

STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: February 3, 2011

AGENCY: New York City  
FH #: 5715280R

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In the Matter of the Appeal of  
[REDACTED]

from a determination by the New York City  
Department of Social Services

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**DECISION  
AFTER  
FAIR  
HEARING**

**JURISDICTION**

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on February 28, 2011, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[REDACTED]

For the Social Services Agency

Jurema Hadley, Fair Hearing Representative

**ISSUES**

Was the Appellant's request for a fair hearing to review the Agency's determination to reduce the Appellant's Public Assistance benefits (including a FEPS shelter allowance supplement) timely?

Assuming the request was timely, has the Agency acted correctly with respect to its determination to reduce the Appellant's Public Assistance benefits (including a FEPS shelter allowance supplement)?

Was the Agency's failure to act on the Appellant's application for an exemption from work activities correct?

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Was the Agency's failure to act on the Appellant's application for a special grant for the payment of rent arrears correct?

### **FINDINGS OF FACT**

An opportunity to be heard having been afforded to all interested parties and evidence having been taken and due deliberation having been had, it is hereby found that:

1. The Appellant's household has been in receipt of Public Assistance benefits (including a FEPS shelter allowance supplement).
2. By notice dated October 13, 2010, the Agency advised the Appellant of its determination to reduce the Appellant's Public Assistance benefits on the grounds that the Appellant failed to comply with employment requirements.
3. The notice advised the Appellant that a fair hearing must be requested within 60 days of the date of the Agency's action concerning Public Assistance.
4. The Appellant requested that the Agency exempt Appellant from work activities to allow Appellant to take care of her disabled child.
5. The Agency has failed to act on the Appellant's application for an exemption from work activities.
6. The Appellant applied for a special grant for the payment of rent arrears.
7. The Agency has failed to act on Appellant's application for a special grant for the payment of rent arrears.
8. On February 3, 2011, 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 food stamp benefits or the loss of food stamp 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,

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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.

Regulations at 18 NYCRR 358-3.7(a) provide that an Appellant has the right to examine the contents of the case record at the fair hearing. The Agency must provide complete copies of its documentary evidence to the hearing officer at the hearing and also to the Appellant or representative where such documents were not otherwise provided in accordance with 18 NYCRR 358-3.7. 18 NYCRR 358-4.3(a). Unless a waiver of appearance is approved by the Office of Administrative Hearings, a representative of the Agency must appear at the hearing along with the case record and a written summary of the case and be prepared to present evidence in support of its determination. If a waiver has been approved, the hearing officer may require the Agency's appearance if necessary to protect the appellant's due process rights. 18 NYCRR 358-4.3(b) and (c). In fair hearings concerning the discontinuance, reduction or suspension of Public Assistance, Medical Assistance, Food Stamp benefits or services, the Agency must establish that its actions were correct. 18 NYCRR 358-5.9(a).

Section 332 of the Social Services Law and 18 NYCRR 385.2 provides that an applicant for or recipient of Public Assistance shall not be required to participate in work activities if such individual is determined by the social services district to be exempt because such individual is:

- (1) ill or injured to the extent that he/she is unable to engage in work activities for up to three months, as verified by medical evidence;
- (2) 60 years of age or older;
- (3) under 16 years of age or under the age of 19 and attending full-time a secondary, vocational or technical school;
- (4) disabled or incapacitated in accordance with 18 NYCRR 385.2(d);
- (5) needed in the home because another member of the household requires his/her presence due to a verified mental or physical impairment, and the social services official has determined that no other member of the household is appropriate to provide such care. "Verified" means that a licensed physician or certified psychologist has made the determination that such an impairment exists and that the household member is in need of care. (Note: Effective October 1, 2006, Social Services Law Section 332(1)(c) requires that such individual must be needed in the home on a full-time basis);

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- (6) pregnant beginning thirty days prior to the medically verified date of delivery of her child.
- (7) the parent or other caretaker relative in a one parent household of a child who is under 12 months of age who is personally providing care for such child. This exemption must last no longer than twelve months for any parent or caretaker relative's life. The exemption can last no longer than three months for any one child, unless extended up to the total twelve month maximum for the life of such parent or caretaker relative by the social services official;

To the extent that the total of 12 months of exemption have not been exhausted by such parent or caretaker relative, the social services official is required to apply the exemption to the parent or caretaker in the case of a child under three months of age, but shall determine whether to apply such exemption for children more than three months old.

At a fair hearing concerning the denial of an application for assistance, the Appellant must establish that the Agency's denial of assistance was not correct. 18 NYCRR 358-5.9(a).

Sections 351.1 and 351.2 of Department Regulations require each applicant for assistance to provide complete, accurate, and current information as to his/her needs and resources and to submit verification of income, and other factors in order to enable the Agency to determine eligibility.

Resources shall be so utilized as to eliminate or reduce the need for assistance, rehabilitate the client and conserve public funds through assignment and recovery. 18 NYCRR 352.23(a).

Department Regulations provide that, upon special authorization by the local Agency, an emergency assistance grant may be issued for payment of rent, property taxes or mortgage arrears for the time prior to the month in which a Public Assistance case is opened or for applicants for ESNA or EAF, when such payment is essential to forestall eviction or foreclosure, no other housing facilities are available, and the health and safety of the person is severely threatened by failure to make such payment. The applicant must reasonably demonstrate an ability to pay shelter expenses, including any amounts in excess of the agency maximum shelter allowance, in the future and must not have sufficient income or resources to secure and maintain alternative permanent housing. The applicant, if accepted for ongoing Public Assistance, must agree to future restriction of shelter payments. 18 NYCRR 352.7(g)(3).

