

STATE OF NEW YORK
DEPARTMENT OF LABOR

REQUEST September 4, 2003
CASE # PXXXXXXXXX
CENTER # Suffolk
FH # 3976010M

In the Matter of the Appeal of :
RC :

DECISION
: **AFTER**
FAIR
HEARING

from a determination by the Suffolk 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 Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on November 10, 2003, in Suffolk County, before James J. Dalton, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

RC, Appellant; Nora Gonzalez, Representative

For the Social Services Agency

Eileen Alheidt, Fair Hearing Representative

ISSUE

Was the Agency's determination to reduce the Appellant's Family Assistance and Food Stamps, by removing her needs therefrom, on the grounds that Appellant failed, without good cause, to cooperate or participate in the assessment process, 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 43 years, has been in receipt of a grant of Family Assistance and Food Stamps for a household of two persons.
2. Appellant is the parent or caretaker of a dependent child, age sixteen years.
3. On June 17, 2003, the Agency notified the Appellant to report for an assessment interview on July 1, 2003.
4. The Appellant did not report to the scheduled assessment interview.
5. On the date of the assessment interview, July 1, 2003, the Appellant

was engaged in work relief activities.

6. The Appellant did not receive the appointment letter for the July 1, 2003 assessment interview.

7. On August 26, 2003 the Agency notified the Appellant of its intent to reduce the Appellant's Family Assistance, by removing her needs therefrom, for at least six months and until willing to comply and reduce the household's Food Stamp benefits for at least four months on the grounds that Appellant failed, without good cause, to cooperate or participate in the assessment process.

8. Before sending the Notice of Intent, the Agency sent the Appellant a notice of conciliation advising this individual of the opportunity to take part in conciliation regarding the Agency's claim.

9. The Appellant responded to the notice of conciliation and had a conciliation with the Agency to give reasons for the failure to comply. After evaluating the Appellant's reasons, the Agency issued the Notice of Intent.

10. The Appellant had been sanctioned three times previously for failing, without good cause, to comply with Suffolk Works Employment Program requirements.

11. On September 4, 2003, 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 131(7)(b) of the Social Services Law provides that where a persons is judged employable or potentially employable, a social services official may require such person to receive suitable medical care and/or undergo suitable instruction and/or work training. A person who refuses to accept such care or undergo such instruction or training is ineligible for Public Assistance and care.

Section 335 of the Social Services Law and 12 NYCRR 1300.6 require that each recipient of Public Assistance who is a member of a household with dependent children and is eighteen years of age or older, or who is sixteen or seventeen years of age and is not attending secondary school and has not completed high school or a high school equivalency program, receives an assessment of employability based on his or her educational level, including literacy and English language proficiency, basic skills proficiency, child care and other supportive services needs; and the skills, prior work experience, training and vocational interests. The assessment must include a review of family circumstances including a review of any special needs of a child. The assessment must be completed within 90 days of the date on which such person is determined eligible for Public Assistance. An applicant for or recipient of Public Assistance may be assigned to work activities prior to completion of such assessment. Applicants and recipients are required to participate in an assessment as assigned by the social services official.

Based on the assessment, the social services official will develop a

FH# 3976010M

written employability plan in consultation with the recipient, which shall set forth:

- (a) the services which the district will provide, including child care;
- (b) the work activities to which the recipient will be assigned;
- (c) the recipient's employment goal, which shall reflect, to the extent possible, the recipient's preferences to the extent they are consistent with the assessment.

In developing the plan, the social services official shall take into account:

- (a) the recipient's supportive services needs;
- (b) the available program opportunities;
- (c) the local employment opportunities;
- (d) if the recipient is assigned to an education program, the recipient's liability for student loans, grants and scholarship awards.

If a recipient's preferences cannot be accommodated in the employability plan, the plan shall record the reasons.

Notwithstanding the requirement that the employability be based on the assessment, in developing the employability plan, the social services official must consider the needs of the social services district to meet federal and state work activity participation rates before completing an individual's employability plan.

The entire household of an applicant who fails or refuses to participate with the requirements for assessments shall be ineligible for Public Assistance. Recipients who fail or refuse to participate with the requirements of this section shall be subject to the sanctions set forth in section 342 of the Social Services Law and 12 NYCRR 1300.12.

Social services officials are required by Section 341 of the Social Services Law and 12 NYCRR 1300.11 to establish a conciliation procedure for applicants and recipients of Public Assistance.

A social services official must issue a notice to each applicant or recipient who refuses or fails to comply with public assistance employment program requirements of Article 9-B of the Social Services Law (Sections 330 - 342). Such notice must advise the individual of his or her refusal or failure to comply, that the individual has the right to provide reasons for such failure or refusal to participate and that he or she has a specified number of days to request conciliation. Applicants and recipients for Safety Net Assistance have seven days to request conciliation and applicants and recipients for Family Assistance have 10 days to request conciliation.

If the individual requests conciliation within the specified number of days, conciliation shall not last longer than 14 days from the date of the

conciliation request in the case of an applicant or recipient of Safety Net, and 30 days from the date of the conciliation notice in the case of a Family Assistance recipient and it will be the individual's responsibility to provide reasons for such refusal or failure to comply.

If the district determines that the individual's refusal or failure to comply was willful and without good cause, then the social services official must issue a notice of denial or 10 day notice of intent to reduce or discontinue assistance.

Social services officials are responsible for determining good cause. The official must consider the facts and circumstances, including information submitted by the individual subject to such requirements. Good cause includes circumstances beyond the individual's control, such as but not limited to, illness of the member, illness of another household member requiring the presence of the member, a household emergency, or the lack of adequate child care for children who have reached the age of six but are under age 13. 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. 12 NYCRR 1300.12(c).

Section 342 of the Social Services Law and 12 NYCRR 1300.12 provides that in the case of an applicant for or recipient of Public Assistance who is a parent or caretaker of a dependent child the Public Assistance benefits otherwise available to the household of which such individual is a member shall be reduced pro-rata:

- (a) For the first instance of failure to comply without good cause until the individual is willing to comply;
- (b) For the second instance of failure to comply without good cause, for a period of three months and thereafter until the individual is willing to comply;
- (c) For the third and all subsequent instances of failure to comply without good cause, for a period of six months and thereafter until the individual is willing to comply.

Pursuant to 7 U.S.C 2015 (Section 6 of the federal Food Stamp Act of 1977), as amended by the the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), if a disqualification is imposed on a member of a household because of that member's failure to perform an action required under a federal, State or local law relating to a means-tested public assistance program, the Agency may also impose a disqualification on the household member under the Food Stamp Program.

If the Agency determines that an individual has refused or failed without good cause to comply with Food Stamp employment requirements, that individual is ineligible to receive Food Stamp benefits for two months for the first instance, four months for the second instance, and six months for the third and subsequent instance of a failure to comply. For the period prior to August 19, 2002, a subsequent failure had to be within three years of the previous such failure in order to increase the duration of the sanction. 7 CFR 273.7(g); 12 NYCRR 1300.12(e).

DISCUSSION

The Agency, in making its determination to sanction the Appellant, stated that the Appellant failed, without good cause, to comply with the requirements of the Suffolk Works Employment Program. Specifically, according to the Agency, the Appellant failed to report to the assessment interview scheduled on July 1, 2003. The Agency did not accept the Appellant's explanation offered at the August 5, 2003 conciliation conference. The Agency also presented evidence to show that the Appellant had previously been sanctioned for failing, without good cause to comply with Suffolk Works Employment Program requirements in September, 1995, June, 1996 and March, 2002.

The Appellant admitted that she did not report to the scheduled assessment interview. She contended, however, that she was at her work relief assignment on July 1, 2003. The Appellant verified her presence at work relief to the Agency.

Appellant further contended that she did not go to assessment interview because she did not receive the notice.

There is a rebuttable presumption that a notice properly addressed, stamped and mailed is received by the addressee. The Agency has established that the notice was sent to the Appellant in the regular course of business.

The Appellant stated that she had problems with her mail delivery for at least five years. She admitted that she has not filed a written complaint with the United States Postal Service about her mail delivery. Furthermore, the Agency stated that there was no returned mail in connection with the June 17, 2003 appointment letter for the July 1, 2003 assessment interview. Nevertheless, the Appellant's contention remains credible. The Appellant's presence at the work relief assignment on July 1, 2003 is an indication that the Appellant was otherwise complying with Suffolk Works Employment Program requirements, and supports her claim that she would have reported to the assessment interview if she had received notice of the appointment.

The Agency has not established that the Appellant's failure to report to the assessment interview was without good cause. Therefore, the Agency's determination to reduce the Appellant's grant of Family Assistance and Food Stamps benefits was not correct. The Agency shall continue the Appellant's assistance.

DECISION AND ORDER

The Agency's determination to reduce the Appellant's Family Assistance and Food Stamps, by removing her needs therefrom, on the grounds that Appellant failed, without good cause, to cooperate or participate in the assessment process was not correct and is reversed.

1. The Agency is directed to continue the Appellant's grant of Family Assistance and to restore any assistance withheld as a result of the Agency's action retroactive to the date of reduction.

2. The Agency is directed to continue the Appellant's Food Stamp benefits and to restore benefits withheld as a result of the Agency's action

retroactive to the date of reduction.

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
November 20, 2003

NEW YORK STATE DEPARTMENT
OF LABOR

By

Commissioner's Designee