

STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: March 11, 2004  
CASE NO: NA  
CENTER : Erie  
FH No. : 4082971J

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In the Matter of the Appeal of :  
AD : DECISION  
from a determination by the Erie County : AFTER  
Department of Social Services : FAIR  
: HEARING  
:

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JURIDICTION

Pursuant to Section 22 of the New York State Social Services Law (hereinafter referred to as "the Social Services Law") and Part 358 of Title 18 of the New York Code of Rules and Regulations (18 NYCRR, hereinafter referred to as "the Regulations"), a Fair Hearing was held on May 26, 2004, in Buffalo, New York, before Administrative Law Judge Snitzer. The following persons appeared:

For the Appellant

AD, the Appellant;  
Marilyn Bradley, the Appellant's representative (NLS)  
Elizabeth White, an NLS observer

For the Erie County Department of Social Services  
(herein referred to as "the Agency")

Ms.Goosman and Ms.DiVinney, Head Social Welfare Examiners

ISSUE

Was the Agency's failure to make any determination to accept or deny the Appellant's December 29, 2003 application for Temporary Assistance, based on the Appellant's alleged failure to meet a condition for the submittal of said application, correct?

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:

1. On December 29, 2003, the Appellant applied for Temporary Assistance for herself and one child. She was already receiving Medicaid and Food Stamp benefits at that time.

2. Immediately following the submittal of her December 29, 2003 application, the Appellant was given a type-written "Orientation/Employment Notice"

- a. Said notice identified the Appellant as an applicant.
- b. Said notice advised her that she was required to attend the Erie

County Department of Social Services Orientation/Employment session the following day, December 30, 2003, at 11:15 AM at Room XXX of the the R Building, and was advised to bring that notice with her and report at least 10 minutes before the scheduled time.

- c. The Appellant was required to sign the notice at a place provided under the following additional content:

"I agree that if I do not return for my Orientation/Employment appointment, my application will be processed for Food Stamps and/or Medicaid only. If I am still in need of Temporary Assistance, I understand that I will have to file a new application."

3. The Appellant reported for the required Orientation/Employment session on December 30, 2003, but did so at 11:25 AM. She was not permitted to enter the orientation at that time, but was advised that she needed to obtain a new letter re-scheduling her for a later session.
4. The Appellant returned to an Intake screener as directed, and obtained another Orientation/Employment Notice that again identified her as an applicant, and advised her that she was required to attend an orientation at 8:30 AM on December 31, 2003 in Room XXX at the R Building; the letter again advised her to bring the notice with her and to report at least 10 minutes early. She was required to sign the new notice below the same paragraph as indicated in Fact Finding 2(c), above, and did so.
5. The Appellant did not report for the re-scheduled orientation, but had good cause for her failure to do so.
6. On March 11, 2004, a request for a Fair Hearing was made by or on behalf of the Appellant, seeking review of the Agency's failure to make any determination to either accept or deny her December 29, 2003 application.

#### APPLICABLE LAW

Section 350.1 of the Regulations defines "Application" as an action by which a person indicates in writing, on the state-prescribed form, his/her desire to receive assistance and/or care, or to have his/her eligibility considered by a social services official.

Section 350.6 of the Regulations provides that every request for assistance or care shall be recorded, and the disposition statistically reported in accordance with the instructions of the department.

Section 1300.5 of the Regulations of the NYS Department of Labor describe "Orientation requirements" to be met by social services districts, at the time of application or redetermination for public assistance and food stamps, and of the obligations of the social services district to inform applicants of the availability of certain specific opportunities and supportive services.

Sections 1300.6 and 1300.7 of the Regulations of the NYS Department of Labor (12 NYCRR 1300.6) pertains to Assessments and Employability Plans for all Temporary Assistance applicants and recipients over eighteen years of age. Assessments review all factors affecting Employability, including education level and training, basic skill proficiency and prior work

experience, vocational and personal interests; and family circumstances. Such Assessments must be completed within ninety days of the date a recipient is found to be eligible for Temporary Assistance. Said Sections also require every applicant or recipient to participate in the Assessment as scheduled or otherwise required, as well as in the preparation of an Employability Plan setting forth the Work Activities to be assigned and the services which the local district will provide, and the recipient's employment goal.

Section 1300.12 of the Regulations of the NYS Department of Labor provides legal authority for the denial of any application for Temporary Assistance if the applicant has refused or failed without good cause to comply with an assigned Employment Program activity. Said Section expressly provides that "a public assistance applicant or recipient subject to employment requirements who is determined to have refused or failed to comply without good cause with the requirements of this Part in accordance with the provisions of section 1300.11 regarding conciliation must be provided a notice of such determination and of the intent of the social services district to deny, discontinue or reduce assistance, as follows:

- "(i) An applicant must be issued an adequate notice of denial of public assistance which informs him/her that he/she has refused or failed to comply without good cause with employment requirements in accordance with the provisions of this Part..."

Section 358-3.3(a) of the Regulations provides that a recipient has a right to timely and adequate notice when a social services agency proposes to take any action to discontinue, suspend, or reduce a Temporary Assistance grant, Medical Assistance authorization or services. Section 358-2.2 of the Regulations defines "adequate" notice, referring to the content thereof.

#### DISCUSSION

The Agency's failure to make an official determination to either accept or deny the Appellant's December 29, 2003 application for Temporary Assistance cannot be affirmed. Although the Agency's representatives claimed the Agency had been led to believe by authorized officials of the OTDA that they need not issue any written notice following the failure of an applicant to appear for what was described as a program orientation, there is no legal authority supporting the Agency's position, and no evidence to show that any such misleading advice had been given. Although one of the Agency representatives claimed that such authorization had been sought because the Agency had been issuing what it believed to be "too many denial notices", there is no legal authority permitting any local district to dispense with a legally-required notice under the described circumstances.

The Agency representatives sought to attribute a "waiver" of notice to the content of the letter handed to the Appellant and signed at the Agency's specific request, to the extent that it expressed an "understanding" that if she did not appear for the scheduled orientation, the application would be processed solely for Food Stamp benefits and Medicaid coverage. There is nothing in the language of the form that can be reasonably construed as a waiver of notice in any case. Moreover, because applicants for assistance and/or benefits may be at a disadvantage in knowing and/or exercising their legal rights, the content of any document, and any signature required thereon, will be construed in a manner recognizing such disadvantage.

In the course of inquiry, it was also admitted by an Agency representative, that the Appellant's December 29, 2003 application had never been registered or "logged in" on the Welfare Management System, but was merely "tracked" by use of an informal system maintained by the Agency. It was said that such method is used by the Agency pending the actual attendance of an orientation by each applicant. No legal authority was cited for treating orientation as a condition for the submittal of an application for assistance, or for its official entry of every application into the state-wide system intended to account for every such event.

The Appellant's representative has requested that the Commissioner issue a Directive in Similar cases pursuant to department regulation 358-6.3 in that the Agency has misapplied provisions of law, regulation or Department policy. In this case the Agency has acknowledged a policy that is a misapplication of law, regulation and Department policy. The Agency will therefore be directed to cease such practice and conform its policy to the regulations and law cited above.

#### DECISION AND ORDER

The Agency's failure to make a timely determination in respect to the Appellant's December 29, 2003 application for Temporary Assistance, and/or its failure to issue any written notice thereof, is not correct, and is reversed.

- \* The Agency is directed to immediately make any entry required to officially record the December 29, 2003 receipt of a written application made by the Appellant in which Temporary Assistance was sought.
- \* The Agency is further directed to schedule a face-to-face eligibility interview with the Appellant, and to give her a reasonable opportunity to submit all information and verification required to establish her eligibility and need for Temporary Assistance.
- \* Subject only to the Appellant's timely completion of customary and authorized conditions of eligibility (the time for which may be extended at her request), the Agency is directed to complete a proper evaluation and determine to either accept or deny the December 29, 2003 application, and issue a written notice of such determination in the manner required by law.
- \* If the Appellant is found to have been otherwise eligible for Temporary Assistance, the Agency is directed to provide such assistance in accordance with her household's verified degree of need, retroactive to the proper date of eligibility.

The Agency is directed to conform its practice and policy consistent with this decision and the above cited law and regulations, pursuant to department regulation 358-6.3.

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

DATED: Albany, New York  
July 7, 2004

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee