

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: April 18, 2014

████████████████████
AGENCY: 54
FH #: 6698713R

In the Matter of the Appeal of
████████████████████ :
: **DECISION**
: **AFTER**
: **FAIR**
: **HEARING**
from a determination by the New York City :
Department of Social Services :
:

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 June 25, 2014, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

████████████████████

For the Social Services Agency

Robert Scarpati, 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.

FH# 6698713R

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 March 27, 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 March 27, 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 18, 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. Should the individual declare that he has a mental or physical impairment, the social services official shall:

1. notify the individual verbally or in writing that the individual within 10 days may provide any relevant medical documentation, including but not limited to drug prescriptions and reports of the individual's treating health care practitioner (individual's practitioner). Such documentation must contain a specific diagnosis as evidenced by medically appropriate tests or evaluations and must specify any work related limitations; and/or
2. refer the individual to a health care practitioner (district's practitioner) certified by the New York State Office of Disability Determinations for a determination of the individual's medical condition. If the social services official refers an individual to the district's practitioner prior to the individual submitting documentation from the individual's practitioner, the individual should make best efforts to bring the documentation to the examination by the district's practitioner. Any documentation available from the individual's practitioner must be submitted to the district's practitioner no later than four days after the examination, provided that in no instance shall such time period exceed ten calendar days from the notification set forth in (1) above, or the district's practitioner will

FH# 6698713R

not be required to consider it as a part of the evidence used to determine the individual's medical condition.

The social services official shall have sole discretion in determining whether any documentation provided by the individual or the individual's practitioner is sufficient to make such a determination on an individual's claim of a physical or mental impairment.

In evaluating the initial claim of a mental or physical impairment made by an applicant, or the continuing claim of a medical impairment made by a recipient who has been previously determined exempt from participation in work activities, the social services official may require the individual to cooperate with measures to verify such claim and/or submit documentation as a condition of eligibility for public assistance and SNAP benefits. Failure of such documentation to substantiate the claimed impairment shall not itself cause the individual to be ineligible for Public Assistance.

In evaluating the ongoing claim of a mental or physical impairment made by an individual who has been determined by the social services official not to be exempt, the social services official may require the individual to provide additional documentation from the individual's practitioner. Such individual remains non-exempt until and unless a different determination is made by the social services official.

If the social services official refers an applicant or recipient to the district's practitioner for an examination as a result of a mental or physical impairment claim by the applicant or recipient the examiner shall:

- (i) review and consider all records or information timely provided by the individual or his or her treating health care practitioner that are pertinent to the claimed medical condition;
- (ii) provide to the social services official in writing a specific diagnosis as evidenced by medically appropriate tests or evaluations in determination of the individual's claimed condition;
- (iii) indicate to the social services official and the individual in writing, a medical opinion which specifies whether the medical condition alleged by the individual is present or absent; the social services official shall be responsible for ensuring that the applicant or recipient does receive such written medical opinion;
- (iv) report to the social services official the presence of any condition other than that which was alleged by the individual, but which was discovered in the course of the examination, which may interfere with the individual's ability to fully engage in work activities;
- (v) determine whether the individual is:

FH# 6698713R

- (a) disabled and exempt from participation from work activities. Such determination shall specify the duration of time for which the disability shall prevent the social services official from making an assignment to work activities;
- (b) work limited, having specific identified limitations affecting the type of work activity to which the individual may be assigned; provided, however, that such determination shall specify the duration of time for which such work limitations shall apply to such individual;
- (c) neither disabled nor work limited.

The social services official shall not assign to work activities any individual for whom a medical determination is pending, either as the result of a request by an applicant or recipient or direction of the social services official, until such a determination is rendered unless the individual agrees to a limited work assignment consistent with the individual's alleged medical condition.

Pursuant to the provisions of Administrative Directive 06 ADM-06, dated May 16, 2006, if a district finds that a TA applicant or recipient reasonably appears to be eligible for SSI, the district must require the applicant or recipient to apply for SSI benefits, follow through on the application for such benefits and accept such benefits, if eligible. Individuals whose application for SSI benefits are denied, but are still unable to participate in work activities including employment because of a medical condition that reasonably appears to qualify the individual for SSI must be required to file an appeal to maintain his/her eligibility for public assistance benefits. Individuals who are required by the district to pursue SSI benefits as a condition of eligibility are exempt from participation in work requirements and cannot be assigned to work activities until the district determines, based on the documentation available, that the individual is no longer exempt from work requirements and is not required to pursue SSI benefits as a condition of eligibility for public assistance. Individuals who are required by the district to appeal a denial of SSI benefits continue to be exempt from participation in work requirements while the appeal is pending a decision unless additional medical information is received which indicates that the individual is no longer exempt from work requirements and the district determines that the individual is no longer required to pursue SSI benefits as a condition of eligibility for public assistance.

