
In the Matter of the Appeal of :

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DECISION
: AFTER
FAIR
HEARING
:

from a determination by the Suffolk County
Department of Social Services

JURISDICTION

This appeal is from a determination by the local Social Services Agency relating to the reduction and discontinuance of Appellant's Public Assistance, Medical Assistance and Food Stamp benefits. The Appellant also seeks a review of the adequacy of Adult Protective Services provided to her by the Agency.

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on December 2, 1988, July 19, 1989, July 27, 1989 and September 18, 1989, in Hauppauge, New York, before Richard S. Levchuck, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

A O , Appellant (on December 2, 1988 only)
Peter Vollmer, Esq., Appellant's Representative
Extie Taichman, Witness
(July 19, 1989, July 27, 1989 and September 18, 1989)

For the Local Social Services Agency

Christine Milazzo, Fair Hearing Representative
Joseph Murphy, Case Manager, Adult Protective Services
(July 19, 1989)

FACT FINDINGS

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:

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1. The Appellant, age fifty-two, had been in receipt of Public Assistance, Medical Assistance and Food Stamp benefits. The Appellant had also been in receipt of Adult Protective Services.

2. On November 28, 1986, the Agency advised the Appellant of its intention to discontinue her Public Assistance, Medical Assistance and Food Stamp benefits on the grounds that the Appellant failed to submit information regarding wages earned.

3. On December 9, 1986, the Agency advised the Appellant of its intention to reduce Appellant's Public Assistance in order to recover an overpayment of assistance in the amount of \$154.00 due to unreported income from employment, and to budget income from employment on an ongoing basis.

4. On February 3, 1987, the Agency advised the Appellant of its intention to discontinue her Public Assistance and Medical Assistance for failure respond to a letter dated January 21, 1987, requesting information regarding wages earned.

5. On March 24, 1987, the Agency advised the Appellant of its intention to discontinue her Public Assistance and Medical Assistance due to her failure to submit a medical report requested of her at a face-to-face recertification interview.

6. On April 9, 1987, the Agency advised the Appellant of its intention to discontinue Appellant's Public Assistance and Medical Assistance for the reason that she failed to report to the Public Works Project.

7. On June 12, 1987, the Agency advised the Appellant of its intention to discontinue Appellant's Public Assistance and Medical Assistance due to her failure to comply with employment requirements on May 9, 1987 and May 27, 1987.

8. On June 19, 1987, the Agency advised the Appellant of its intention to discontinue Appellant's Public Assistance and Medical Assistance due to her failure to comply with employment requirements on May 9, 1987 and May 27, 1987.

9. On August 6, 1987, the Agency advised the Appellant of its intention to discontinue Appellant's Public Assistance and Medical Assistance for failure to submit documentation requested of her at a face-to-face recertification interview.

10. On September 15, 1987, the Agency advised the Appellant of its intention to reduce her Public Assistance grant due to an increase in the amount of Public Assistance being recovered from her grant in order to recover an overpayment of assistance.

11. On November 4, 1987, the Agency advised the Appellant of its intention to reduce her Public Assistance grant for the reason that her grant was being cooperatively budgeted with that of her son.

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12. On November 13, 1987, the Agency advised the Appellant of its intention to discontinue her Public Assistance, Medical Assistance and Food Stamp benefits due to a failure to comply with employment related requirements.

13. On March 21, 1988, the Agency advised the Appellant of its intention to issue her shelter allowance in restricted form.

14. On April 4, 1988, the Agency advised the Appellant of its intention to suspend her Public Assistance and to discontinue her Medical Assistance, for failure to comply with employment-related requirements.

15. The Agency presented no evidence at the hearing to support its actions that it took pursuant to its Notices of Intent dated November 28, 1986, December 9, 1986, February 3, 1987, March 24, 1987, April 9, 1987, June 12, 1987, June 19, 1987, August 6, 1987, September 15, 1987, November 4, 1987, November 13, 1987, March 21, 1988 and April 4, 1988.

16. On May 19, 1988, the Agency advised the Appellant of its intention to discontinue her Public Assistance, Medical Assistance and Food Stamp benefits for failure to appear at her recertification interview.

17. On May 31, 1988, the Agency advised the Appellant of its intention to discontinue her Public Assistance and Medical Assistance for failure to submit information at recertification.

18. On June 20, 1988, the Agency advised the Appellant of its intention to discontinue her Public Assistance and Medical Assistance for failure to report to the Department of Labor on May 17, 1988.

19. The Appellant has been in receipt of Adult Protective Services from the Agency on an ongoing basis for the period from May of 1987 through June, 1989.

20. On July 17, 1988, a psychiatrist who had evaluated the Appellant pursuant to an application for Supplemental Security Income completed a report in which he stated that the Appellant is mentally retarded, illiterate, and is brain-injured.

21. In a separate report, the psychiatrist who evaluated the Appellant concluded that she is not capable of working.

22. On or about June 20, 1989, the Appellant traveled to Bloomville, New York, located in Delaware County. She has not returned to Suffolk County.

23. During this period, employees of the Appellant's representative made numerous attempts to contact Appellant's Adult Protective Services workers for the purpose of having the employment sanctions imposed on her removed, and to restore her Public Assistance and Medical Assistance.

