

SUPREME COURT OF THE STAT OF NEW YORK
COUNTY OF NEW YORK: IAS Part 24

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In the Matter of the Application of

POLINA SIROTA,

Petitioner,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules,

Index No.

-against-

114671/96

MARVA HAMMONS, as Commissioner of the New
York City Department of Social Services, and BRIAN
Wing, as Acting Commissioner of the New York
State Department of Social Services,

Respondents.

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Parness, J.

Petitioner commenced this Article 78 proceeding challenging respondents' determination discontinuing petitioner's grant of public assistance and medical assistance benefits. Petitioner, a 24-year-old single female refugee with no dependent children, receives Home Relief benefits which are conditioned upon compliance with work requirements set forth in Social Services Law Sec 164 [Work relief] as well as the requirements of the Job Opportunities and Basic Skills Training Program ("JOBS") set forth in Social Services Law Title 9-B. Petitioner is enrolled in Kingsborough Community College where she has already completed upper level English as a Second Language ("ESL") courses. In June 1996 petitioner was notified of an "Optional Program for Full-Time Students" which provides for reduced work hours and flexible

scheduling for certain Work Experience Program (WEP) participants who maintain a Grade Point Average (GPA) of 2.0 or more. The notice of the Optional Program advises students to "Continue to report to your current assignment until you are officially notified to do otherwise. Failure to do so may result in the loss of benefits". In August 1996, in accordance with Social Services Law Sec. 164, petitioner was given a workfare assignment at the Jewish Community Council of Coney Island. She reported as directed on August 26, 1996; the work site document completed on that date indicates that "Petitioner refused assignment. She is enrolled in school." (City respondent's answer exhibit 5) Petitioner did not respond to a Conciliation Notification, and, on September 14, 1996 the City Agency sent a notice to petitioner setting forth its intention to sanction her by discontinuing her grant of Public Assistance benefits. On September 17, 1996, petitioner attended a post notice conference. The form documenting the conference reflected that petitioner stated that she could not complete all the [WEP] hours because of her schooling. The interviewer completed the form so as to indicate [the Client's] explanation was not accepted and the case not settled in conference [because] "Client's GPA was not high enough to be WEP exempt."

A Fair Hearing was held on October 11, 1997. Petitioner testified that she attended Kingsborough Community College where she was enrolled in English as a Second Language, Speech and Health Education courses totaling 15 credits, and that she studied four hours each night. When questioned about what happened on the first day of her work assignment petitioner testified, "I didn't refuse from [sic] work, just wanted to reduce my work hours, and I ask for, and she said if you want to, you can go home. You're supposed to receive their conciliation letter -- . . . and ask them about the reducing for hours." Petitioner testified that she never received

the Notice of Conciliation though the address to which it was mailed was correct, and that the landlord from whom she rents a room in gives her the mail. Conciliation Notices are generated by the Office of Employment Services (OES) and an affidavit setting forth that Office's mailing procedure was introduced into evidence. Petitioner admitted her grade point average was below 2.0. The administrative law judge indicated the post notice conference had been made part of the record by stating, "You had a conference . . . They talked about your grade point average, and the sanction went through . . ." He ultimately decided that "the Agency's determination to discontinue the Appellate's grant of Public Assistance and Medical Assistance benefits because the Appellant willfully and without good cause failed or refused to comply with employment requirements was correct."

Petitioner commenced this Article 78 proceeding. Petitioner claims that Respondent Hammons' determination was arbitrary and capricious, and in violation of Social Services Law 341 and 18 N.Y.C.R.R. Parts 385 and 358 in that City Respondent:

- a. failed to provide petitioner with the required conciliation procedure to resolve disputes concerning employment requirements;
- b. improperly terminated petitioner's benefits without making factual determinations that petitioner willfully failed to comply with an employment requirement without good cause;
- c. failed to provide a notice of intent stating with specificity the particular acts that led to imposition of the sanction;
- d. improperly terminated petitioner's food stamps

She claims that Respondent Wing's determination was arbitrary and capricious and in violation of Social Services Law 341, 18 N.Y.C.R.R. Parts 385 and 358, in the manner in

which the proceeding took place, and in violation of due process of law in that State

Respondent's Administrative Law Judge:

- a. improperly shifted the burden of proof to petitioner;
- b. failed to make factual findings concerning willfulness and lack of good cause;
- c. failed to assess the adequacy of the notice of intent to terminate benefits;
- d. required petitioner to proceed without an interpreter.

Respondents contend that this proceeding should be transferred to the Appellate Division pursuant to CPLR 7804(g). Petitioner argues against transfer because "the petition does not allege that the State's decision should be reversed because it was not supported by substantial evidence; rather it alleges that the State's decision should be reversed because it was made in violation of Social Services law and regulations, violated due process, and is arbitrary and capricious." (Petitioner's Memo of Law at 4). A careful reading of the petition in conjunction with counsel's letter of March 7, 1997 explicitly delineating the nature of petitioner's claims causes the Court to conclude that the petition does not raise a question of substantial evidence and that transfer of the proceeding would be improper CPLR 7804(g).

Petitioner's first contention is that the City failed to provide a conciliation procedure to resolve the dispute as required by Social Services Law 341 and 18 N.Y.C.R.R. Sec. 385.18. However, respondents alleged service of a notice to attend a conciliation conference and submitted affidavits of mailing procedures. Petitioner's denial of receipt of such notice is insufficient to warrant the conclusion that conciliation was not offered. In any event, petitioner was afforded a post notice conference where she was given an opportunity to state her case and try to convince the OES staff member that her benefits should not be terminated.

Petitioner next contention, that the City's subsequent Notice of Intent to Discontinue Benefits failed to specifically state the particular acts which led to the imposition of the sanction, is belied by the notice specifically stating, "The reason for the [discontinuance of benefits] is that after reviewing your case . . . we have decided that on 08/26/96 you willfully and without good cause failed or refused after assignment to a WEP sponsor agency, to adhere to the sponsor agency's rules regarding your participation." The notice, however, does not provide for any sanction as to food stamps, and the City admits that food stamps were improperly terminated. The City offers to restore all back food stamps, and respondent Hammons is directed to act accordingly.

The Court finds petitioner's claims against the State Respondent equally without merit.

"In fair hearings concerning the discontinuance, reduction or suspension of public assistance, medical assistance, food stamp benefits or services, the social services agency must establish that its actions were correct." 18 N.Y.C.R.R. Sec. 358-5.9. Employable recipients of Home Relief must participate in work relief as a condition of receiving public assistance. Social Services Law Sec. 164, Sec.332, and Sec. 336(c). A recipient of public assistance is exempt from complying with a requirement concerning eligibility if he or she establishes good cause for failing to comply with the requirement. Good cause exists when the recipient has a physical or mental condition that prevents compliance; the failure to comply is directly attributable to Agency error; or other extenuating circumstances beyond the recipient's control prevent him or her from being reasonably expected to comply with an eligibility requirement. The applicant or recipient is responsible for notifying the social services district of the reason for failing to comply with an eligibility requirement and for furnishing evidence to support any claim of good cause. 18

N.Y.C.R.R. 351.26. The social services district ~~must~~ review the information and evidence provided and make a determination of whether ~~the~~ information and evidence support a finding of good cause. Contrary to petitioner's contention, individuals who contend they have good cause for not participating in employment programs ~~bear the~~ burden of demonstrating good cause. *Boniila v Dowling* 219 A.D.2d 526 [First Dept. 1995]. Thus the Administrative Law Judge's finding that the petitioner did not establish that ~~the~~ failure to comply was not willful or without good cause did not impermissibly shift the burden of proof to petitioner.

Petitioner's procedural claim ~~directed against~~ the sufficiency of the determination is equally without merit. The Administrative Law Judge did make the required factual finding that petitioner willfully and without good cause ~~failed or refused~~ to comply with employment requirements.

With respect to the adequacy of ~~the~~ Notice of Intent to terminate benefits, that objection was not raised at the hearing and, in ~~any event~~, the notice is adequate.

Petitioner's final argument is that ~~Respondent~~ Wing's determination violated due process because the Administrative Law Judge ~~required~~ petitioner to proceed without an interpreter. However, the record reflects that ~~petitioner~~ responded appropriately to each of the questions asked and provided narrative explanations ~~as warranted~~. She did not request an interpreter until just before the conclusion of the hearing and did not utilize the interpreter's services to present any additional information. ~~The extent~~ of petitioner's competency in English clearly demonstrates that it was not arbitrary and ~~capricious~~ for the Administrative Law Judge to proceed without an interpreter.

For the foregoing reasons the ~~petition~~ is granted solely to the extent of directing

Respondents to restore any food stamp benefits lost by reason of the improper termination of petitioner's food stamps and is otherwise denied.

In view of the Court's determination of the merits of petitioner's claims, the application for a temporary restraining order is denied.

This constitutes the decision, order and judgment of the Court.

April 11, 1997

A handwritten signature consisting of a stylized, cursive 'J' followed by a dot, likely representing the initials J. S. C.

J. S. C.