An individual who is eligible to receive comprehensive health services through a special needs plan set forth in paragraph 364-j(1)(m) or (n) of the Social Services Law regardless of whether such a plan is operating in the social services district in which the individual resides, shall be considered to be either disabled or work limited, as determined by the social services official.

Section 335-b of the Social Services Law and 18 NYCRR 385.2(d) provide that individuals in receipt of Public Assistance and who are work limited shall be assigned to work activities only if such assignment:

FH# 6698713R

- (a) is consistent with the individual's treatment plan when such plan is prescribed by the individual and/or district's practitioner;
- (b) Where no treatment plan exists, is consistent with the individual's mental and physical limitations; and
- (c) is determined to be appropriate by the social services official who is satisfied that such individual is able to perform the work assigned and that such assignment will assist the individual's transition to self-sufficiency.

Regulations at 18 NYCRR 385.2(e) provide that an individual exempted from participation in work activities due to disability who the social services official determines has the potential to be restored to self-sufficiency through rehabilitation, may be required to:

- provide information from the individual's practitioner or submit to an examination by the district's practitioner to determine whether the individual can recover from the mental or physical impairment.
- accept medical care to assist in recovery from the mental or physical impairment and in restoring self-sufficiency;
- accept referral to and enrollment in a program of vocational rehabilitation, training and other essential rehabilitation designed to restore an individual to self-sufficiency.

At the time that the social services official or the district's practitioner makes a determination of an individual's medical condition, the social services official shall notify the applicant or recipient in writing of such determination and of the right to request a fair hearing to contest such determinations within ten days of such notification.

If the individual requests a fair hearing within the ten day period, the social services official shall not assign the individual to work activities pending the fair hearing determination, except that the social services official may, during the pendency of a determination assign an individual, with the agreement of such individual, to a limited work assignment which would be consistent with any limitations associated with the mental or physical impairments alleged by the individual.

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).

FH# 6698713R

Local social services districts have the responsibilities to:

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

FH# 6698713R

Agency in order to receive assistance. By Notice of Work Requirement (NOWR) dated March 27, 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.

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 18, 2014, which was more than ten days after the Agency's determination. At the hearing, the Appellant acknowledged receipt of the NOWR. The Appellant however stated that the NOWR was provided to her only in English, that she reads very little English and that there was no translator or telephone translation during her appointment. The Appellant did not understand that she was required to request this fair hearing within ten days.

The Appellant's testimony is credited based upon the consistency of her 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, that found the Appellant to be work-limited but not exempt from employment requirements, was incorrect. In support of this contention, the Appellant presented a letter from her doctor from the [REDACTED], dated June 4, 2014, indicating that the Appellant is totally disabled at this time. The Appellant further submitted a letter from [REDACTED], [REDACTED], dated June 24, 2014, that suggests the Appellant may be work limited, and a clinical summary from [REDACTED], dated June 5, 2014, indicating the Appellant's current health issues and medications.

The Agency submitted the NOWR, the Biopsychosocial (BPS), prepared from July 16, 2013, through August 12, 2013, and the updated CSP Summary, dated March 27, 2014. The Comprehensive Service Plan (CSP) Summary specifically acknowledges that the Appellant provided the Agency with virtually the same three letters, although all dated in February 2014 and March 2014, and cites in the CSP Recommendations that the letter from [REDACTED] noted that "the Appellant is totally disabled and unemployable at this time." The CSP provides no justification for failing to take the Appellant's documentation into consideration in its determination.

The Appellant's statements and evidence are credited. Accordingly, the Agency's determination to require the Appellant to engage in work activities on a limited basis cannot be sustained.

DECISION AND ORDER

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

1. The Agency is directed to immediately exempt the Appellant from participation in all work activities.

FH# 6698713R

2. The Agency may, in its discretion, obtain a new medical evaluation of the Appellant's work exemption status and must provide the Appellant with timely and adequate written notice of any change in such exemption status.

3. The Agency is directed to have any and all correspondence from the Agency be provided to the Appellant in her native and preferred language for reading and speaking: Urdu

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
07/15/2014

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