, assessment, or work activities as defined in 18 NYCRR Part 385. The guarantee applies to all of the eligible children of the parent(s) or caretaker relative(s) regardless of the child's status as part of the public assistance filing unit.
 - (ii) A local social services district must guarantee to applicants who would otherwise be eligible for, or are recipients of, public assistance benefits and who are employed, the option to choose to receive continuing child care subsidies in lieu of public assistance benefits, for such period of time as the recipient continues to be eligible for public assistance. For the purposes of this section, an eligible applicant for, or recipient of, public assistance benefits and who is employed, includes a person whose gross earnings equal, or are greater than, the required number of work hours times the state minimum wage. Recipients of child care subsidies under this section who are no longer eligible for public assistance benefits, shall be eligible for transitional child care described in subparagraph (iv) of this section as if they had been recipients of public assistance.
 - (iii) A social services district must guarantee child care services to a family which is receiving public assistance when such services are needed for a

child under 13 years of age in order to enable the child's parent(s) or caretaker relative(s) to engage in work as defined by the social services district.

- (iv) A social services district must guarantee child care services for a period of up to 12 consecutive months after the month in which a family's public assistance case closed or, for those who chose child care in lieu of public assistance, the month after the family is no longer financially eligible for public assistance, provided:
 - (a) the case closed or the family became financially ineligible for public assistance due to:
 - (1) increased income from either employment or child support; or
 - (2) the family voluntarily ending assistance and their income is no longer within public assistance standards; and
 - (b) the family received public assistance in at least three of the six months immediately preceding the case closing; or, for a family which chose child care in lieu of public assistance, was eligible for public assistance in at least three of the six months immediately preceding their ineligibility for public assistance; and
 - (c) the family includes an eligible child that is under the age of 13 who needs child care services in order to enable the child's parent(s) or caretaker relative(s) to be engaged in work as defined in section 415.1(o)(1) of this Part; and
 - (d) the family has income at or below 200% of the applicable State income standard.

This child care guarantee is available to eligible families for 12 months from the month after the family's eligibility for public assistance has terminated or ended. Families may ask for and begin to receive child care in any month during the 12 month period of the child care guarantee. The start date for eligibility may precede the date services were requested and cover any period during the 12 months of the guarantee.

- (2) Families that are eligible when funds are available. A social services district must provide child care services to a family eligible under any one of the subparagraphs of this paragraph, to the extent that the district continues to have funds available under either the district's allocation from the State Child Care Block Grant program or any local funds appropriated for such program subject to any priorities and set asides established pursuant to subdivision (d) of this section.

- (i) A family which has applied for or is receiving public assistance when such services are needed for an eligible child aged 13 or older, who has special needs or is under court supervision, in order to enable the child's parent(s) or caretaker relative(s) to participate in activities required by social services official including orientation, assessment, or work activities defined in 18 NYCRR Part 385.
- (ii) A family receiving public assistance when such services are needed for a child aged 13 or older, who has special needs or is under court supervision, in order to enable the child's parent(s) or caretaker relative(s) to engage in work as defined by the social services district.
- (iii) A family receiving public assistance when child care services are necessary:
 - (a) to enable a teenage parent to attend high school or an equivalency program; or
 - (b) for the child to be protected because the child's parent(s) or caretaker relative(s) is physically or mentally incapacitated or has family duties away from home necessitating his or her absence.
- (iv) A family with income up to 200 percent of the State income standard when the family is at risk of becoming dependent on public assistance and child care services are needed:
 - (a) for the child's caretaker(s) to be engaged in work as defined in section 415.1(o)(1) of this Part; or
 - (b) to enable a teenage parent to attend high school or an equivalency program.
- (3) Families that are eligible if funds are available under this program and if the social services district has listed such families as eligible in the district's consolidated services plan or integrated county plan. A social services district must provide child care services for an eligible child as defined in section 415.1(b) of this Title to a family eligible under this paragraph, to the extent that the district continues to have funds available under either the district's allocation for the State Child Care Block Grant program or any local funds appropriated for such program subject to any priorities and set asides established pursuant to subdivision (d) of this section, provided the social services district has listed such families as eligible families in the district's consolidated services plan or integrated county plan:

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- (i) A family receiving public assistance when child care services are necessary for a parent or caretaker relative to participate in an approved activity in addition to their required work activity.
- (ii) A family receiving public assistance when child care services are necessary for a sanctioned parent or caretaker relative to participate in unsubsidized employment whereby the parent or caretaker relative receives earned wages at a level equal to or greater than the minimum amount required under federal and State labor law.
- (iii) A family receiving public assistance or with income up to 200% of the State income standard when child care services are needed for the child to be protected because the child's caretaker is:
 - (a) participating in an approved substance abuse treatment program, or in screening for or an assessment of the need for substance abuse treatment;
 - (b) homeless or receiving services for victims of domestic violence and needs child care in order to participate in an approved activity, or in screening for or an assessment of the need for services for victims of domestic violence; or
 - (c) in an emergency situation of short duration including, but not limited to, cases where the caretakers absence from the home for a substantial part of the day is necessary because of extenuating circumstances such as a fire, being dispossessed from the home, seeking living quarters, or providing chore/housekeeper services for an elderly or disabled relative.
- (iv) A family is receiving public assistance or has income up to 200% of the State income standard and child care services are needed for the child's caretaker to attend a two year program other than one with a specific vocational sequence leading to an associates degree or a certificate of completion, or a four year college or university program leading to a bachelors degree provided:
 - (a) the program is reasonably expected to improve the earning capacity of the caretaker;
 - (b) the caretaker is and continues to participate in non-subsidized employment whereby the caretaker works at least 17 hours per week and earns wages at a level equal to or greater than the minimum amount required under federal and State labor law while pursuing the course of study; and

- (c) the caretaker can demonstrate his or her ability to successfully complete the course of study.
- (v) A family with an open child protective services case when it is determined on a case-by-case basis that such child care is needed to protect the child.
- (vi) A family with income up to 200% of the State income standard when child care services are needed for the child to be protected because the child's caretaker is physically or mentally incapacitated or has family duties away from home necessitating his or her absence.
- (vii) A family with income up to 200% of the State income standard when child care services are needed for the child's caretaker to participate in one of the following activities provided such activity is an allowable activity set forth in the social services district's consolidated services plan or integrated county plan and the district determines that the activity is a necessary part of a plan for the family's self-support:
 - (a) actively seeking employment as defined in section 415.1(p) of this part for a period of up to six months as established by the social services district in its consolidated services plan or integrated county plan, if the caretaker documents that he or she is currently registered with a New York State Department of Labors Division of Employment Services Office, provided that child care services will be available only for the portion of the day the family is able to document is directly related to the parent or caretaker engaging in such activities;
 - (b) educational or vocational activities including attendance in one of the following secondary or post-secondary programs:
 - (1) a public or private educational facility providing a standard high school curriculum offered by or approved by the local school district;
 - (2) an education program that prepares an individual to obtain a New York State high school equivalency diploma;
 - (3) a program providing basic remedial education in the areas of reading, writing, mathematics and oral communications for individuals functioning below the ninth month of the eighth grade level in those areas;

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- (4) a program providing literacy training designed to help individuals improve their ability to read and write;
 - (5) an English as a second language (ESL) instructional program designed to develop skills in listening, speaking, reading and writing the English language for individuals whose native or primary language is other than English;
 - (6) a two year full-time degree granting program at a community college , a two year college, or an undergraduate college with a specific vocational goal leading to an associate degree or certificate of completion within a determined time frame which must not exceed 30 consecutive calendar months;
 - (7) a training program which has a specific occupational goal and is conducted by an institution licensed or approved by the State Education Department other than a college or university;
 - (8) a prevocational skills training program such as a basic education and literacy training program; or
 - (9) a demonstration project designed for vocational training or other projects approved by the Department of Labor.
- (b) Title XX program.
- (1) To the extent that the social services district has made Title XX funds available for child care services, a family is eligible for child care services funded under Title XX of the federal social security act if the family meets one or more of the criteria set forth in subdivision (a) of this section or the child is in need of child care as a preventive service provided the social services district has listed such families as eligible families in the district's consolidated services plan or integrated county plan, subject to any applicable priorities and set asides established pursuant to subdivision (d) of this section.
 - (2) A social services district may establish in its consolidated services plan or integrated county plan upper income levels above 200 percent of the State income standard for families receiving child care services under the Title XX provided that the income levels do not exceed 275% of the State income standard for a family of one or two, 255% of the State income standard for a family of three, or 225% of the State income standard for a family of four or more.
- (c) Child care services during breaks in activities.

- (1) A social services district must provide New York State Child Care Block Grant services to families receiving public assistance, during breaks in activities, for a period of up to two weeks when the parent or caretaker relative is: engaged in work; participating in work activities or performing community service pursuant to Title nine-B of article five of the social services law; a teen parent attending high school or other equivalent training; physically or mentally incapacitated; or absent from the home due to family duties. Such child care services may be authorized for up to one month if child care arrangements would be lost if the services were not continued, and the program or employment is scheduled to begin within that one month period.
- (2) For all other families that are eligible under subdivisions (a) or (b) of this section, a social services district may provide child care services while the caretaker is waiting to enter an approved activity or employment or on a break between approved activities for a period not to exceed two weeks or for a period not to exceed one month where child care arrangements would otherwise be lost and the subsequent activity is expected to begin within that period.

Administrative Directive 05-OCFS-ADM-03 provides that, to the degree that a social services district has chosen to make funds available for low income child care services under Title XX of the Social Security Act, a family is eligible for child care services funded under Title XX if the family meets any of the programmatic eligibility criteria for the New York State Child Care Block Grant (NYSCCBG), or if the child is in need of child care as a preventive service, subject to any applicable priorities and set asides established in the district's most recently approved Consolidated Services Plan (CSP) or Integrated County Plan (ICP). To exercise this option, the district must identify the programmatically eligible families it chooses to include as eligible families in the district's CSP/ICP and receive approval from the Office. The district may opt to refine any of the optional categories so that a more specific population is selected by specifying any limitations to the programmatic eligibility criteria in its CSP/ICP. For Title XX funds, a district is permitted to establish within its CSP/ICP upper income levels that exceed 200% of the State Income Standard (SIS) for families receiving child care services, up to the maximum income levels of 275% of the State Income Standard for a family of one or two persons, 255% for a family of three persons, and 225% for a family of four or more persons.

DISCUSSION

Statute of Limitations

On November 2, 2015, the Agency notified the Appellant that it had determined to deny his application for child day care services. Although the Agency's notice advised the Appellant that a fair hearing must be requested within sixty days of its action, the Appellant failed to request this fair hearing until February 2, 2016, which was more than sixty days after the Agency's determination.

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The Appellant testified at the fair hearing with the assistance of an [REDACTED] interpreter. The Appellant stated that he has limited ability to read English and suffers from poor eyesight. He stated that members of his church assisted him in completing the application for child day care services and also assisted him in requesting the fair hearing due to such limitations in reading.

The Appellant's testimony regarding the reasons for which he did not request a fair hearing within sixty days after the issuance of the Agency's November 2, 2015 denial notice constitutes good cause to toll the applicable statute of limitations. Therefore, the merits of the Agency's November 2, 2015 denial notice will be addressed herein.

November 2, 2015 Denial Notice

The Agency Representative (AR) stated that the Appellant's household is not programmatically eligible for day care services under Albany County's Child and Family Services Plan because the Appellant's spouse is incapacitated and the Agency does not have sufficient daycare funding to provide services to households in which a parent/caretaker is ill or incapacitated. The AR stated that the Agency is currently providing child day care services to households in which both parents are working and income is at or below 125% of the federal poverty level. The AR presented a Comment Sheet for the Appellant's case in which an Agency caseworker noted that "they are applying for after school care, however they provided a 6 month old medical indicating W is unable to provide for herself and children" and a May 26, 2015 Disability Certificate from [REDACTED] which states that the Appellant's wife is totally incapacitated and she is "unable to independently care for herself, her children and her home". The AR also presented 15 OCFS/LCM 02 regarding New York State Child Care Block Grant Subsidy Program Allocations SFY 2015-2016, spreadsheets regarding Child Care Children Served for 2015 and 2016, a March 3, 2016 letter from the Deputy Commissioner of Division of Child Care Services at OCFS approving the Agency's 2016 Annual Plan Update to its Child and Family Services Plan effective March 3, 2016, and Appendices K and L of the Agency's 2016 Annual Plan Update. Inasmuch as the Appellant filed the application at issue in October 2015, prior to the effective date of the presented Annual Plan Update, the AR was asked to supplement the Agency's evidentiary packet with the 2015 Annual Plan Update. However, the AR thereafter presented only Appendices A through J of the Agency's January 1, 2012 through December 31, 2016 County Child and Family Services Plan, which do not pertain to child care administration and eligible families.

The Appellant stated that his wife is suffering from severe health issues and is unable to care for their children. He stated that his wife is being treated by five different medical providers. The Appellant testified that he and his family moved to the United States in January 2014 and he became employed with a work schedule from 2:30 p.m. until 11:00 p.m. on Monday through Friday each week. The Appellant stated that his church previously provided after school care from 2:30 p.m. until 7:00 p.m. after which his children returned home and went to bed. He stated that the church thereafter informed him that he must be approved for a child care subsidy

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in order for his children to continue attending the after school program and he was referred to the Agency. He testified that he attempted to inform the caseworker of his wife's medical inability to care for their children while he works. He stated that the church has since kicked his children out of the program because he was not approved for the child care subsidy.

The Agency's 2015 Annual Plan Update to its Child and Family Services Plan was obtained from the New York State Office of Children and Family Services official website. Pursuant to Appendix L, optional categories of eligible families that the Agency included as part of its County Plan using NYSCCBG funds with applicable limitations were listed, including:

Optional Categories	Option	Limitations
4. Families with income up to 200% of the State Income Standard when child care services are needed because the child's caretaker: a) is physically or mentally incapacitated	Yes	Allowed when the parent/caretaker provides a medical report that they are unable to care for their child(ren) 24/7. Circumstances of continued need will be periodically reviewed as necessary; every 6 months minimum.

Pursuant to Appendix M of the 2015 Annual Plan Update:

4. The district will select cases to be opened based on a combination of income and category of family.

Yes. List the categories and income groupings in the order that they will be opened:

In the event that insufficient funds are available, cases will be opened in the reverse order of case closings as follows:

1. Families that have a child with special needs.
2. Families with income at or below 125% of the State Income Standard (SIS).
3. Families with ill or incapacitated parent/caretakers.
4. Teen parents that need child care assistance to enable them to attend high school or an equivalency program.
5. Families with income between 150% and 126% of the SIS
6. Families with income between 175% and 151% of the SIS
7. Families with income between 200% and 176% of the SIS
8. Families that fall under Appendix L, with the exception of those families with ill or incapacitated parent/caretakers.

The record supports that the Agency's determination to deny the Appellant's application for child day care services on the grounds that his household is not programmatically eligible because his wife's present medical condition does not fulfill childcare eligibility requirements was not correct and is reversed. The reason for the Agency's denial on its November 2, 2015 notice and the reason presented by the AR at the fair hearing are contradictory. The Agency's 2015 Annual Plan Update to its Child and Family Services Plan specifically states that eligible families for child day care services include families with income up to 200% of the State Income Standard when child care services are needed because the child's caretaker is physically or mentally incapacitated. The Comment Sheet presented by the AR purports to deny the application because the medical documentation regarding the Appellant's spouse's disability was 6 months old. However, there is no indication that the Agency requested updated medical documentation from the Appellant's spouse to determine if she was still physically and/or mentally incapacitated and unable to care for her children. The Appellant's testimony that he attempted to explain to the Agency caseworker over the telephone that his spouse is medically unable to care for their children while he works is found credible. The Appellant's testimony throughout the fair hearing was detailed, consistent and plausible. Further, the Appellant displayed an honest and open demeanor, maintained eye contact and responded to questioning without hesitation. Although the Disability Certificate presented by the Appellant at application was in fact 5 months old, the record does not support that the Agency notified the Appellant to submit updated medical documentation to prove his spouse's incapacity.

Further, although the AR contended that the Agency is only funding child day care services to households in which both parents are working and in receipt of income at or below 125% of the federal poverty level, which was not a ground listed on the Agency's November 2, 2015 denial notice, the record failed to establish that the Agency had insufficient funding that justified lowering the income standard from 200% to 125%. For instance, the Agency could have introduced into evidence a letter from its Commissioner or financial department indicating that child care funding has been limited to establish that the income standard has been decreased.

Accordingly, the Agency is directed to continue processing the Appellant's October 30, 2015 application for child day care services, afford the Appellant the opportunity to submit any other documents necessary to establish eligibility and advise the Appellant in writing of its determination. If Appellant's household is determined to be eligible for child day care services, the Agency is directed to provide such benefits retroactive to the date of application.

DECISION AND ORDER

The Agency's determination to deny the Appellant's application for child day care services on the grounds that his household is not programmatically eligible because his wife's present medical condition does not fulfill childcare eligibility requirements was not correct and is reversed. The Agency is directed to:

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1. Continue processing the Appellant's October 30, 2015 application for child day care services and afford the Appellant the opportunity to submit any other documents necessary to establish eligibility.
2. Advise the Appellant in writing of its determination.
3. If Appellant's household is determined to be eligible for child day care services, the Agency is directed to provide such benefits retroactive to the date of application.

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
04/08/2016

NEW YORK STATE OFFICE OF
CHILDREN AND FAMILY SERVICES

By

A handwritten signature in black ink that reads "Robin Stroup". The signature is written in a cursive, flowing style.

Commissioner's Designee