For any period of time prior to which the person received Public Assistance, the amount of the emergency assistance grant that may be provided pursuant to 352.7(g)(3) cannot exceed the maximum Public Assistance shelter allowance. The agency may issue a grant for shelter arrears in excess of the maximum monthly shelter allowance but any such amount is an overpayment subject to recovery and recoupment in accordance with Section 352.31 of the Department's Regulations.

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Shelter arrears payments are limited to a total period of six months once every five years unless the district determines, at its sole discretion, that additional shelter arrears payments are necessary based on the individual case circumstances. 18 NYCRR 352.7(g).

An individual may not receive assistance to meet the person's needs for a period during which the individual was subject to a sanction. The purpose of a sanction is to impose a financial penalty when an individual or family member will not comply with program rules. Providing assistance to meet a person's needs, to an otherwise eligible person, to cover a period during which the person was sanctioned, would clearly violate the sanction requirement and must not be done. Informational Letter 99 INF-15.

### **DISCUSSION**

The record establishes that the Appellant's household has been in receipt of Public Assistance benefits (including a FEPS shelter allowance supplement).

The record establishes that by notice dated October 13, 2010, the Agency advised the Appellant of its determination to reduce the Appellant's Public Assistance benefits on the grounds that the Appellant failed to comply with employment requirements. The notice advised the Appellant that a fair hearing must be requested within 60 days of the date of the Agency's action concerning Public Assistance. Although the Agency's notice advised the Appellant that a fair hearing must be requested within sixty days of its action concerning Public Assistance benefits, the Appellant failed to request this fair hearing until February 3, 2011, which was more than 60 days after the Agency's action.

At the hearing, the Agency relied on the Statute of Limitations and did not submit the entire contents of the case record or any documents other than the Notice of Intent and the NYCWAY record.

At the hearing, the Appellant testified that one reason that she did not request this fair hearing within 60 days is that the October 13, 2010 notice from the Agency was written in English only and that she is Spanish-speaking and is not able to read or write English. Appellant testified that she was thus not aware of the 60-day deadline for filing a fair hearing. It is noted that OAH records indicate that the Appellant is Spanish-speaking and that this hearing was held with the assistance of a Spanish interpreter. The Agency did not submit any evidence that it provided the Appellant a Spanish-language version of the October 13, 2010 notice. Appellant also testified that she spoke with her worker after receiving the October 13, 2010 notice and her worker told her that she should wait until April, 2011 to deal with the issue, because that is when her sanction would end. Appellant's testimony is found to be credible in that it was direct and consistent and supported by Agency records and credible documentation. Appellant has accordingly established a basis to toll the Statute of Limitations.

With respect to the Agency's October 13, 2010 determination to reduce the Appellant's Public Assistance benefits, the Agency failed to meet its obligations under 18 NYCRR 358-

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4.3(b), and failed to establish that its determination was correct pursuant to 18 NYCRR 358-5.9(a).

It is undisputed that Appellant requested that the Agency exempt Appellant from work activities to allow Appellant to take care of her disabled child. It is also undisputed that the Agency has failed to act on the Appellant's application for an exemption from work activities.

At the hearing, the Appellant testified that her son suffers from a serious psychiatric disability and that he is not able to take care of himself without her assistance. In support of her testimony, Appellant submitted a completed Agency form "Family Care Assessment" signed by a Medical Doctor indicating that she is needed to provide her son full-time home care. It is noted that Agency records (NYCWAY) confirm that the Appellant has previously been provided with an exemption from work requirements to take care of her disabled son and that Appellant had submitted all the required documents. Under the circumstances, the Agency action cannot be sustained.

It is undisputed that the Appellant applied for a special grant for the payment of rent arrears. It is also undisputed that the Agency has failed to act on the Appellant's application. It is noted that a sanctioned Public Assistance household may not receive assistance to pay rent arrears while the household is sanctioned. However, in light of the decision herein reversing the Agency's October 13, 2010 determination to sanction the Appellant's household the Agency's action cannot be sustained.

### **DECISION AND ORDER**

The Appellant's request for a fair hearing to review the Agency's determination to reduce the Appellant's Public Assistance benefits was timely.

The Agency's October 13, 2010 determination to reduce the Appellant's Public Assistance benefits is not correct and is reversed.

1. The Agency is directed to withdraw its Notice of Intent dated October 13, 2010 with respect to the Appellant's Public Assistance benefits.
2. The Agency is directed to restore any Public Assistance benefits (including any FEPS shelter allowance supplement) lost as a result of the Agency's action.

The Agency's failure to process Appellant's request for an exemption from work activities is not correct and is reversed.

1. The Agency is directed: to evaluate the Appellant's application for an exemption from work activities, to exempt the Appellant from work activities pending a determination by the Agency and to inform the Appellant in writing of such determination.

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The Agency's failure to act on the Appellant's application for a special grant for the payment of rent arrears is not correct and is reversed.

1. The Agency is directed immediately to investigate the Appellant's eligibility for a special grant for the payment of rent arrears, to provide the Appellant with written notification as to the results of such investigation and to provide the Appellant with a grant for the payment of such rent arrears if the Appellant is found eligible.

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  
03/09/2011

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By



Commissioner's Designee