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24. The Appellant's Adult Protective Services workers made no attempt to request the lifting of employment sanctions imposed on the Appellant by the Agency.

25. The Agency presented no direct evidence of any assistance provided to the Appellant by her Adult Protective Services workers in assisting her with obtaining Public Assistance, Medical Assistance and Food Stamp benefits.

26. The Appellant's representative presented no evidence at the hearing to show that the Agency had denied him access to Appellant's case record.

27. On June 27, 1988, the Appellant requested a fair hearing to review the Agency's determination to discontinue her Public Assistance and Medical Assistance dated June 20, 1988. On July 25, 1988, the Appellant's representative amended the request for a fair hearing to include a review of the other determinations by the Agency hereinbefore discussed.

ISSUES

Was the Appellant's request for a fair hearing to review the Agency's determination dated November 28, 1986, to discontinue Appellant's Public Assistance, Medical Assistance and Food Stamp benefits because the Appellant failed to submit information regarding wages earned timely?

Assuming that the Appellant's request for a fair hearing was timely, was the Agency's determination dated November 28, 1986, to discontinue Appellant's Public Assistance, Medical Assistance and Food Stamp benefits because the Appellant failed to submit information regarding wages earned correct?

Was the Appellant's request for a fair hearing to review the Agency's determination dated December 9, 1986, to reduce Appellant's Public Assistance benefits in order to recover an overpayment of assistance in the amount of \$154.00 due to unreported income from employment, and to budget income from employment on an ongoing basis timely?

Assuming that the Appellant's request for a fair hearing was timely, was the Agency's determination dated December 9, 1986, to reduce Appellant's Public Assistance, in order to recover an overpayment of assistance in the amount of \$154.00 due to unreported income from employment, and to budget income from employment on an ongoing basis correct?

Was the Appellant's request for a fair hearing to review the Agency's determination dated February 3, 1987, to discontinue Appellant's Public Assistance and Medical Assistance because the Appellant failed to respond to a letter dated January 21, 1987, requesting information regarding wages earned timely?

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Assuming that the Appellant's request for a fair hearing was timely, was the Agency's determination dated February 3, 1987, to discontinue Appellant's Public Assistance, Medical Assistance and Food Stamp benefits because the Appellant failed to respond to a letter dated January 21, 1987, requesting information regarding wages earned correct?

Was the Appellant's request for a fair hearing to review the Agency's determination dated March 24, 1987, to discontinue Appellant's Public Assistance and Medical Assistance because the Appellant failed to submit a medical report requested of her at a face-to-face recertification interview timely?

Assuming that the Appellant's request for a fair hearing was timely, was the Agency's determination dated March 24, 1987, to discontinue Appellant's Public Assistance and Medical Assistance because the Appellant failed to submit a medical report requested of her at a face-to-face recertification interview correct?

Was the Appellant's request for a fair hearing to review the Agency's determination dated April 9, 1987, to discontinue Appellant's Public Assistance and Medical Assistance because the Appellant failed to report to the Public Works Project timely?

Assuming that the Appellant's request for a fair hearing was timely, was the Agency's determination dated April 9, 1987, to discontinue Appellant's Public Assistance and Medical Assistance because the Appellant failed to report to the Public Works Project correct?

Was the Appellant's request for a fair hearing to review the Agency's determination dated June 12, 1987, to discontinue Appellant's Public Assistance and Medical Assistance because the Appellant failed to comply with employment requirements on May 9, 1987 and May 27, 1987 timely?

Assuming that the Appellant's request for a fair hearing was timely, was the Agency's determination dated June 12, 1987, to discontinue Appellant's Public Assistance and Medical Assistance because the Appellant failed to comply with employment requirements on May 9, 1987 and May 27, 1987 correct?

Was the Appellant's request for a fair hearing to review the Agency's determination dated June 19, 1987, to discontinue Appellant's Public Assistance and Medical Assistance because the Appellant failed to comply with employment requirements on May 9, 1987 and May 27, 1987 correct?

Assuming that the Appellant's request for a fair hearing was timely, was the Agency's determination dated June 19, 1987, to discontinue Appellant's Public Assistance and Medical Assistance because the Appellant failed to comply with employment requirements on May 9, 1987 and May 27, 1987 correct?

Was the Appellant's request for a fair hearing to review the Agency's determination dated August 6, 1987, to discontinue Appellant's Public

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Assistance and Medical Assistance because the Appellant failed to submit documentation requested of her at a face-to-face recertification interview timely?

Assuming that the Appellant's request for a fair hearing was timely, was the Agency's determination dated August 6, 1987, to discontinue Appellant's Public Assistance and Medical Assistance because the Appellant failed to submit documentation requested of her at a face-to-face recertification interview correct?

Was the Appellant's request for a fair hearing to review the Agency's determination dated September 15, 1987, to reduce Appellant's Public Assistance grant due to an increase in the amount of Public Assistance being recovered from her grant in order to recover an overpayment of assistance timely?

Assuming that the Appellant's request for a fair hearing was timely, was the Agency's determination dated September 15, 1987, to reduce Appellant's Public Assistance grant due to an increase in the amount of Public Assistance being recovered from her grant in order to recover an overpayment of assistance correct?

Was the Appellant's request for a fair hearing to review the Agency's determination dated November 4, 1987, to reduce Appellant's Public Assistance because the Appellant's Public Assistance grant was being cooperatively budgeted with that of her son timely?

Assuming that the Appellant's request for a fair hearing was timely, was the Agency's determination dated November 4, 1987, to reduce Appellant's Public Assistance because the Appellant's Public Assistance grant was being cooperatively budgeted with that of her son correct?

Was the Appellant's request for a fair hearing to review the Agency's determination dated November 13, 1987, to discontinue Appellant's Public Assistance, Medical Assistance and Food Stamp benefits because the Appellant failed to comply with employment-related requirements timely?

Assuming that the Appellant's request for a fair hearing was timely, was the Agency's determination dated November 13, 1987, to discontinue Appellant's Public Assistance, Medical Assistance and Food Stamp benefits because the Appellant failed to comply with employment-related requirements correct?

Was the Appellant's request for a fair hearing to review the Agency's determination dated March 21, 1988, to issue the Appellant's shelter allowance in restricted form timely?

Assuming that the Appellant's request for a fair hearing was timely, was the Agency's determination dated March 21, 1988, to issue the Appellant's shelter allowance in restricted form correct?

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Was the Appellant's request for a fair hearing to review the Agency's determination dated April 4, 1988, to suspend Appellant's Public Assistance and to discontinue Medical Assistance because the Appellant failed to comply with employment-related requirements timely?

Assuming that the Appellant's request for a fair hearing was timely, was the Agency's determination dated April 4, 1988, to suspend Appellant's Public Assistance and discontinue her Medical Assistance because the Appellant failed to comply with employment-related requirements correct?

Was the Agency's determination dated May 19, 1988, to discontinue Appellant's Public Assistance, Medical Assistance and Food Stamp benefits correct?

Was the Agency's determination dated May 31, 1988, to discontinue Appellant's Public Assistance and Medical Assistance correct?

Was the Agency's determination dated June 20, 1988, to discontinue Appellant's Public Assistance and Medical Assistance because she failed to report to its Department of Labor on May 17, 1988 correct?

Was the failure of the Agency to provide Appellant's representative with access to the Appellant's case record correct?

Was the Agency's determination with regard to the adequacy of Adult Protective Services provided to the Appellant correct?

Was the failure of the Agency's Income Maintenance workers to refer the Appellant to Adult Protective Services correct?

APPLICABLE LAW

Section 22 of the Social Services Law provides that a request for a fair hearing to review an Agency's determination must be made within sixty days of the date of the Agency's action or failure to act.

The Food Stamp Program is a federal program regulated by the United States Department of Agriculture Food and Nutrition Service. Program regulations are set forth in the Code of Federal Regulations (7 CFR). Section 273.15 of 7 CFR requires that a state must provide a fair hearing to any household aggrieved by an action which affects the household's participation in the Food Stamp Program. New York Department of Social Services Regulations at 18 NYCRR 358-3.1 set forth the situations in which an applicant or recipient has a right to a fair hearing.

A person is allowed to request a fair hearing on any action of a local social services agency relating to food stamp benefits or loss of food stamp benefits which occurred in the ninety days preceding the request for a hearing. Such action includes a denial of a request for restoration of any

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benefits lost more than ninety days but less than a year prior to the request. In addition, at any time within the period for which a person is certified to receive food stamp benefits, such person may request a fair hearing to dispute the current level of benefits. Social Services Law Section 22.4(b), 18 NYCRR 358-3.1, 18 NYCRR 358-3.5, 7 CFR 273.15.

Section 131 of the Social Services Law and Section 385.5 of the Regulations of the State Department of Social Services provide that as a condition of eligibility for assistance, employable recipients of Public Assistance are required to report to the State Job Service for employment or training interviews, accept referrals to employment, accept employment or training, participate in training or job services and actively and diligently search for employment. Section 385.14(e) of the Department's Regulations provide that a recipient who without good cause fails or refuses to comply with employment requirements shall be disqualified for the first violation from receiving Home Relief for at least thirty days and until such time as the recipient is willing to comply with employment requirements. In case of a second violation within three years of the first instance of willful noncompliance such recipient is disqualified from receiving Home Relief for sixty days and until such time as the recipient is willing to comply with the requirements. There is a ninety day disqualification for the third and all subsequent violations within a three year period beginning with the most recent instance of willful noncompliance without good cause.

Social Services Law Section 131.5 and Section 385.14(c) of the Department's Regulations require the Agency to comply with certain procedures prior to disqualifying an employable recipient from receiving assistance. The Agency must issue a Notice of Intent at least ten days prior to a proposed discontinuance or reduction of assistance, informing the recipient that the discontinuance or reduction of assistance will become effective unless the recipient contacts the Agency within ten days to explain the recipient's failure to comply with the employment requirements. It is the recipient's responsibility to give reasons for such non-compliance. If the recipient responds to such notice within the ten day period, the Agency must determine whether the recipient's reasons satisfactorily explain the recipient's non-compliance.

If the Agency determines that the facts as presented show that the non-compliance was not willful or was for good cause, the initial ten day Notice of Intent to discontinue or reduce assistance must be cancelled.

