

STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST October 29, 2002  
CASE # P00XXXXXX  
CENTER # Suffolk  
FH # 3803657H

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In the Matter of the Appeal of :

A.M.

DECISION  
: AFTER  
FAIR  
HEARING

from a determination by the Suffolk County  
Department of Social Services :

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#### 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 December 2, 2002, in Suffolk County, before Richard S. Levchuck, Administrative Law Judge. The following persons appeared at the hearing:

#### For the Appellant

A.M., Appellant; Kathleen Whelan, Esq., and Cheryl Keschner, Appellant's Representatives

#### For the Social Services Agency

Randi Delirod, Fair Hearing Representative; Jeannette O'Keefe, Witness

#### ISSUES

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

Was the Agency's failure to provide the Appellant with school transportation for her children while she resided in temporary housing for the period from September 20, 2002 through November 12, 2002 correct?

#### FACT FINDING

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 applied for Public Assistance and Food Stamp benefits for herself and four of her minor children ages fifteen, fourteen, thirteen and eleven years old.

2. The Appellant was advised by the Agency on September 19, 2002 to submit the following documentation to the Agency by September 30, 2002:

a letter from her attorney regarding the status of a lawsuit brought on behalf her daughter, a confidential employment inquiry form completed by K R U and verification of her eligibility for Unemployment Insurance Benefits.

3. The Appellant provided a letter from her attorney which requested that she come in to discuss the lawsuit brought on behalf of her daughter.

4. The Appellant contacted the New York State Department of Labor by telephone and was advised that she would receive a written response within six to eight weeks.

5. The Appellant failed to provide the Agency with a confidential employment inquiry form completed by K R U.

6. On October 12, 2002, the Agency sent a Denial Notice setting forth its determination to deny the Appellant's application for Public Assistance and Food Stamp benefits because the Appellant had failed to return to the Agency with certain documentation necessary to determine Appellant's eligibility for Public Assistance and Food Stamp benefits.

7. On or about September 20, 2002, the Appellant advised the Agency that she had lost her housing after it went into foreclosure. The Appellant requested that the Agency provide her with temporary housing.

8. The Appellant's children attend school in the \_\_\_\_\_ School District.

9. During the period from September 20, 2002 through November 5, 2002, the Agency placed the Appellant and her children in temporary housing assistance at the R C I, located in \_\_\_\_\_, New York, the O M, located in \_\_\_\_\_, New York, The O M located in \_\_\_\_\_, New York and the H B Motel, located in \_\_\_\_\_, New York. The Appellant received this housing through the Agency's Emergency Services division.

10. On November 6, 2002, the Agency's Division of Housing placed the Appellant and her family in temporary housing at their current location at \_\_\_\_\_, New York. The Agency's Division of Housing received the school transportation forms (also known as the "STAC forms") on November 7, 2002. The forms were picked up by Globe Ground Transportation, which is the transportation management company for the Emergency Housing Transportation Program. On that same day, the forms were returned to the Agency as they were incomplete. The Agency completed the forms and returned them to Globe Ground.

11. On November 8, 2002, the Agency received the original school forms and completed them. The busing transportation initially began on November 13, 2002 and with the exception of an initial interruption due to a problem with the school district, has continued since November 19, 2002.

12. The Appellant's children were not provided with transportation to attend school for the period from September 20, 2002 through November 13, 2002 and did not attend school during this period.

13. On October 29, 2002, 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

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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.

The Food Stamp application process includes filing and completing the application form, being interviewed and having certain information verified. If the household refuses to cooperate with the Agency in completing this process, the application shall be denied. In order for a determination of refusal to be made, the household must be able to cooperate but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. 7 CFR 273.2(d); 18 NYCRR 387.5, 387.6, 387.7.

For households initially applying for Food Stamp benefits mandatory verification shall be completed regarding: gross nonexempt income, alien status, shelter expenses, medical expenses, residency, household size, Social Security number, identity, date of birth, utility expenses, resources, disability and, if questionable, household composition and citizenship and any other questionable information that has an effect on the household's eligibility and benefit level. 7 CFR 273.2(f); 18 NYCRR 387.8(b).

To be considered questionable, the information on the application must be inconsistent with statements made by the applicant, or inconsistent with other information on the application or previous applications. The local department shall determine if information is questionable based on the household's individual circumstances. 7 CFR 273.2(f); 18 NYCRR 387.8(b).

Written documentary evidence is to be used as the primary source of verification of all items except residency and household size. Residency and household size may be verified either through readily available documentary evidence or through a collateral contact. Residency is to be verified except where verification cannot reasonably be accomplished such as in homeless cases. 7 CFR 273.2(f); 18 NYCRR 387.8(b).

The household has the primary responsibility for providing documentary evidence to support its application and to resolve any questionable information. The local Agency, however, is obligated to offer assistance in

situations where the household cannot obtain the documentation in a timely manner. Such assistance may include using a collateral contact or home visit unless otherwise required by Federal or State Regulations. 7 CFR 273.2(f); 18 NYCRR 387.8(b).

If the Agency determines to verify a deductible expense and such verification has not been obtained and obtaining the verification may delay the household's certification, then the Agency may determine eligibility and benefit level without providing a deduction for the claimed but unverified expense, including medical expense. If the household subsequently provides verification, benefits shall be redetermined. 7 CFR 273.2(f).

