

STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: April 17, 2015

AGENCY: Dutchess

FH #: 7008714Q

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In the Matter of the Appeal of  
[REDACTED]

from a determination by the Dutchess County  
Department of Social Services

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:  
: **DECISION**  
: **AFTER**  
: **FAIR**  
: **HEARING**  
:  
:

**JURISDICTION**

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on June 23, 2015, in Dutchess County, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[REDACTED]

For the Social Services Agency

William Sanchez, Fair Hearing Representative

**ISSUE**

Was the Agency's determination to deny the Appellant's application for Public Assistance for failure to provide documentation necessary to determine the Appellant's eligibility for such benefits correct?

Was the Agency's determination to deny the Appellant travel costs to and from the fair hearing correct?

**FINDINGS OF FACT**

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

1. On or about March 27, 2015, the Appellant (age 80) applied for Public Assistance benefits for herself.

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2. The Appellant resides with her son, daughter-in-law, and grandson.

3. The Appellant was advised by the Agency on March 27, 2015 to submit documentation to the Agency by April 7, 2015. Some of the documents requested included: proof of income of the Appellant's daughter and son-in-law, bank account information for the daughter and son-in-law, and W-2/tax records to show a tax refund for the Appellant's daughter and son-in-law.

4. By Notice of Decision dated April 11, 2015, the Agency advised the Appellant that it was denying her application for Public Assistance benefits, because the Appellant failed to provide proof of income/resource verification for her daughter and son-in-law in PA and tax refund verification from her daughter and son-in-law.

5. On April 17, 2015, the Appellant requested this fair hearing.

### **APPLICABLE LAW**

Regulations at 18 NYCRR 351.1 and 351.2 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. These obligations also apply to non-legally responsible caretaker relatives of children receiving public assistance, as well as minor siblings of such children residing in the same household. Section 351.5 of the Regulations provides that if the applicant or recipient has previously verified necessary information which is not subject to change and the Agency possesses documentation of such verification in its files, the applicant or recipient is not required to resubmit verification of such information. Section 351.6 of the Regulations provides that verification of data is an essential element of the eligibility investigation process. The applicant or recipient is the primary source of the required information. However, when the applicant or recipient is unable to provide the required verification, the Agency must assist the applicant or recipient in obtaining the verification or make collateral investigation. 18 NYCRR 351.5 and 351.6. If a third party seeks to impose a charge or fee for providing required information to the applicant or recipient, the Agency must pay such fee or must assist the applicant or recipient in obtaining the information by other means. 18 NYCRR 351.5. The applicant's or recipient's failure or refusal to cooperate in providing necessary information is a ground for denying or discontinuing Public Assistance.

An applicant for or recipient of public assistance is exempt from complying with any requirement concerning eligibility for public assistance if the applicant or recipient establishes that good cause exists for failing to comply with the requirement. Except where otherwise specifically set forth in regulations, good cause exists when the applicant or recipient has a physical or mental condition which prevents compliance; the applicant's or recipient's failure to comply is directly attributable to Agency error; or other extenuating circumstances, beyond the control of the applicant or recipient, exist which prevent the applicant or recipient from being reasonably expected to comply with an eligibility requirement. The applicant or recipient is

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responsible for notifying the Agency of the reasons for failing to comply with an eligibility requirement and for furnishing evidence to support any claim of good cause. The Agency must review the information and evidence provided and make a determination of whether the information and evidence supports a finding of good cause. 18 NYCRR 351.26.

18 NYCRR 358-3.4(i) provides that an Appellant has a right “at your request to the social services agency, to receive necessary transportation or transportation expenses to and from the fair hearing for yourself and your representatives and witnesses and to receive payment for your necessary child care costs and for any other necessary costs and expenditures related to your fair hearing.”

**DISCUSSION**

At the hearing, the Agency testified that it was not fully prepared to proceed given that the Agency mistakenly thought that this fair hearing was not to be held until June 25, 2015.

The Appellant testified that she has no income. She previously lived with her daughter and son-in-law from November of 2008 to November of 2010. She then moved into her current abode with her son and daughter-in-law.

The Appellant also testified that she faxed the requested documents to the Agency. She introduced into evidence documents which included, but were not limited to, a letter from a bank regarding an account her daughter held with the account balance, a tax return for her daughter and son-in-law showing their income from 2014 and a tax refund, and a checking account statement for her daughter and son-in-law that includes payroll deposits going into the account for the Appellant's daughter. Also included in the Appellant's evidence was a fax confirmation sheet showing that the documents were faxed to the Agency on April 1, 2015.

The Agency admitted that it received the faxed information mentioned above on April 6, 2015. However, the Agency did not believe that the bank information was sufficient to establish income verification and stated that the Agency would have needed paystubs.

Based on the foregoing, it is found that the Appellant established that she provided the documents that were indicated as missing in the Notice of Decision. Namely, the Appellant's fax confirmation shows that she submitted a tax return that showed tax refund information and that she submitted bank account information for her daughter and son-in-law. While there is no specific income noted as being exclusively the Appellant's son-in-law's income in the documents submitted, the tax form does show his and his wife's combined income for the year 2014. Notably, the Agency's documentation requirements form does not indicate what exact documents it wanted to prove income. Given that it is unknown exactly what income information the Agency was seeking, and unknown as to why the Agency needed this information since the Appellant has not resided with her daughter or son-in-law since 2010, the Agency has not established that this information was needed in order to determine the Appellant's eligibility. Thus, for all of the above reasons, the Agency's determination to deny the Appellant's application for Public Assistance cannot be affirmed.

Additionally, the Appellant's daughter-in-law testified that she has been paying for the Appellant's needs, and she now wants the government to pay for them. She stated that she has no legal obligation to pay for the Appellant's needs. The Appellant's daughter-in-law suggested that she should be reimbursed for paying for the Appellant's needs and requested that she be reimbursed for losing money by having to take a day off work to come to the hearing and for parking costs/travel fees for driving the Appellant to the hearing. These issues were raised for the first time at the fair hearing.

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The Agency's position was that public transportation could have been provided to the fair hearing at the Agency's expense if the Agency was advised in advance that the Appellant needed transportation.

The Regulations do not permit the Commissioner to reimburse the Appellant's in-laws or relatives for taking care of the Appellant's every day needs or to reimburse the Appellant's daughter-in-law for her lost time from work to come to the fair hearing.

However, the Regulations do allow the Agency to reimburse the Appellant for travel expenses incurred in traveling to and from the fair hearing. This includes mileage costs in an amount allowed by the Regulations, if a personal vehicle is used, but does not include parking fees in this instance given that there is available parking near the hearing location that is free. As such, the Appellant is entitled to mileage costs being that a personal vehicle was used, if the Appellant submits documentation supporting the same.

### **DECISION AND ORDER**

The Agency's determination to deny the Appellant's application for Public Assistance benefits is not correct and is reversed.

1. The Agency is directed to continue to process the Appellant's application without regard to the requested information.
2. The Agency is directed to assist the Appellant in obtaining any additional required documentation.
3. The Agency is directed to advise the Appellant in writing of its determination.

The Agency's determination to deny the Appellant travel costs to and from the fair hearing was not correct and is reversed.

1. The Agency is directed to reimburse the Appellant's travel expenses to and from the fair hearing if the Appellant submits proof of mileage by way of an affidavit or otherwise.

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.

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DATED: Albany, New York  
07/03/2015

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink, appearing to read "Omar Richards", written in a cursive style.

Commissioner's Designee