If the Agency determines that such facts do not satisfactorily explain the recipient's refusal or failure to comply with employment requirements, the Agency must issue a new ten day Notice of Intent to discontinue or reduce assistance which includes the reasons for such determination. This second notice must advise the recipient of his/her right to challenge the Agency's determination to discontinue or reduce assistance. At the hearing, it is the responsibility of the recipient to give reasons for his/her non-compliance.

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Under section 366 of the Social Services Law a person who requires Medical Assistance is eligible for such assistance where such person:

- (a) is receiving or is eligible for Home Relief or Aid to Dependent Children or Supplemental Security Income;
- (b) although not receiving or in need of public assistance or care, has not sufficient income and resources to meet all the costs of medical care and services available under the Medical Assistance Program and such person is:
 - (i) under the age of 21; or
 - (ii) 65 years of age or older; or
 - (iii) the spouse of a cash Public Assistance recipient living with him/her and essential or necessary to his/her welfare and whose needs are taken into account in determining his/her cash payments; or
 - (iv) for reasons other than income or resources, is eligible for Aid to Dependent Children or Supplemental Security Income and/or additional state payments.
- (c) is at least 21 years of age but under the age of 65 and is not receiving or eligible to receive home relief or aid to dependent children and:
 - (i) who is the parent of a dependent child under the age of 21; and
 - (ii) who lives with such child; and
 - (iii) whose net income, without deducting the amount of any incurred medical expenses, does not exceed the net income exemption set forth in section 366.2(a)(8) of the Social Services Law.

Department Regulations at 18 NYCRR 360.3(c) provide that for a person who does not meet the criteria set forth above, other than financial, eligibility for Medical Assistance must be determined on the basis of that person's eligibility for Home Relief in accordance with the requirements of 18 NYCRR Part 352.

Federal Regulations at 7 CFR 273.7(b) and Departmental Regulations at 18 NYCRR 387.13(a) provide that each household member who is not exempt from the work registration requirements of the Food Stamp Program must register for employment.

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To be exempt from the work registration requirements a person must be:

- physically or mentally unfit for employment.

Persons registered for work shall:

- (1) participate in an employment and training program if assigned by the local Agency;
- (2) respond to a request from the Agency for supplemental information regarding employment status or availability for work;
- (3) report to an employer to whom referred by the agency if the potential employment meets the suitability requirements described in 7 CFR 273.7(i) and 18 NYCRR 387.13(k); and
- (4) accept a bona fide offer of suitable employment at a wage not less than the higher of either the applicable State or Federal minimum wage.

7 CFR 273.7(e); 18 NYCRR 387.13(d).

Persons required to register for work and who are not exempt from placement may be required to participate in the following employment and training programs:

- (1) independent job search
- (2) job search training program.

If the Agency determines that an individual other than the head of household (principal wage earner) has refused or failed without good cause to comply with work registration requirements, including employment and training programs, that individual is ineligible to receive Food Stamp benefits for two months. If the head of household fails to comply, the entire household is ineligible for Food Stamp benefits for the two month period. 7 CFR 273.7(g); 18 NYCRR 387.13(e)(1).

The head of household is the principal wage earner. The principal wage earner is the household member (including members excluded for Food Stamp budget purposes) who is the greatest source of earned income in the two months prior to the month of violation. This provision applies only if the employment involves 20 hours or more per week or provides weekly earnings at least equivalent to the Federal minimum wage multiplied by 20 hours. No person of any age living with a parent or person acting as parent, who is work-registered, a Work Incentive Program participant, a recipient of unemployment compensation benefits or registered for work as part of the unemployment compensation application process, or is employed or self-employed and working a minimum of 30 hours weekly or receiving weekly

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earnings equal to the Federal minimum wage multiplied by 30 hours shall be considered the head of household. If there is no principal source of earned income in the household, the household may designate the head of household. 7 CFR 273.1(b)(2); 18 NYCRR 387.13(h).

Eligibility may be re-established if the household member who caused the disqualification leaves the household, becomes exempt other than by participation in the Work Incentive Program or receipt of Unemployment Insurance Benefits, or complies with the requirements as follows:

for refusal to register - register;

for refusal to respond to a request for supplemental information regarding employment status or availability for work - complies with the request;

for refusal to report to an employer - reports to this employer if work still available or another employer if referred;

for refusal to accept offer of suitable employment - accepts the employment if available or secures other employment yielding equivalent earnings; and

for refusal to comply with assignment as part of an approved employment and training program - complies with the assignment or an alternative assignment made by the agency.

7 CFR 273.7(h); 18 NYCRR 387.13(f)(2).

In addition, a sanctioned household may reestablish eligibility if a new and eligible person joins the household as its head of household. 7 CFR 273.7(g)(1); 18 NYCRR 387.13(f)(2).

Prior to sending a notice of adverse action, the Agency must determine whether good cause for non-compliance with work registration requirements exists. In determining whether good cause exists, the Agency must consider the facts and circumstances, including information submitted by the household member involved and the employer. Good cause shall include circumstances beyond the member's control such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, the unavailability of transportation, or the lack of adequate child care for children who have reached age six but are under age 12. 7 CFR 273.7(m); 18 NYCRR 387.13(g).