When a household's eligibility cannot be determined within thirty days of filing of the application, the Agency must determine the cause of the delay. If the delay is the fault of the household, then the application must be denied. However, if the household takes the required action within sixty days of the filing of the application, the case must be processed without requiring a new application. Prorated benefits must then be provided to the household from the date the necessary verification was provided. If the delay is the fault of the Agency, then the Agency must notify the household as to what action it must take to complete the application. The cause of the delay in failing to complete verification shall be considered the household's fault only if the Agency has assisted the household in trying to obtain the verification and allowed the household at least ten days to obtain the missing verification. If the household is found to be eligible during the second thirty-day period, prorated benefits must be provided from the date of application. 7 CFR 273.2(h); 18 NYCRR 387.14(a)(4).

If, due to the Agency's fault, the application process is not completed by the end of the second thirty-day period, the Agency must continue to process the application until an eligibility decision is reached. If the household is found eligible and the Agency was at fault for the delay in the initial thirty days, the household must receive benefits retroactive to the day of application. However, if the initial thirty-day delay was the household's fault, the household must receive benefits retroactively to the date final verification of all required eligibility factors was received. If the household was at fault for not completing the application process by the end of the second thirty-day period, the application must be denied and the household will not be entitled to any lost benefits, even if the delay in the initial thirty days was the fault of the Agency. 18 NYCRR 387.14(a)(4).

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 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.

Administrative Directive 95-ADM-3 amended and clarified the responsibilities of the social services districts (SSDs) in relation to the

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education and transportation of homeless school age children who are temporarily placed outside of their original school district.

Under this directive, when a parent has designated a school district other than the school district of current location, the SSDs are responsible for providing transportation to and from school for homeless children who are eligible for Emergency Assistance to Needy Families with Children (EAF) and who have been placed by the SSD into the temporary housing. Transportation can be provided, if such transportation is necessary and is requested by the parent, by the SSDs or by contract with a board of education or a cooperative educational services.

#### DISCUSSION

At the hearing, the Appellant stated that she provided the Agency with a confidential employment inquiry form from K R U on September 30, 2002. This testimony was uncorroborated and was not persuasive. The Appellant did not provide evidence such as a copy of the document in question to support her testimony that she provided it to the Agency. In addition, the letter from the attorney representing the Appellant's daughter did not provide any information concerning the status of any lawsuit but merely appeared to be a form letter advising her to contact the attorney's office with the phone extension and office hours listed.

Verification of recent employment, including the reasons for its termination, is essential for a determination of eligibility for Public Assistance and Food Stamp benefits. In addition, information on the status of a potential resource is essential for a determination of eligibility for Public Assistance. The Appellant did not establish that she provided this documentation to the Agency or that she had good cause for her failure to do so. Accordingly, the Agency properly determined to deny the Appellant's application for Public Assistance and Food Stamp benefits.

Regarding the failure of the Agency to provide the Appellant with school bus transportation for her children while she resided in temporary housing, the Appellant's representative is seeking relief in the form of a directive in similarly affected cases under Regulations at 18 NYCRR 358-6.3.

The Agency sought to draw a distinction between temporary housing placements that are provided through its Emergency Services Division in which an applicant is required to call in every day for a housing placement and to vacate the temporary housing on a daily basis and those that are provided by its Division of Housing which are for longer periods of time. The Agency noted that it is not feasible for it to arrange for school bus transportation where temporary housing is provided through its Emergency Services Division. The Agency also noted that a more stable temporary housing placement did not become available to the Appellant until November 6, 2002 at which time it was able to initiate the process of providing transportation to the Appellant's children to attend school.

The Agency acknowledged that it was unable to arrange for the provision of transportation to school for children in families who receive temporary housing through its Emergency Services division, citing the requirement under 95-ADM-3 of a STAC form, which asks for an address as an insurmountable obstacle. The Agency added that it was not physically possible to provide school busing to these children. The Agency also added that these children

could utilize public transportation or that it would reimburse the household for ten cents per mile if they used their own automobiles.

However, the relevant Administrative Directive 95-ADM-3 does not make any distinction between the temporary housing on the basis of duration, as the Agency seeks to do. The result of the Agency's failure to arrange for school transportation for the Appellant's children was an absence from school for nearly two months. The Appellant's representative noted that one child of the Appellant's is learning disabled and has an individualized education plan (IEP) and as such falls within the purview of the Individuals with Disabilities in Education Act which requires states to have a plan that assures a free and appropriate public education to children with disabilities.

The record in this case establishes that the Agency failed to comply with the provisions of Administrative Directive 95-ADM-3. While the Appellant's children are now in fact, receiving transportation to school, the Agency should under Regulations at 18 NYCRR 358-6.3, review all similarly affected cases to ensure that children of families in temporary housing are provided with transportation to school if they are placed in temporary housing that is outside of the school district.

#### DECISION AND ORDER

The determination of the Agency not to provide the Appellant with school transportation for her children while she resided in temporary housing for the period from September 20, 2002 through November 12, 2002 is not correct and is reversed.

1. The Agency is directed to review all similarly affected cases to ensure that school transportation is provided to children of homeless families.

The Agency's determination to deny the Appellant's application for Public Assistance and Food Stamp benefits is correct.

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 required, 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  
January 29, 2003

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee