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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 May 15, 2014, 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

Lyneth Murray, Fair Hearing Representative

**ISSUES**

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

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

**FINDINGS OF FACT**

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

1. The Appellant has been in receipt of Public Assistance benefits.

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2. The Appellant advised the Agency of health-related conditions which the Appellant claimed prevented participation in the employment-related activities required by the Agency in order to receive assistance.

3. By Notice of Work Requirement (NOWR) dated February 19, 2014, the Agency informed the Appellant that the Appellant had been found to be non-exempt from employment requirements but was only work-limited and therefore required to participate in the Agency's employment-related programs in order to receive assistance.

4. The Notice of February 19, 2014, which the Agency provided to the Appellant advised the Appellant that a request for a fair hearing concerning this determination must be made within ten days of the Agency's determination.

5. On April 14, 2014, the Appellant requested this fair hearing.

### **APPLICABLE LAW**

Section 131.5 of the Social Services Law provides that no Public Assistance shall be given to an applicant for or recipient of Public Assistance who has failed to comply with the requirements of the Social Services Law, or has refused to accept employment in which he or she is able to engage.

Section 332-b of the Social Services Law and 18 NYCRR 385.2(d) provide that upon application and recertification for Public Assistance benefits, or whenever a district has reason to believe that a physical or mental impairment may prevent the individual from fully engaging in work activities, the district must determine whether the individual has any medical condition which would limit the individual's ability to participate in work activities.

Section 332-b of the Social Services Law and 18 NYCRR 385.2(d) further provide that, after the determination of an individual's medical condition has been made, the Agency must notify the applicant or recipient in writing of such determination and of the right to request a fair hearing to contest such determination within ten days of such notification. An individual shall not have the right to a fair hearing to contest such determination if he or she requests a fair hearing after the ten day period.

Administrative Directive 06-ADM-05 Revised, issued on April 27, 2006, consolidates existing policy guidance issued by OTDA for providing access to persons with disabilities and/or Limited English Proficiency (LEP), who are inquiring about, applying for, or receiving Temporary Assistance (TA), SNAP benefits (SNAP) and assistance under the Home Energy Assistance Program (HEAP).

Local social services districts have the responsibilities to:

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ensure that applicants for and recipients of TA, SNAP and HEAP have equal access to all benefits, programs and services for which they are eligible, including those offered by other agencies operating on behalf of a district;

ensure that emergency/immediate needs are addressed as may be appropriate to the case, and protect the filing or application date when an appointment is rescheduled for a person with a disability and/or LEP because reasonable accommodations cannot be made or no interpreter is available on the date the application is filed;

document any limitations, necessary accommodations and/or LEP requirements to ensure access and coordinate services (e.g., note in the case record and on the Welfare-to-Work Case Management System that an individual is unable to climb stairs);

provide information to applicants and recipients of public assistance or care, and not discriminate against anyone making the inquiry based on race, color, religion, national origin, age, sex, handicap (physical or mental impairment), genetic pre-disposition or carrier status, creed, arrest/convictions, marital status, sexual orientation, military status and/or retaliation; and

assign a person to serve as ADA and LEP contact(s), to investigate any complaints of discrimination or improper case administration, and to inform applicants/recipients with a disability and/or LEP of their complaint procedures.

For access by persons with LEP, districts have the responsibilities to:

obtain a qualified interpreter, but may not deny access to an application for benefits, programs or services based on the inability to provide adequate interpretation services;

provide applicants/recipients the choice to use a relative or friend as an interpreter, but may not require applicants/recipients to bring their own interpreter; and

make interpreter services desk guides available to workers and language posters available in all client areas.

Specifically, all local service districts must continue to post the "Interpreter Services Poster" (PUB-4842) in all TA, MA and SNAP Benefits client areas. Informational Letter 05-INF-08 notified all local districts that the mandated "Interpreter Services Poster (PUB-4842) and the recommended "Interpreter Services Desk Guide" (PUB 4843) have been updated.

## **DISCUSSION**

The record in this case establishes that the Appellant has been in receipt of Public Assistance benefits. The Appellant advised the Agency of health-related conditions which the Appellant claimed prevented participation in the employment-related activities required by the Agency in order to receive assistance. By Notice of Work Requirement (NOWR) dated February 19, 2014, the Agency informed the Appellant that the Appellant had been found to be

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non-exempt from employment requirements but was only work-limited and therefore required to participate in the Agency's employment-related programs in order to receive assistance.

Although the Agency's Notice advised the Appellant that a fair hearing must be requested within ten days of its determination, the Appellant failed to request this fair hearing until April 14, 2014, which was more than ten days after the Agency's determination. At the hearing, the Appellant stated that his name as printed on the NOWR appears to be written by him, but that the signature does not appear to be his signature. However, the Appellant acknowledged that he received the NOWR and printed his name on it. The Appellant further claims that he reads very little English and that the NOWR provided to him for his signature was only in English and not also in Spanish. He stated that he was told by the worker that if he did not sign the NOWR he would lose his SNAP benefits. The Appellant further claims that he was not told of the ten day requirement in which to request this hearing.

The Appellant's testimony is credited based upon the consistency of his statements. Accordingly the Appellant statements establish a sufficient basis for tolling the ten day statute of limitations.

The Appellant contended at the hearing that the medical evaluation made by the Agency's health care practitioner, which found the Appellant to be work-limited but not exempt from employment requirements, was incorrect. At the hearing, the Appellant submitted a note from his physician written on a New York State Prescription, dated March 21, 2014, stating that the Appellant should refrain from excessive walking or standing because of a [REDACTED] [REDACTED]. A prescription for [REDACTED] is also submitted. The Agency submitted only the NOWR. However, the NOWR specifically acknowledges that the Appellant is limited in his walking and standing. Accordingly, the Appellant testimony and evidence agree with the Agency's findings with regard to the Appellant's medical conditions and functional limitations.

The Appellant did not sufficiently refute the Agency's findings that the Appellant was work-limited but not exempt from employment requirements. The Agency's determination to require the Appellant to engage in work activities on a limited basis must be upheld.

## **DECISION**


The Agency's determination that the Appellant was not disabled but only work-limited and able to participate in work activities with limitations was correct.

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DATED: Albany, New York  
06/05/2014

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink, appearing to be "M. J. ...", written over a horizontal line.

Commissioner's Designee