

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: November 28, 2005
CASE #:
CENTER #: 54
FH #: 4446823Y

In the Matter of the Appeal of
T C
from a determination by the New York City
Department of Social Services

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**DECISION
AFTER
FAIR
HEARING**

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 December 22, 2005, in New York City, before Evdokia Sofos, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Eugene Doyle, P.O.O.R., Appellant's Representative

For the Social Services Agency

M. Biderman, Fair Hearing Representative

ISSUES

Was the Agency's determination to include the needs of the Appellant's child, C K , and the child's father, P K , in the Appellant's application for Public Assistance correct?

Was the Agency's determination to deny the Appellant's application for Public Assistance correct?

Was the Agency's failure to make a determination of P R. K 's eligibility for Medical Assistance correct?

Was the Agency's determination as to the adequacy of the Appellant's Food Stamp benefits from August 30, 2005 to the present correct?

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Was the Agency's determination not to provide reimbursement to the Appellant's representative for transportation expenses incurred to enable him to attend the fair hearing correct?

FINDINGS OF FACT

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 resides with her seven-month-old daughter, C K , and with the child's father, P R. K .
2. The Appellant is homebound and the Appellant did not appear at the hearing.
3. The Appellant is visually impaired and is further limited by learning disabilities and problems with comprehension.
4. The Appellant has applied for Social Security benefits as well as Supplemental Security Income benefits.
5. On August 30, 2005, the Appellant (by the Appellant's Representative) applied for a grant of Public Assistance for herself and for Food Stamps and Medical Assistance for herself, for her daughter, C K , and the child's father, P R. K .
6. By notice dated November 21, 2005, the Agency determined to deny the Appellant's application for Public Assistance on the grounds that the household income is sufficient to meet the budgetary needs of the household.
7. The Appellant and her daughter, C K were approved for Medical Assistance benefits retroactive to May, 2005.
8. The Agency has failed to act on the Appellant's application for Medical Assistance for P R. K and has provided no written notification of its determination either to accept or deny such application.
9. The Appellant's application for Food Stamps for herself, C K and P R. K was approved for Food Stamp benefits in the amount of \$237.00 monthly.
10. The Appellant is seeking a review of the adequacy of the Food Stamp allotment from August 30, 2005 to the present.
11. On November 28, 2005, the Appellant requested this fair hearing.
12. At the hearing, the Appellant's Representative requested reimbursement for transportation expenses incurred in traveling to the fair hearing site.

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13. The Appellant's Representative was not provided with reimbursement of his transportation expenses.

APPLICABLE LAW

352.30 Persons included in the budget.

- (a) For budgetary purposes, the number of persons in the public assistance household are those persons who the applicant, recipient or a representative indicates wish to receive public assistance and who reside together in the same dwelling unit. The applicant or recipient must include his or her minor dependent children in the application. When a minor dependent child is named as an applicant for public assistance, his or her natural or adoptive parents and blood-related or adoptive brothers and sisters (who are also minor dependent children) must also apply for public assistance and have their incomes and resources applied toward the public assistance household if they reside in the same dwelling unit as the applying minor dependent child. A person required to be added to the public assistance household is deemed to be included in the application already on file as of the date the person joins the household, either by birth, adoption, or by moving into the dwelling unit of the existing public assistance household. For the purposes of this subdivision, a minor dependent child is a child who is under 18 years of age. Subject to section 352.2(b) of this Part, parents and siblings who are SSI recipients, stepbrothers and stepsisters, ineligible sponsored aliens, aliens who fail to meet the citizenship and alienage requirements in subdivision (a) of section 349.3 of this Title, individuals ineligible due to the lump sum provision of section 352.29(h) of this Part, or children who are receiving adoption subsidies which are exempt under section 352.22(p) of this Title are not required to apply in accordance with this subdivision. The public assistance household may also include persons who are temporarily absent from such household, such as children or minors attending school away from home whose full needs are not otherwise met.

Section 131-a.2 of the Social Services Law establishes the standard of monthly need for Public Assistance households depending upon size of household. The standard of monthly need, when not a whole dollar amount, shall be rounded to the next lower whole dollar amount. When the estimate of regularly recurring monthly need as set forth in Section 131-a.2 exceeds available income and/or resources, the difference is known as a budget deficit. In any month in which a budget deficit of \$10.00 or more exists, a household is entitled to Public Assistance. Where the budget deficit is less than \$10.00, the household is not considered to be in need of or entitled to any cash assistance; however, household members are considered recipients of Public Assistance for other purposes such as eligibility for Medical Assistance. Social Services Law 131-a.2; 18 NYCRR 352.29.

