

STATE OF NEW YORK
DEPARTMENT OF LABOR

REQUEST August 9, 2002
CASE # P00XXXXX
CENTER # Suffolk
FH # 3761428H

In the Matter of the Appeal of :

J I

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 October 16, 2002, in Suffolk County, before Jonathan M. Kastoff, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

J I, Appellant
Antonia Ezechi, representative

For the Social Services Agency

Randi Delirod, Fair Hearing Representative
Rosalie Tickle, Witness

ISSUE

Was the Agency's determination to reduce the Appellant's Family Assistance on the grounds that Appellant refused to comply with work experience requirements by failing to report to a Suffolk Works Employment Program correct?

Was the Agency's determination to deny Appellant's request for an exemption from the work rules 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 has been in receipt of a grant of Family Assistance for a household of five persons. Also residing in the household is Appellant's mother.
2. Appellant is the parent or caretaker of a dependent child.
3. Appellant was scheduled for a SWEF appointment at the Suffolk County

Department of Labor on February 11, 2002 in order to register for the SWEP program.

4. Appellant failed to report to the scheduled SWEP appointment.

5. On June 11, 2002 the Agency notified the Appellant of its intent to reduce the Appellant's Family Assistance for three months and until Appellant is willing to comply with work experience requirements on the grounds that Appellant refused to cooperate with work experience requirements by failing to report to a SWEP appointment.

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

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

8. Appellant had been sanctioned one time previously for failing to comply with assigned work activities.

9. Appellant had previously requested an exemption from the work rules in order to be at home to care for her mother.

10. The Agency determined that Appellant was nonexempt from complying with the work rules.

11. On August 9, 2002, the Appellant requested this fair hearing to review the Agency's determinations.

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.

Pursuant to Section 336-c of the Social Services Law and 12 NYCRR 1300.9, work experience programs meeting State and federal requirements may be established by social services districts. Work experience programs may include the performance of work for a federal office or agency, county, city, village or town or for the State or in the operation of or in an activity of a nonprofit agency or institution.

Work experience opportunities are limited to projects which serve a useful public purpose in fields such as health, social services, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, operation of public facilities, public safety, and child day care.

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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 applicant/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.

If the participant does not respond to the conciliation letter issued by the social services official within the specified number of days then the social services official must issue a notice to deny Public Assistance or a ten day notice of intent to discontinue or reduce Public 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).

The parent or care taker relative of a child under thirteen years of age shall not be subject to the ineligibility provisions of Section 342 of the Social Services Law if the individual can demonstrate, in accordance with the regulations of the Office of Children and Family Services, that lack of available child care prevents such individual from complying with the work requirements. The parent or caretaker relative shall be responsible for locating the child care needed to meet the work requirements; provided, however, that the relevant social services district shall provide a parent or caretaker relative who demonstrates an inability to obtain needed child care with a choice of two providers, at least one of which will be a regulated provider.

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.

DISCUSSION

Appellant testified that she did not report to the SWEAP appointment because she failed to receive the appointment notice in the mail. Appellant's testimony was plausible, consistent with statements made to the Agency at conciliation, and persuasive. Appellant presented sufficient evidence to establish good cause for Appellant's failure to report to the scheduled SWEAP appointment. Therefore, the Agency's determination to reduce Appellant's Public Assistance cannot be sustained at this time.

At the hearing the Agency agreed to determine whether Appellant could be exempted from the work rules in order to be at home to care for her mother, to notify Appellant in writing of the Agency's determination, and to exempt Appellant from work activities pending that determination.

Appellant accepted the Agency's agreements as a resolution of her fair hearing request regarding an exemption from the work rules. There are no further issues left to be decided.

DECISION AND ORDER

The Agency's determination to reduce the Appellant's Family Assistance on the grounds that Appellant refused to comply with work experience requirements was not correct and is reversed.

1. The Agency is directed to reinstate 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.

In accordance with its agreements made at the hearing, the Agency is directed to take the following action, if it has not yet already done so:

1. Determine whether Appellant could be exempted from the work rules in order to be at home to care for her mother, notify Appellant in writing of the Agency's determination, and exempt Appellant from work activities pending that determination.

Should the Agency need additional information from the Appellant in order to comply with the above directives, it is directed to notify the Appellant

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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
October 25, 2002

NEW YORK STATE DEPARTMENT
OF LABOR

By

Commissioner's Designee