

STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST April 16, 1998  
CASE #  
CENTER # Suffolk  
FH # 2885835Y

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In the Matter of the Appeal of :

C D

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 October 30, 1998, in Suffolk County, before Susan Lerner, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

C D , Appellant  
J. Castellano, Esq.

For the Social Services Agency

W. Schneid, Fair Hearing Representative

ISSUE

Was the Agency's determination to discontinue the Appellant's Food Stamp benefits because the Appellant failed to provide documentation necessary to determine the Appellant's continuing eligibility for assistance correct?

Was the Agency's determination to deny the Appellant's application for Food Stamp benefits on the grounds that Appellant's household had excess resources correct?

Was the Agency correct to deny the Appellant transportation expenses on June 8, 1998?

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's eligibility to receive Food Stamps was subject to recertification in March, 1998.

2. The Appellant had previously applied for benefits on or about December 24, 1997, which application was denied.

3. By interoffice memo dated December 24, 1997, from a C. Aspinall to a G. Carter, the Agency noted that Appellant had a new address, i.e., , East Hampton, New York. On January 15, 1998 the Agency requested proof of residency from the Appellant.

4. As part of the recertification process, the Agency requested proof of shelter expenses.

5. In March of 1998 the Appellant submitted a letter from a relative of her landlord, indicating Appellant's living arrangement.

6. On April 9, 1998, the Agency notified the Appellant of its determination to deny the Appellant's application for continued Food Stamp benefits on the grounds that she had failed to provide verification of both her residence and of the ownership of a vehicle.

7. Said notice also cited failure to complete a self-employment worksheet which was neither mentioned nor established by the Agency at the fair hearing.

8. The Agency has withdrawn that portion of its denial which was based upon failure to establish ownership of a vehicle.

9. By notice dated April 16, 1998 the Agency notified the Appellant of its determination to deny the Appellant's application for continued Food Stamp benefits on the grounds that her two vehicles constituted excess resources.

10. On June 8, 1998 the Appellant appeared for a fair hearing which was not heard. The Appellant requested and was denied transportation expenses for travel to and from the fair hearing site.

11. On April 16, 1998, the Appellant requested this fair hearing.

#### APPLICABLE LAW

To be eligible for Food Stamp benefits a participant household's resources may not exceed a certain maximum amount which varies depending upon household size and composition. Liquid and non-liquid resources of all members of the household may not exceed \$2,000, except, for households which contain a member age sixty or older, such resources may not exceed \$3,000. 7 CFR 273.8 and 18 NYCRR 387.9(b). Households in which all members are recipients of or authorized to receive Family Assistance or Supplemental Security Income are deemed categorically eligible for Food Stamp benefits and are not subject to the resource limits. 7 CFR 273.8(a), 18 NYCRR 387.14(a)(5).

Liquid resources are those resources readily available to the applicant or recipient, including but not limited to the following:

- cash on hand;
- money in checking and savings accounts;

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- savings certificates;
- stocks or bonds;
- lump sum payments;
- funds (less the amount of penalty, if any, for early withdrawal) held in individual retirement accounts (IRA's) or in Keogh plans which do not involve the household member in a contractual relationship with individuals who are not household members.

18 NYCRR 387.9(b)(1)(i) 7 CFR 273.8(c)(1).

Non-liquid resources include personal property, licensed and unlicensed vehicles, buildings, land, recreational properties, and any other property not specifically excluded in accordance with 18 NYCRR 387.9(b)(3). Non-exempt and non-liquid resources shall be valued at fair market value less any encumbrances. (Licensed vehicles shall be treated as discussed below.) 7 CFR 273.8(c)(2) 18 NYCRR 387.9(b)(1)(ii).

The resources of households containing sponsored aliens shall include that portion of the sponsor's resources deemed available to the alien. 7 CFR 273.8(c) 18 NYCRR 387.9(b)(1)(iii).

In determining the resources of a household certain items are excluded including:

- The home and surrounding property which is not separated from the home by property owned by others. Public rights-of-way, such as roads which run through the surrounding property and separate it from the home, do not affect the exemption of the property. The home and surrounding property shall remain exempt when temporarily unoccupied for reasons of employment, training for future employment, illness, or uninhabitability caused by casualty or natural disaster, provided that the household intends to return. Households that currently do not own a home but own or are purchasing a lot on which they intend to build or are building a permanent home shall receive an exclusion for the value of the lot and, if it is partially completed, for the home. 7 CFR 273.8(e); 18 NYCRR 387.9(b)(3).
- Household goods, personal effects including one burial plot per household member, and the cash value of life insurance policies. The cash value of pension plans or funds shall be excluded, except that Keogh plans which involve no contractual relationship with individuals who are not household members and individual retirement accounts (IRA's) shall not be excluded. 7 CFR 273.8(e); 18 NYCRR 387.9(b)(3).

- Licensed Vehicles.

- (a) Licensed vehicles must have the entire value excluded when the vehicle meets any of the requirements set forth below. However, when vehicles do not qualify for any of these exclusions, such vehicles must be valued according to the market value test as described in (b), (c) and (d). The tests for exclusions are as follows:
- (1) used primarily (over 50 percent of the time) for income-producing purposes. In addition, a licensed vehicle used over 50 percent of the time in self-employment of a household member engaged in farming continues to be excluded as a resource for one year from the date the household member terminates self-employment from farming;
  - (2) annually producing income consistent with its fair market value, even if used only on a seasonal basis;
  - (3) necessary for long-distance travel, other than daily commuting, if it is essential to the employment of a household member or ineligible alien or disqualified person whose resources are being considered available to the household;
  - (4) used as the household's home and is, therefore, excluded as such;
  - (5) necessary to transport a physically disabled household member or ineligible alien or disqualified person whose resources are being considered available to the household regardless of the purpose of such transportation;
  - (6) any vehicle operated on those Indian reservations that do not require vehicles driven by tribal members to be licensed;
  - (7) any vehicle leased by a household member; or
  - (8) any vehicle title to which is held by a non-household member so long as no member of the household is permitted access to the cash value of the vehicle.
  - (9) any vehicle upon which a household depends to carry fuel for heating or water for home use when such transported fuel or water is the primary source of fuel or water for the household.

- (b) All licensed vehicles not excluded under (a) must be evaluated individually for their fair market value. That portion of the value which exceeds \$4,550 through September 30, 1995, \$4,600 for October 1, 1995 through September 30, 1996, and \$4,650 beginning October 1, 1996 must be attributed in full toward the household's resource level, regardless of any encumbrances on the vehicle. 7 U.S.C. 2014(g); 7 CFR 273.8(h); 18 NYCRR 387.9(b)(3).
- (c) Licensed vehicles shall also be evaluated for their equity value except for the following types of vehicles:
- (1) vehicles excluded under (a);
  - (2) one general purpose licensed vehicle per household;
  - (3) additional licensed vehicles which are used by household members (or an ineligible alien or excluded individual whose resources are being considered available to the household) to attend training or education preparatory to employment, to travel to and from employment, or to seek employment in compliance with the job search requirements of the food stamp program.

7 CFR 273.8(h); 18 NYCRR 387.9(b)(3).

- (d) In the event a licensed vehicle is assigned both a fair market value in excess of the amounts provided for under (b), above, and an equity value, only the greater of the two amounts is to be counted as a resource. 7 CFR 273.8(h); 18 NYCRR 387.9(b)(3)(iii).

Leased vehicles are not considered resources nor are vehicles which are registered in the name of a household member but the title to the vehicle is held by a person who is not a member of the household.

- Property, real or personal, to the extent that it is directly related to the maintenance or use of a vehicle used primarily for income producing purposes or annually producing income consistent with its fair market value, or necessary to transport a physically disabled household member (or ineligible alien or disqualified person whose income is being considered available to the household). 7 CFR 273.8(h); 18 NYCRR 387.9(b)(3).
- Property which annually produces income consistent with its fair market value, even if only used on a seasonal basis. Such property includes rental houses and vacation homes. 7 CFR 273.8(e); 18 NYCRR 387.9(b)(3).

Property, such as farm land and rental homes, or work-related equipment, such as the tools of a tradesman or the machinery of a farmer, which is essential to the employment or self-employment of a household member, except that a rental home which is used by a household for vacation purposes at some time during the year shall be counted as a resource unless it annually produces income consistent with its fair market value. In addition, property essential to self-employment of a household member engaged in farming is excluded as a resource for one year from the date the household member terminates his/her self-employment from farming. 7 CFR 273.8(e); 18 NYCRR 387.9(b)(3).

Resources which have been counted as income such as those of students or self-employed persons, which have been prorated as income. 7 CFR 273.8(e); 18 NYCRR 387.9(b)(3).

Resources which are excluded for Food Stamp purposes by express provision of Federal statute. 7 CFR 273.8(e); 18 NYCRR 387.9(b)(3).

Energy assistance payments or allowances which are excluded from income. 7 CFR 273.8(e); 18 NYCRR 387.9(b)(3).

Resources of non-household members as referred to in the definition of household concept in 18 NYCRR 387.1. 18 NYCRR 387.9(b)(3).

Non-liquid asset(s) against which a lien has been placed as a result of taking out a business loan and the household is prohibited by the security or lien agreement with the lien holder (creditor) from selling the assets. 7 CFR 273.8(e); 18 NYCRR 387.9(b)(3)

Resources of any household member who receives Family Assistance benefits or who receives Supplemental Security Income (SSI) benefits or Aid to the Aged, Blind or Disabled under Title I, X, XIV or XVI of the Social Security Act, if or SSI rules exempt the resource for the program in which such individual participates, and the household member's income does not exceed the applicable income standard of eligibility. 7 CFR 273.8(e).

Any income tax refund made to a household member or the member's spouse by reason of an earned income tax credit, as authorized by the Internal Revenue Code, for the month of its receipt and the month following the month of its receipt. Any income tax refund made to a household member by reason of an earned income tax credit must be excluded for a period of 12 months from receipt if such member was participating in the food stamp program at the time the credits were received and participated in such program continuously during the 12-month period. For purposes of this rule, participation in the food stamp program is considered continuous when a household does not leave the program or

temporarily leaves the program for a period of one month or less. However, such households must continue to otherwise meet the income and resource criteria of the food stamp program. 7 U.S.C. 2014(g); 18 NYCRR 387.9(b).

Federal Regulations at 7 CFR 273.14 and Regulations at 18 NYCRR 387.17 provide that the Agency shall deny a reapplication for Food Stamp benefits if the household fails to attend any interview scheduled on or after the deadline for timely filing of the recertification application or to submit all necessary verification within the time frame established by the State.

The Agency must allow the household at least ten calendar days from the interview to submit any additional or missing verification. The Agency need not provide continued benefits if the household fails to submit the verification within the time frame specified by the Agency.

18 NYCRR 358.4.3 (d) provides that upon request of the appellant, the social services agency must provide necessary transportation and transportation expenses to and from the fair hearing for the appellant and appellant's representatives and witnesses and payment for appellant's necessary child care costs and for any other necessary costs and expenditures related to the fair hearing.

#### DISCUSSION

The record reflects that one of the bases for denying Appellant's request for continued Food Stamps was that the value of two vehicles owned by her and listed on her recertification application exceeded the applicable limits. With regard to the Appellant's 1988 Dodge pick-up truck, she states it is no longer hers as title was returned to its previous owner in December, 1997, albeit the vehicle remained on her property as of the time of recertification. The evidence presented by the Appellant, however, establishes that that vehicle is properly deemed an exempt resource as it was used for business purposes. Therefore, the issue of whether she retains the vehicle or title to it, need not be determined. As the Appellant did not present proof of the vehicles use or of her business activity until the fair hearing, however, the Agency's determination was correct when made.

It is noted that the Agency's notice cites two vehicles, yet the Agency's presentation referred only to the 1988 pick-up. It is therefore noted that the Appellant's 1994 Ford Tempo was previously valued by the Agency at \$ 5650.00 and that as per the governing regulations, with respect to all licensed vehicles not otherwise excluded, only that portion of the value which exceeds \$4,650.00, i.e., \$ 1,000.00, is attributed toward the household's resource level.