Households determined to be in need for Public Assistance receive a monthly grant equal to the standard of need based on household size minus any income available to the household. This monthly grant includes a basic allowance, an amount for shelter, and amount for fuel for heating when heat is not included in the cost of shelter, a home energy allowance, a supplemental home

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energy allowance, an amount for the additional costs of meals for persons who are unable to prepare meals at home, and an amount for other special items of need.

Regulations at Title 18 NYCRR provide that "each social services district must provide a monthly allowance for rent in the amount actually paid, for cases with a verified rental obligation..." 18 NYCRR 352.3. The maximum shelter allowance is determined by reference to tables set forth in Section 352.3 of the Regulations, which list amounts which depend upon county of residence, family size, and whether there are children residing in the home. For purposes of determining maximum shelter allowance, a child is defined by Section 369.3(c) to be an individual under age 18, or under age 19 if regularly attending a secondary school or equivalent level of vocational or technical training on a full-time basis. Additionally, a needy pregnant woman whose pregnancy has been medically verified and is therefore eligible for Family Assistance in accordance with Section 369.5(c) is considered, for purposes of determining the maximum shelter allowance, to have a child in the home.

Pursuant to Section 352.17 of 18 NYCRR, the amount of earned income used to determine the public assistance grant will be based on an estimate of average monthly earnings. To project average monthly income, the social services district must average the most recent four weeks of earned income, or if there has been a change expected to last at least 30 days, use the new information regarding the amount of pay and the frequency of pay.

Average monthly earned income is applied against need to determine the grant amount for each calendar month of a payment quarter. The amount of average earned income applied must be recalculated at recertification and when a quarterly report is received by the agency. No other adjustments will be made unless one of the following occurs:

- (1) loss of employment;
- (2) change in status of the recipient from part-time to full-time employment or the converse;
- (3) increase or decrease in income expected to last at least 30 days;
- (4) increase or decrease in number of hours worked per pay period expected to last at least 30 days; or
- (5) receipt of income from an additional source of any kind.

The recipient must report and certify any changes in employment status which are set forth above and the social services district must adjust the grant beginning with the month in which the change occurred.

In addition, regulations at 18 NYCRR 352.31(c) provide that, for a temporary change in earned income that lasts for less than thirty days, supplementation must be provided if such supplement has been requested by the recipient; verification of the reduction in earned income is

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provided within ten days after the month in which the reduction occurred; and the recipient establishes that the reduction was beyond his/her control (i.e., due to a physical or mental problem of the recipient, the employer's determination to reduce work hours or wages or other extenuating circumstances under which the recipient could not reasonably be expected to earn the same amount of income).

Regulations at 18 NYCRR 352.19 provide that the first \$90.00 of earned income must be disregarded and deducted from the gross monthly earnings of each individual engaged in employment.

For any Family Assistance or any Safety Net Assistance household which contains a dependent child under age 18 (or under age 19 if the child is attending secondary school) or, effective September 24, 2003, a pregnant woman, 45 percent (43 percent between June 1, 2004 and May 31, 2005; 51 percent between June 1, 2003 and May 31, 2004; 50 percent between June 1, 2002 and May 31, 2003; 49 percent between June 1, 2001 and May 31, 2002; 47 percent between June 1, 2000 and May 31, 2001; 46 percent between June 1, 1999 and May 31, 2000; 45 percent between June 1, 1998 and May 31, 1999; 42 percent prior to June 1, 1998) of the remainder of the recipient's monthly earned income is exempt and must be disregarded as income or resources in determining eligibility and degree of need. 18 NYCRR 352.20(c). Social Services Law Section 131-a(8)(a). However, an applicant's eligibility for Family Assistance or Safety Net Assistance must be determined without taking such earned income exemption into account, unless the applicant's needs were met in whole or in part by FA or SNA payments for any one of the four preceding months. 18 NYCRR 352.20(c).

In addition, in accordance with Section 352.19 of 18 NYCRR, expenses incident to employment shall not be deducted from gross earnings in any month where the individual:

- (1) terminated employment or reduced earnings without good cause within the period of thirty days preceding such month;
- (2) refused without good cause, within a period of thirty days preceding such month, to accept employment in which he is able to engage, offered by the State Employment Service, or any other bona fide offer of employment; or
- (3) failed without good cause to make a timely report of income.

Section 360-2.4 of 18 NYCRR provides that eligibility for a Medical Assistance Authorization must be determined within 45 days of application. However where Medical Assistance eligibility is dependent on disability status the agency must determine eligibility within ninety days of application. Where an applicant for Public Assistance is determined ineligible for such benefits, the agency must make a separate determination of Medical Assistance eligibility within thirty days of the date the application for Public Assistance was denied. If timely action was not taken on the Public Assistance application, the agency must determine eligibility within thirty days of the date when action should have been taken. The

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district must determine eligibility within thirty days of the date of a Medical Assistance application if an applicant is a pregnant woman or an infant younger than one year of age whose household income does not exceed 185 percent of the applicable Federal poverty level; the applicant is a child at least one year of age but younger than six years of age whose household income does not exceed 133 percent of the applicable Federal poverty level; or the applicant is a child born after September 30, 1983 who is at least six years of age but younger than 19 years of age whose income does not exceed 100 percent of the applicable Federal poverty level.

The level of Food Stamp benefits to which a household is entitled is based on the household's net income. A household's net income is computed by subtracting from the gross household income certain exclusions and deductions which are allowable under the Federal Food Stamp Act (7 USC 2014), Code of Federal Regulations (7 CFR 273.9, 273.10 and 273.11), specific United States Department of Agriculture (USDA) instructions and State Regulations (18 NYCRR 387.11 and 387.12).

The amount of earned income used to determine Food Stamp benefits is based on an estimate of average monthly earnings. To project average monthly income, the Agency must average no less than the most recent four weeks of income, or if there has been a change expected to last at least 30 days, use the new information regarding the amount of pay and the frequency of pay. Income which is not of a continuing nature must not be included for purposes of projecting average income. Average monthly income is applied against need to determine the amount of Food Stamp benefits for each calendar month of a certification period. The amount of average earned income applied must be recalculated at recertification and when a periodic report is received by the Agency. Adjustments to benefits will be made prospectively whenever information is received from a household required to report changes in working hours on a monthly basis because of ABAWD eligibility requirements. 18 NYCRR 387.17(d).

Exclusions are allowed for certain items including in-kind benefits, vendor payments, loans, reimbursements for past or future expenses (to the extent they do not exceed actual expenses and do not represent a gain or benefit to the household), non-recurring lump sum payments, costs of producing self-employment income, and monies withheld to recover certain prior overpayments. In addition, effective October 1, 2002, adoption subsidy payments and foster care payments are excluded from a household's income, as well as all educational grants, loans and scholarships provided for education purposes other than living expenses. Also, as of October 1, 2002, legally obligated child support payments made by a Food Stamp household member to non-household members, which were formerly a deduction from income in computing Food Stamp entitlement, are excluded from consideration in determining eligibility or amount of entitlement.

Allowable deductions include:

- (1) A 20% deduction from earned income.
- (2) A standard deduction in the amount of \$134 monthly for households of four or less persons, \$157 for households of 5 persons, and \$179 for households of 6 or more persons. (For the period between October 1, 2004 and September 30, 2005,

the standard deduction is \$134 monthly for households of four or less persons, \$153 for households of 5 persons, and \$175 for households of 6 or more persons.) This deduction is equal to 8.31 percent of the applicable net income limit (poverty level) based on household size or \$134, whichever is greater, and up to a maximum deduction equivalent to the deduction for a household of six persons.

- (3) Actual dependent care costs which consist of costs for the care of a child or other dependents including an incapacitated adult when necessary for a household member to accept or continue employment, seek employment in compliance with the job search criteria (or an equivalent effort by those not subject to job search) or to attend training or to pursue education in preparation for employment. The deduction for dependent care is actual cost up to \$200 per month for each dependent under age two, and up to \$175 per month for each dependent age two and over.
- (4) Prior to October 1, 2002, a deduction for child support payments made by a household member to or for an individual who is not a member of the household if such household member is legally obligated to make such payments. Effective October 1, 2002, such payments are excluded from gross income.
- (5) Excess shelter costs computed by subtracting 50% of adjusted income from the sum of the following items:
 - a. actual rent or mortgage payments;
 - b. if the household is billed separately and on a recurring basis for heating/cooling costs, the heating/cooling standard (or, prior to October 1, 2002, the greater of the standard and the household's actual heating/cooling costs). If the household is eligible for the standard allowance for heating and/or cooling, or if the household is receiving a Home Energy Assistance Program (HEAP) payment or other Low Income Home Energy Assistance Act (LIHEAA) payment, the household is entitled to the combined standard allowance for heating and/or cooling, non-heat related utilities and telephone (or, prior to October 1, 2002, the greater of the combined standard allowance and the household's actual combined costs).
 - c. if the household is billed separately and on a recurring basis for utility costs other than heat, the utility standard (or, prior to October 1, 2002, the greater of the standard and the household's actual utility costs, other than for heat). If the household is not eligible for the standard allowance for heating and/or cooling but is eligible for the standard allowance for utilities, the household is entitled to the combined standard allowance for non-heat related utilities and telephone (or, prior to October 1, 2002, the

greater of the combined standard allowance and the household's actual combined costs).