Where Food Stamp benefits are lost due to an error by the Agency, the Agency is required to restore lost benefits. However, lost benefits shall be restored for not more than twelve months prior to whichever of the following occurred first:

1. The date the Agency received a request for restoration from a household; or

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2. The date the Agency is notified or otherwise becomes aware that a loss to a household has occurred.

7 CFR 273.17; 18 NYCRR 387.18 and Department of Social Services Food Stamp Source Book, Section X-H-1.

Department Regulations at 18 NYCRR 351.20 provide that continuing eligibility for Public Assistance must be established through the process of face-to-face recertification interviews. From time to time recipients of Public Assistance are required personally to appear at recertification interviews and to present appropriate documentation to demonstrate their continuing eligibility for such assistance.

Section 351.22 of the Regulations provides that if a recipient fails to appear at a scheduled interview without good cause, the Agency must send a notice of proposed discontinuance to the recipient. If the recipient appears at the Agency during the ten day period, an interview must be scheduled. If the recipient is found to be eligible as a result of such interview, the ten day notice of proposed discontinuance must be cancelled and the recipient's Public Assistance must be continued.

Prior to discontinuing a Public Assistance household's Authorization to Participate in the Food Stamp Program due to failure to recertify for Public Assistance purposes, the Agency must send a written notice just before or at the beginning of the last month of the household's current Food Stamp certification period. The Agency may not discontinue Food Stamp benefits for failure to report to the Public Assistance recertification interview without first determining whether the household is eligible for Food Stamp benefits as a non-Public Assistance household. If the household fails to recertify by the end of its Food Stamp certification period, its Food Stamp Authorization will expire at the end of that period.

An Agency may discontinue Medical Assistance benefits to a recipient who fails without good cause to appear at a Public Assistance recertification interview provided that the recipient specifically has been advised that the Public Assistance recertification interview was scheduled also for the purpose of recertifying the recipient's Medical Assistance eligibility.

Agencies are required to take all necessary steps to correct any overpayment or underpayment of assistance to a Public Assistance recipient. Overpayments shall include payments made to an eligible person in excess of his/her needs and payments made to an ineligible person. In addition, overpayments shall include aid-continuing payments made to such person pending a fair hearing decision. Social Services Law Section 106-b; 18 NYCRR 352.31(d).

If the Agency establishes that a recipient endorsed and cashed a \$50.00 support pass-through payment which he/she has reported lost or stolen and which has been replaced, the amount of such check must be recovered from subsequent pass-through payment or recouped from the recipient in accordance with 18 NYCRR 352.31(d).

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If a recipient endorsed and cashed an allegedly lost or stolen check which has been replaced, the amount of such check must be recovered from the recipient. 18 NYCRR 352.7(g)(1)(iii).

The Agency must recover the overpayment from:

- (1) the assistance unit which was overpaid;
- (2) any assistance unit of which a member of the overpaid assistance unit subsequently has become a member; or
- (3) any individual members of the overpaid assistance unit, whether or not currently a recipient.

The proportion of the current assistance grant deductible for recoupment of an overpayment is ten percent of the household needs unless undue hardship is claimed and substantiated, in which case the recoupment shall be at a rate not less than five percent of the household needs. However, when the grant amount is less than ten percent of such needs, or less than five percent in undue hardship situations, the full grant shall be recouped. 18 NYCRR 352.31(d).

Sections 351.1 and 351.2 of Department Regulations require that to demonstrate eligibility, applicants for and recipients of Public Assistance must present appropriate documentation of such factors as identity, residence, family composition, rent payment or cost of shelter, income, savings or other resources and, for aliens, of lawful residence in the United States. Section 351.6 of the Regulations provides that verification of data is an essential element of the eligibility investigation process. The recipient is the primary source of the required information. However, the Agency must make collateral investigation when the recipient is unable to provide verification. 18 NYCRR 351.5 and 351.6. The applicant's or recipient's failure or refusal to cooperate in providing necessary information is a ground for denying or discontinuing Public Assistance.

Section 360.4 of the Regulations provides that verification of data is an essential element of the Medical Assistance eligibility investigation process. The recipient is the primary source of the required information. However, the Agency must make collateral investigation when the recipient is unable to provide verification. The applicant's or recipient's failure or refusal to cooperate in providing necessary information is a ground for denying an application for a Medical Assistance Authorization or for discontinuing such benefits.

Section 360.16(c) of the Regulations provides that an initial authorization for Medical Assistance will be made effective back to the first day of the first month for which eligibility is established. A retroactive authorization may be issued for medical expenses incurred during the three month period preceding the month of application for Medical Assistance, if the applicant was eligible for Medical Assistance in the month such care or services were received.

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Section 360.17(a)(4) of the Regulations provides that when an erroneous determination of eligibility by the Agency is reversed, payments for medical care covered under the Medical Assistance Program may be made to the recipient or his/her representative when such person paid for such care. Payment is limited to the rate or fee established under the Medical Assistance Program at the time the service was provided.

Certified households are required to report changes in sources of income or changes in the amount of gross monthly income in excess of \$25.00 (except changes in the Public Assistance grant), all changes in household composition, changes in residence and the resulting change in shelter costs, the acquisition of a non-exempt licensed vehicle, any change in deductible medical expenses of more than \$25.00 and when resources reach or exceed a total of \$2000.00. A certified household must report such change within ten days of the date the change becomes known to the household. Such change can be reported on the State-prescribed form or by telephone. 7 CFR 273.12(a); 18 NYCRR 387.17(e)(1) and (2).

All changes which result in an increase in a household's benefits shall be verified prior to taking action on such changes. The household shall be allowed ten days from the date the change is reported to provide the required verification. The time frames for issuing the benefit shall run from the date the change was reported, not from the date of verification. Should the household fail to provide the required verification within ten days after the change is reported but provide verification at a later date, then the time frames shall run from the date verification is provided rather than from the date the change is reported. When the local agency fails to take action on a change which increases a household's benefits within the time limits specified above, all lost benefits shall be restored to the household. For changes which result in an increase in a household's benefits due to the addition of a new household member or due to a decrease of \$50.00 or more in the household's gross monthly income, the local Agency shall make the change effective not later than the first allotment issued ten days after the date the change was reported. However, in no event shall these changes take effect any later than the month following the month in which the change was reported. 7 CFR 273.12(c)(1); 18 NYCRR 387.17(e)(3).

The local agency shall act upon upon changes that decrease a household's benefit level or make a household ineligible to participate in the Food Stamp Program no later than the allotment for the month following the month in which the notice of adverse action period has expired, provided a fair hearing and continuation of benefits have not been requested. 7 CFR 273.12(c)(2); 18 NYCRR 387.17(e)(3)(ii).

Changes reported during a Food Stamp certification period shall be subject to the same verification procedures which apply at initial certification. However, the local Agency is not required to verify income, medical expenses, or actual utility expenses if the source has not changed and the amount has changed by \$25.00 or less since the last verification. 7 CFR 273.2(f)(8); 18 NYCRR 387.8(c)(5).

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Food Stamp recertification verification is required on changes in income, medical expenses, and actual utility costs claimed by the household whenever the source has changed, or the amount has changed by more than \$25.00 since the last verification was completed, for any or all of these items. Newly obtained social security numbers, changes in household circumstances, and any other information which is questionable are subject to the verification standards that apply at the initial certification of the household. 7 CFR 273.2(f)(8); 18 NYCRR 387.8(c)(6).

Pursuant to Department Regulations at 18 NYCRR 358-3.1, a person has a right to a fair hearing if assistance or benefits or services are denied, reduced, discontinued or suspended. In addition, there is a right to a hearing when:

- a. an application for assistance, benefits or services is not acted upon in a timely manner;
- b. a Public Assistance grant, Food Stamp benefits or a Medical Assistance Authorization is increased;
- c. the manner, method or form of payment of a Public Assistance grant has been changed;
- d. a restricted payment is made or continued;
- e. a Medical Assistance Authorization is restricted;
- f. there is objection to a payee on a restricted payment;
- g. assistance or benefits or services being provided are inadequate;
- h. although there has been no change in the Public Assistance grant, Food Stamp benefits or Medical Assistance spenddown, the Agency has changed any item of the computation of such assistance, benefits or spenddown;
- i. a request for restoration of Food Stamp benefits lost less than one year prior to the request has been denied; the person objects to the amount restored or any other action taken by the Agency to restore such benefits;
- j. the fee being charged for a service has been increased and the increase is not based on a change in the fee schedule itself;

- k. there is objection to the amount deducted from the initial payment of Supplemental Security Income as reimbursement of public assistance; or
- l. there is objection to a determination of employability;
- m. a sponsor of an alien receiving food stamp benefits for whom there has been an overissuance of benefits for which the sponsor is being held liable objects to the amount for which such sponsor is being held liable or the determination that such sponsor was responsible for incorrect information being provided which resulted in the overissuance;
- n. the reimbursement claim of a relative or friend of a deceased recipient of Public Assistance or care who paid for burial arrangements of such deceased person has been denied.

DISCUSSION

The record in this case establishes that with regard to the Agency's notices dated November 28, 1986, December 9, 1986, February 3, 1987, March 24, 1987, April 9, 1987, June 12, 1987, June 19, 1987, August 6, 1987, September 15, 1987, November 4, 1987, November 13, 1987, March 21, 1988 and April 4, 1988, the Appellant's request for a fair hearing was made more than sixty days after the determinations for which relief is being requested. However, the evidence also establishes that the Appellant is mentally retarded and brain injured, and could not have had the capacity to understand the requirement that a fair hearing must be requested within sixty days of an Agency's determination. Although a social worker from Nassau/Suffolk Law Services had been involved with the Appellant and her family prior to and during the period of time in which the aforementioned actions were taken by the Agency, their involvement during this time was limited to attempting to obtain Adult Protective Services for the Appellant

This worker testified at the hearing that her advocacy on behalf of the Appellant was limited to securing of Adult Protective Services for the Appellant and that the Appellant did not provide her with copies of the Agency's Notices of Intent. She further testified that she did not refer the Appellant's case to legal counsel until May of 1988 when it became apparent to her that the Appellant was in need of legal assistance.

The evidence in this case further establishes the Appellant was in receipt of Adult Protective Services during this time. However, the evidence in this case also establishes that the Appellant's Adult Protective Services Workers did not provide her with assistance or advocacy to get her benefits restored, nor did they assist her in obtaining an exemption from the Agency's employment requirements and preventing the numerous actions implemented by the Agency to discontinue her assistance.