The record reflects that another basis for denying Appellant's request for continued Food Stamps was her failure to comply with a request for residence verification. The Agency submitted a request for a lease and landlord's form dated January 15, 1998, at the fair hearing. The Agency stated that that request was sent to the Appellant's prior address; returned by the Post Office; and re-sent to Appellant's address of record, as listed on her December, 1997 application. That request is not in issue, however, as it was not related to the recertification process. That request appears

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to have been issued after the Appellant's December application was denied and the Agency did not explain the basis for making that request of the Appellant at that time.

The notice in issue refers only to a denial after the recertification application was processed, which was in March, 1998. The Agency referred to page 25 of its summary packet as the document which instructed the Appellant to verify residency as part of the recertification process. That document asks for rent receipts and utility bills.

The Appellant established that as per her recertification application, her address was changed to \_\_\_\_\_ in East Hampton, but that she receives mail at General Delivery, East Hampton. The Appellant explained that she did not have a lease and that her landlord was in the state of Tennessee. She pointed out that on her recertification application, she indicated that she did not have her landlord's address, but that she provided the Agency with the landlord's phone number. The record reflects that in March, 1998, the Appellant had submitted a letter from her landlord's daughter, indicating that she needed someone to occupy her home while she tended to her mother in North Carolina and that the Appellant was staying at the house but was several months in arrears. While the Agency correctly noted that the letter provided did not include the address in issue, the Appellant pointed out that the Agency never attempted to contact her landlord in Tennessee.

A review of the record establishes that with respect to the Appellant's recertification application, she made a good faith effort to respond to the Agency's inquiries. Although the Agency did not have all required information at the time of their determination, they did not inform the client that the documentation submitted was insufficient and the reasons therefor. The Agency did not inform the client that they needed the letter to be written by the landlord or that the letter was deemed insufficient because it did not include her address. There is therefore no way of knowing what the Appellant would have submitted if she was informed of the Agency's specific requirements.

Lastly, the record reflects that the Agency's determination to deny transportation expenses on June 8, 1998 was not correct and is reversed. The parties agree that the Appellant appeared for a 9 am hearing and that the matter was not called that morning. Judicial Notice is taken of the fact that there were two calendars being heard on that date and that each was lengthy; that the matter was called later in the day; and that the Appellant could not stay. The record reflects that the Appellant reported at 10 am and had to leave to meet other obligations, at 1:30 pm. The case was called at 1:45 pm.

There is disagreement as to whether the Appellant and her representative tried to contact the Hearing Officer or the Fair Hearing unit to request either an adjournment or transportation funds. The testimony provided by the Appellant and her representative is that attempts were made to contact both the Hearing Officer and the hearings unit and that ultimately the State was contacted with an adjournment request. No decision need be rendered, however, as to those circumstances. As there is no disagreement that the



Appellant travelled to the hearing site for a scheduled hearing and that she had to leave and was not heard during the scheduled morning calendar, the Agency is obliged to provide the appropriate transportation expense. If appellant had been able to access the Hearing Officer that day, it would have been reasonable to grant an adjournment to her and thus she would have been eligible to receive transportation funds.

#### DECISION AND ORDER

The Agency's determination to deny the Appellant's application for Food Stamp benefits on the grounds that Appellant's household had resources in excess of the maximum allowable was correct when made.

1. The Agency is directed to provide Food Stamp benefits to the Appellant in accordance with the verified degree of need, if otherwise eligible, and to restore lost benefits retroactive to the date of application.

The Agency's determination to discontinue the Appellant's Food Stamp benefits for failure to provide documentation necessary to determine the Appellant's continuing eligibility for assistance is not correct and is reversed.

1. The Agency is directed to continue to process the Appellant's recertification application, affording her the opportunity to further verify residence and conducting any collateral investigation possible, as provided above.

2. The Agency is directed to assist the Appellant in obtaining the documents needed to verify eligibility.

3. The Agency is directed to thereafter restore lost benefits retroactive to the date of application.

The Agency was not correct to deny the Appellant transportation expenses on June 8, 1998.

1. The Agency is directed to provide the Appellant with transportation expenses for travel related to the fair hearing site on June 8, 1998.

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

DATED: Albany, New York  
January 27, 1999

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

  
Commissioner's Designee