

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

REQUEST August 13, 1996
CASE#
CENTER# Erie
FH# 2527827M

In the Matter of the Appeal of

:

B B

DECISION
: AFTER
FAIR
HEARING

from a determination by the Erie County
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 the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on October 9, 1996, in Erie County, before James W. Ryan III, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

B B Appellant; Marilyn Bradley, Neighborhood Legal Services

For the Social Services Agency

Mr. Janulewicz, Fair Hearing Representative

ISSUE

Was the Agency's determination to discontinue the Appellant's Public Assistance, Medical Assistance and Food Stamp benefits for failure to provide documentation necessary to determine the Appellant's continuing eligibility for such benefits 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, age 35, has been in receipt of Public Assistance, Medical Assistance and Food Stamp benefits for a household of three.
2. On May 23, 1996, the Agency sent the Appellant an eligibility questionnaire which was to be returned to the Agency within five days.
3. The Appellant returned the questionnaire to the Agency.
4. On August 13, 1996, the Appellant requested this fair hearing.

APPLICABLE LAW

Department 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. 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.

Section 351.21(a) of Department Regulations provides that contacts with recipients and collateral sources shall include face-to-face contacts, correspondence, reports on resources, eligibility mailouts and other documentation. Contacts with or concerning recipients shall be made as frequently as individual need, change in circumstances or the proper administration of assistance or care may require.

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 the Department's 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.

Section 360-2.2(f) of the Regulations requires that a personal interview be conducted with all applicants for Medical Assistance. Such personal interview shall be conducted before a decision on Medical Assistance eligibility is authorized or reauthorized. The Department may grant a waiver of the personal interview requirement for recertification of aged, certified blind or certified disabled recipients when the Agency demonstrates that alternative procedures have been established to verify that recipients continue to meet all eligibility requirements for Medical Assistance. Section 360-2.3 of the Regulations provides that the Medical Assistance applicant and recipient has a continuing obligation to provide accurate and complete information on income, resources and other factors which affect eligibility. An applicant or recipient is the primary source of eligibility information. However, the Agency must make collateral investigation when the recipient is unable to provide verification. The applicant's or recipient's failure or refusal to cooperate in providing necessary information is a ground for denying an application for a Medical Assistance Authorization or for discontinuing such benefits.

Certified Food Stamp households are required to report changes in sources of income or changes in the amount of gross monthly income in excess of \$25.00 (except changes in the Public Assistance grant), all changes in household composition, changes in residence and the resulting change in shelter costs, the acquisition of a non-exempt licensed vehicle and when resources reach or exceed a total of \$2000.00. A certified household must report such change within ten days of the date the change becomes known to the household. Such change can be reported on the State-prescribed form or by telephone. 7 CFR 273.12(a); 18 NYCRR 387.17(e).

Changes reported during a Food Stamp certification period shall be subject to the same verification procedures which apply at initial certification. However, the local Agency is not required to verify income, medical expenses, or actual utility expenses if the source has not changed and the amount has changed by \$25.00 or less since the last verification. 7 CFR 273.2(f)(8); 18 NYCRR 387.8(c)(5).

At recertification the local Agency shall verify a change in income or actual utility expenses if the source has changed or the amount has changed by more than \$25.00. Previously unreported medical expenses and total recurring medical expenses which have changed by more than \$25.00 shall also be verified at recertification. The local Agency shall not verify income, total medical expenses, or actual utility expenses claimed by households which are unchanged or have changed by \$25.00 or less, unless the information is incomplete, inaccurate, inconsistent or outdated. Other information which has changed may be verified at recertification. Unchanged information shall not be verified unless the information is incomplete, inaccurate, inconsistent or outdated. 7 CFR 273.2(f)(8); 18 NYCRR 387.8(c)(6).

All changes which result in an increase in a household's benefits shall be verified prior to taking action on such changes. The household shall be allowed ten days from the date the change is reported to provide the

required verification. The time frames for issuing the benefit shall run from the date the change was reported, not from the date of verification. Should the household fail to provide the required verification within ten days after the change is reported but provide verification at a later date, then the time frames shall run from the date verification is provided rather than from the date the change is reported. When the local agency fails to take action on a change which increases a household's benefits within the time limits specified above, all lost benefits shall be restored to the household. For changes which result in an increase in a household's benefits due to the addition of a new household member who is not a member of another certified household, the local agency shall make the change effective not later than the first allotment issued ten days after the date the change was reported. If the change is reported after the 20th of a month and it is too late for the agency to adjust the following month's allotment, the agency shall provide an opportunity for the household to obtain the increase in benefits by the 10th day of the following month, or the household's normal issuance cycle in that month, whichever is later. 7 CFR 273.12(c)(1); 18 NYCRR 387.17(e).

The local agency shall act upon upon changes that decrease a household's benefit level or make a household ineligible to participate in the Food Stamp Program no later than the allotment for the month following the month in which the notice of adverse action period has expired, provided a fair hearing and continuation of benefits have not been requested. 7 CFR 273.12(c)(2); 18 NYCRR 387.17(e).

DISCUSSION

The Agency failed to establish that a notice of discontinuance was properly mailed to the Appellant or that the Appellant did not comply with the request for eligibility information.

The Appellant's contention that she did not receive the Notice of Intent is fully credited. There is a presumption that a notice is received by an Appellant if there is sufficient evidence to show that it was mailed. The Appellant credibly testified that she did not receive the notice. It is significant that the Appellant did not request a fair hearing until August 13, 1996. The Agency produced no one with personal knowledge that the notice was mailed or sufficient evidence that the Agency followed an established practice in mailing the notice. Without evidence that the notice was mailed, there is no presumption that the Appellant received it.

The Appellant further contended that she submitted the eligibility questionnaire to the Agency and indicated on it that she wanted her daughter, L , deleted from the case. The Agency representative testified that he could not find a written request to delete the daughter. The Appellant produced at the hearing a notice dated June 11, 1996 which indicated that L was deleted from her case "per your request". The Appellant's testimony is credible because the June 11, 1996 notice is consistent with her request to delete her daughter. Accordingly, the Agency is reversed.

DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Public Assistance, Medical Assistance and Food Stamp benefits is not correct and is reversed.

1. The Agency is directed to continue the Appellant's grant of Public Assistance, Medical Assistance and Food Stamp benefits.

2. The Agency is further directed to restore lost benefits retroactively to June 29, 1996, the date of discontinuance.

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

DATED: Albany, New York
December 20, 1996

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

By


Commissioner's Designee