The Agency's involvement with the provision of Adult Protective Services to the Appellant outweighed that of her representative and dictated that a more active role on the part of the Agency should have been taken to guide the Appellant to the fair hearing process. Accordingly, a valid basis for tolling the Statute of Limitations has been established.

At the hearing, the Agency presented no evidence to support any of its actions for which the notices set forth above were issued. The Agency merely took the position that a review of these notices was time barred. Inasmuch as the Statute of Limitations has been tolled for the reasons hereinbefore stated and, in the absence of any evidence to support these notices, the Agency's determinations dated November 28, 1986, December 9, 1986, February 3, 1987, March 24, 1987, April 9, 1987, June 12, 1987, June 19, 1987, August 6, 1987, September 15, 1987, November 9, 1987, November 13, 1987, and April 4, 1988 cannot be sustained. Although the Agency contended at the hearing that it was only notified of a request for a fair hearing on the applicability of the Statute of Limitations with regard to these notices, this contention is without merit, as Appellant's representative's amended fair hearing requested dated July 25, 1988, clearly sets forth a request for review of the merits of the Agency's actions.

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With regard to the Notice of Intent to restrict Appellant's shelter allowance dated March 21, 1988, inasmuch as the Appellant has moved and is no longer a recipient of Public Assistance from the Agency, the Agency's action to restrict her shelter allowance is moot and need not be decided.

At the hearing, the Agency presented evidence which indicated its intention to withdraw its Notice of Intent to discontinue Public Assistance, Medical Assistance and Food Stamp benefits dated May 19, 1988, and also withdraw its Notice of Intent to discontinue Public Assistance and Medical Assistance dated May 31, 1988. The Agency agreed to take no action on these notices, and to restore any assistance lost to the Appellant as a result of its action.

Regarding the Agency's determination dated June 20, 1988, to discontinue Appellant's assistance for failure to report to its Department of Labor on May 17, 1988, the evidence in this case establishes that the Appellant had an active Adult Protective Services case at the time she had been requested to report to the Department of Labor. At the hearing, a social worker from the office of Appellant's representative testified of repeated efforts on her part to obtain an exemption from the Agency's employment requirements for the Appellant through the Appellant's Adult Protective Services worker. She testified that the Appellant had been unable to obtain a psychiatric evaluation due to repeated actions by the Agency to discontinue Appellant's Medical Assistance. The Appellant's Adult Protective Services worker should have advised the Agency's employment program that the Appellant was suffering from psychological problems and mental illness that resulted in the need for protective services. The Appellant should not have been mandated to participate in the Agency's employment program in view of her subsequently diagnosed mental illness. Accordingly, the Agency's determination to discontinue Appellant's assistance for failure to report to the Department of Labor cannot be sustained.

It is noted that the Agency objected to the absence of the Appellant on three of the dates that the hearing was scheduled for. However, with regard to the disposition of the issues hereinbefore discussed, the Appellant's presence or testimony was not necessary for an adjudication of the issues, as the Agency presented no evidence to support its determination on the merits of any of the issues except for its notice dated June 20, 1988. The Agency merely cited the Statute of Limitations with regard to its other notices.

The Agency gave no indication on any of the hearing dates that it desired to have a qualified psychiatrist of its own choosing examine Appellant for the purpose of determining whether or not she was competent enough to understand her obligation to request a fair hearing prior to the expiration of the Statute of Limitations. The Appellant's representative presented a psychiatric evaluation which attested to his contention that the Appellant is of diminished mental capacity. The Agency had sufficient opportunity prior to the Appellant's leaving Suffolk County and between that dates that this hearing had been scheduled to conduct its own psychiatric

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evaluation of the Appellant for the purpose of establishing his competence. Furthermore, inasmuch as the Appellant's mental condition was dispositive of the Agency's action dated June 20, 1988, to sanction Appellant for non-compliance with employment requirements, the Appellant's absence at the hearing cannot be reviewed as prejudicial to the Agency absent a showing that it intended to conduct its own evaluation of her mental condition by a qualified professional.

There is no provision in the Regulations for a right to a fair hearing where access to a case record has been denied by the Agency. Nonetheless, the Agency is reminded of its obligation to provide Appellant's representative with access to Appellant's case record.

Lastly, the Appellant's representative seeks a review of the adequacy of Adult Protective Services provided to the Appellant, and the failure of the Agency's Income Maintenance personnel to refer the Appellant to Adult Protective Services. At the hearing, the Appellant's representative acknowledged that no relief can be granted at this time because the Appellant has moved, and is no longer in receipt of either Public Assistance or Adult Protective Services. Rather, Appellant's representative seeks a directive for similar cases pursuant to Department Regulations at 18 NYCRR 358-6.3, demanding additional training for Adult Protective Services workers and coordination of their efforts with the staff of the Agency's Income Maintenance Center. In this case, however, the Appellant's representative attempted to show that a social worker from his office repeatedly contacted Appellant's Adult Protective Services worker and that the Appellant's Protective Services worker failed to adequately evaluate the Appellant's needs and mental impairments, and need for protective services intervention, and failed to assist in securing and/or maintaining Public Assistance, Medical Assistance and Food Stamp benefits. In addition, Appellant's representative also contends that the responsibility for providing protective services was improperly delegated to his office by the Agency, that the Agency failed to arrange for the provision of psychiatric or psychological services to the Appellant, and failed to maintain an adequate service plan and progress notes.