- d. if the household is billed separately and on a recurring basis for a telephone, the \$33 telephone standard (or, prior to October 1, 2002, the greater of the standard and the actual cost for basic service for one telephone). If the household is not eligible for the standard allowance for heating and/or cooling or for the standard allowance for utilities but is eligible for the standard allowance for telephone, the household is entitled to the standard allowance for telephone (or, prior to October 1, 2002, the greater of the standard allowance and the actual cost of basic service for one telephone);
- e. any other allowable shelter costs.

Effective October 1, 2005, the excess shelter deduction is limited to \$400 (\$388 for October 1, 2004 through September 30, 2005), unless the household contains a member sixty years of age or older or disabled. Where the household contains such a member, there is no limitation on the amount of the deduction.

- (6) Allowable unreimbursed medical costs in excess of \$35 monthly for those household members who are elderly or disabled.

Once the household's net income is determined, reference to the USDA Basis of Coupon Issuance Tables provides the household's level of Food Stamp entitlement.

Households in which any member is in receipt of Public Assistance or Supplemental Security Income (SSI) and households in which at least one member is in receipt of Food Stamps are categorically income eligible for HEAP benefits. All other households must have total household income less than or equal to maximum limits as set in accordance with federal law. A categorically eligible or income eligible household will, however, be ineligible for HEAP benefits if the household resides in government subsidized housing with heat included in the rent; the household pays room and board or room only and is not residing in a commercial enterprise; the household is temporarily housed in a hotel/motel; the household resides in a congregate care facility or dormitory; the household consists of children residing in an agency boarding home, group home or institution who are receiving Title IV-E payments or payments under Article 6 of the Social Services Law; the household is temporarily living in a car, van or recreational vehicle; the household consists of individuals living on a military base in government-provided housing with no utility or heating bills in their name; the household has no responsibility for any heating costs and does not make undesignated payments for heat in the form of rent; or the household consists of individuals who are migrant or seasonal workers provided room and board and with no heating expense. 18 NYCRR 393.4(c).

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Where Food Stamp benefits are lost due to an error by the Agency, the Agency is required to restore lost benefits. However, lost benefits shall be restored for not more than twelve months prior to whichever of the following occurred first:

1. The date the Agency received a request for restoration from a household; or
2. The date the Agency is notified or otherwise becomes aware that a loss to a household has occurred.

7 CFR 273.17; 18 NYCRR 387.18 and the Food Stamp Source Book, Section 10.

An appellant at a fair hearing has a right to be represented by an attorney or other representative at any conference and hearing, or to represent themselves. Upon request, an appellant has the right to receive necessary transportation or transportation expenses to and from the hearing for themselves and their representatives and witnesses and to receive payment for necessary child care costs and for any other necessary costs and expenditures related to the fair hearing. 18 NYCRR 358-3.4(e) and (i).

DISCUSSION

The record established that the Appellant resides with her seven-month-old daughter, C K , and with the child's father, P R. K . The Appellant's Representative contends that the Appellant is homebound, thus the Appellant did not appear at the hearing. The Appellant's Representative contends that the Appellant is visually impaired and is further limited by learning disabilities and problems with comprehension. The Appellant has applied for Social Security benefits (Disabled Adult Child benefits) as well as Supplemental Security Income benefits. On August 30, 2005, the Appellant (by the Appellant's Representative) applied for a grant of Public Assistance for herself and for Food Stamps and Medical Assistance for herself, for her daughter, C K , and the child's father, P R. K .

By notice dated November 21, 2005, the Agency determined to deny the Appellant's application for Public Assistance on the grounds that the household income is sufficient to meet the budgetary needs of the household. The Appellant and her daughter, C K were approved for Medical Assistance benefits retroactive to May 1, 2005. The Agency has failed to act on the Appellant's application for Medical Assistance for P R. K and has provided no written notification of its determination either to accept or deny such application. The Appellant's application for Food Stamps for herself, C K and P R. K was approved for Food Stamp benefits in the amount of \$237.00 monthly. The Appellant is seeking a review of the adequacy of the Food Stamp allotment from August 30, 2005 to the present.

The Agency denied the Appellant's application for Public Assistance on the grounds that P R. K 's employment income is sufficient for a household of three persons. The Appellant's Representative contended at the hearing that the Agency's determination was not correct because the Appellant only applied for Public Assistance for herself and that the employment income of P R. K should not have been considered when determining

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whether the Appellant was eligible for Public Assistance benefits.

Section 352.30(a) of the Regulations provide that an applicant must include her minor dependent children in the application. When a minor dependent child is named as an applicant for public assistance, her natural or adoptive parents must also apply for public assistance and have their incomes and resources applied toward the public assistance household if they reside in the same dwelling unit as the applying minor dependent child.

At the hearing, the Appellant's Representative contended that there was no authority for the requirement that the needs of the Appellant's child and the needs and income of the child's father be included in the determination of the Appellant's Public Assistance eligibility. In support of his contention, the Appellant's Representative submitted a copy of the relevant portions of the July 7, 2004 New York State Register, wherein the sentence requiring that the applicant include his or her minor dependent children in the application is omitted from the text of Section 352.30(a) of the Regulations as set forth herein. However, such requirement is set forth in the official compilation of the Regulations, set forth in volume 18 of the Codes, Rules and Regulations of the State of New York (18 NYCRR), as published by the Department of State. Accordingly, the Appellant's Representative's contention that the child, C K , and her father, P R. K , should not have been included in the Public Assistance household composition and that P R. K 's employment income should not have been considered by the Agency in the determination of the Appellant's eligibility for Public Assistance is not correct.

However, although duly notified of the time and place of the hearing, the Agency failed to present sufficient evidence at the hearing to support its determination as to Appellant's entitlement to Public Assistance benefits. The Agency did not present a budget computation to support its contention that P R. K 's employment earnings are sufficient for a household of three persons. Accordingly, the record fails to establish that the Agency computation of Appellant's Public Assistance benefits was correct. Further, although duly notified of the time and place of the hearing, the Agency failed to present any evidence at the hearing to support its determination as to Appellant's household entitlement to Food Stamp benefits.

At the hearing, the Appellant's Representative further requested reimbursement of transportation expenses in the amount of \$18.00 incurred in traveling to the hearing site, but it was not provided. This was added as a supplemental issue. It is noted that on the date of this hearing, there was an ongoing transit strike (December 20, 2005 through December 22, 2005) and no subway or bus service was available. The Appellant's representative submitted documentation (including receipts) establishing that in order to get from his office to the hearing site at 14 Boerum Place, Brooklyn, he took the AirTrain from Howard Beach to Jamaica, Queens (\$5.00 each way), and then the Long Island Railroad from Jamaica, Queens to Flatbush Avenue in Brooklyn (\$4.00 each way), resulting in a total cost of \$18.00 round trip.

The Regulations, set forth above, clearly provide that an appellant and his representative and witnesses are entitled to transportation costs incurred in traveling to the hearing. Accordingly, the Agency's determination not to provide reimbursement of such costs is not correct.

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DECISION AND ORDER

The Agency's determination that the Appellant's application for Public Assistance should include her daughter, C K , and the child's father, P R. K is correct.

The Agency's determination to deny Appellant's application for Public Assistance benefits is not correct and is reversed.

1. The Agency is directed to redetermine the Appellant's eligibility for Public Assistance, taking into account household income and expenses.

2. The Agency is directed to advise the Appellant in writing of its computation, and to provide any benefits for which the Appellant may be eligible.

The Agency's failure to determine P R. K 's eligibility for Medical Assistance was not correct and is reversed.

1. The Agency is directed to process P R. K 's application for Medical Assistance forthwith.

2. The Agency is directed to advise the Appellant as to any additional documentation required to determine eligibility.

3. The Agency is directed to notify the Appellant in writing of its determination as to eligibility.

4. The Agency is directed to restore all lost benefits resulting from the Agency's failure to process P R. K 's application for Medical Assistance in a timely manner.

The Agency's determination as to the adequacy of the Appellant's the Appellant's Food Stamp benefits is not correct and is reversed.

1. The Agency is directed to review the Appellant's household's Food Stamp allotment for the period of August 30, 2005 to the present.

2. The Agency is directed to restore lost benefits retroactive to August 30, 2005.

The Agency's determination not to provide reimbursement of travel expenses incurred by the Appellant's Representative in traveling to the fair hearing is not correct and is reversed.

1. The Agency is directed to provide a grant of \$18.00 as reimbursement for the travel expenses incurred by the Appellant's Representative.

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

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documentation is needed. If such information is requested, 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
02/21/2006

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink, appearing to read "Paula P. O'Keefe". The signature is written in a cursive, flowing style.

Commissioner's Designee