The Appellant's representative also alleges a failure on the part of the Agency's Adult Protective Services workers to interface with income maintenance workers from the Agency to secure documentation and to lift employment sanctions. However, while the Agency may not have acted properly with regard to the Appellant, there was no evidence presented of a manifest disregard or misapplication of law, Department Regulations, or the Agency's own State-approved policy. At the hearing, the Appellant's representative cited an article from Newsday to support his request for such a directive. However, the facts contained in the case mentioned in the article were dissimilar to those contained in the instant case. In addition, the social worker who testified at the hearing on behalf of the Appellant only testified as to the facts of this case. There was no evidence presented of a failure to coordinate the efforts of Adult Protective Services workers and Income Maintenance Center staff in similar cases.

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Accordingly, the record does not support the issuance of such a directive at this time.

At the hearing, the Agency objected to the absence of the Appellant from all of the proceedings except for December 2, 1988. The Appellant has apparently left Suffolk County and traveled to Delaware County during the month of June, 1989, and has not been heard from since. However, the Appellant's presence was not necessary in determining whether or not the actions of the Agency were correct.

The Agency also objected to the correction of assistance underpaid to the Appellant as she is currently no longer a recipient of Public Assistance. However, the Appellant was a recipient of Public Assistance at the time the hearing was initially held, and should not be penalized for delays beyond her control in the rendering of a decision.

DECISION AND ORDER

The determination of the Agency dated November 28, 1986, to discontinue Appellant's Public Assistance, Medical Assistance and Food Stamp benefits is not correct and is reversed.

The determination of the Agency dated December 9, 1986, to reduce Appellant's Public Assistance is not correct and is reversed.

The determination of the Agency dated February 3, 1987, to discontinue Appellant's Public Assistance and Medical Assistance is not correct and is reversed.

The determination of the Agency dated March 24, 1987, to discontinue Appellant's Public Assistance and Medical Assistance is not correct and is reversed.

The determination of the Agency dated April 9, 1987, to discontinue Appellant's Public Assistance and Medical Assistance is not correct and is reversed.

The determination of the Agency dated June 12, 1987, to discontinue Appellant's Public Assistance and Medical Assistance is not correct and is reversed.

The determination of the Agency dated June 19, 1987, to discontinue Appellant's Public Assistance and Medical Assistance is not correct and is reversed.

The determination of the Agency dated August 6, 1987, to discontinue Appellant's Public Assistance and Medical Assistance is not correct and is reversed.

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The determination of the Agency dated September 15, 1987, to reduce Appellant's Public Assistance is not correct and is reversed.

The determination of the Agency dated November 4, 1987, to reduce Appellant's Public Assistance is not correct and is reversed.

The determination of the Agency dated November 13, 1987, to discontinue Appellant's Public Assistance, Medical Assistance and Food Stamp benefits is not correct and is reversed.

The determination of the Agency dated April 4, 1988, to suspend Appellant's Public Assistance and to discontinue her Medical Assistance is not correct and is reversed.

The determination of the Agency dated June 20, 1988, to discontinue Appellant's Public Assistance and Medical Assistance is not correct and is reversed.

1. The Agency is directed to restore any Public Assistance and Medical Assistance lost to the Appellant as a result of its Notices of Intent dated November 28, 1986, December 9, 1986, February 3, 1987, March 24, 1987, April 9, 1987, June 12, 1987, June 19, 1987, August 6, 1987, September 15, 1987, November 4, 1987, November 13, 1987, April 4, 1988 and June 20, 1988.

2. The Agency is directed to advise the Appellant that Food Stamp benefits lost to her as a result of its Notices of Intent dated November 28, 1986, November 13, 1987 and June 20, 1988, will be issued by her current county of residence.

In accordance with its agreements entered into at the hearing, the Agency, if it has not already done so, is directed to take the following actions:

1. The Agency is directed to cancel its Notice of Intent to discontinue Public Assistance, Medical Assistance and Food Stamp benefits dated May 19, 1988.

2. The Agency is directed to cancel its Notice of Intent to discontinue Public Assistance and Medical Assistance dated May 31, 1988.

3. The Agency is directed to restore any Public Assistance lost to the Appellant as a result of its notices dated May 19, 1988 and May 31, 1988.

4. The Agency is directed to advise the Appellant that Food Stamp benefits lost to her as a result of its Notice of Intent dated May 19, 1988, will be issued by her current county of residence.

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5. The Agency is directed to contact Appellant's current county of residence and provide her current county of residence with documentation verifying her entitlement to lost benefits.

Regarding the adequacy of Adult Protective Services to the Appellant, the Agency's determination is moot and need not be decided.

Regarding the restriction of Appellant's shelter allowance, the Agency's determination dated March 21, 1988, is moot and need not be decided.

Regarding the failure of the Agency's Income Maintenance workers to refer the Appellant to Adult Protective Services, the Agency's determination is moot and need not be decided.

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

DATED: Albany, New York

CESAR A. PERALES,
COMMISSIONER

MAR 21 1990

BY 
Commissioner's Designee