

**STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE**

REQUEST: January 22, 2010
CASE #: Fxxxxxxx
AGENCY: Suffolk
FH #: 5450153M

In the Matter of the Appeal of
JDW
from a determination by the Suffolk County
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 April 5, 2010, in Suffolk County, before Antonia Ezechi, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

JDW, Appellant
Robin Sparks, Esq. Appellant's Attorney

⌘ For the Social Services Agency

Susan Gabrielson, Fair Hearing Representative

ISSUE

Was the Agency's failure to reimburse the cost of expenses incurred by the Appellant pursuant to the Appellant's Fair Hearing number 5226639H 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, age 57, was in receipt of Food Stamp benefits for just himself.

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2. By notice dated, February 19, 2009, the Agency determined to discontinue the Appellant's Food Stamps benefits on the grounds that the Appellant was in violation of probation.

3. The Appellant requested a Fair Hearing numbered 5226639H and advised the Agency that the case in question was dismissed in 1991, he had no outstanding issue and that Florida was not actively seeking him to hold criminal proceedings.

4. The Agency's termination of the Appellant's Food Stamps was erroneous because under the law, in order to terminate benefits, the issuing jurisdiction must be actively seeking the absconder for the purposes of holding criminal proceedings. Florida was not interested in extraditing the Appellant or in holding criminal proceeding.

5. The Agency required the Appellant to provide some documentation from Florida and the Appellant incurred \$70.90 to do so. The Appellant documented his expenses to the Agency.

6. The Agency withdrew the notice dated, February 19, 2009, and restored the Appellant's benefits.

7. On or about August 7, 2009, the Appellant requested a reimbursement of the \$70.90 that he incurred related to Fair Hearing number 5226639H.

8. The Agency failed to reimburse the Appellant and after about three months, the Appellant requested Fair Hearing number 5403086Y to challenge the Agency's failure to reimburse him the necessary costs and expenditures related to Fair Hearing number 5226639H.

9. On January 19, 2010, the Agency stipulated to "evaluate expenses incurred by the Appellant to see if these expenses warrant reimbursement by the Agency". The Agency failed to comply with its own stipulation but instead, asked the Appellant to file an application for Emergency Assistance in order to get reimbursed.

10. On January 22, 2010, the Appellant requested this fair hearing.

APPLICABLE LAW

Regulations at 18 NYCRR 358-4.3(d) provide 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 the 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. NYCRR 358-4.3(d).

DISCUSSION

The Agency stipulated to evaluate expenses incurred by the Appellant pursuant to a Fair Hearing and to determine if those expenses warrant reimbursement by the Agency.

At the hearing, the Appellant accepted the terms of the Agency's stipulation as a complete resolution of the Appellant's request for a fair hearing.

The Agency failed to honor its own stipulation but instead disingenuously advised the Appellant to submit an application for emergency assistance for the reimbursement. Needless to say that the Agency would have turned around and properly denied emergency assistance to the Appellant on the grounds that there was no emergency. The Agency further advised the Office of Administrative Hearings, Compliance Unit, that this advice to the Appellant amounted to compliance of the stipulation on its part and that it had no intention of complying further since the Appellant refused to tender the application for emergency assistance.

The Agency maintained this argument at this hearing.

The underlying problem appears to be that other than requests for transportation reimbursements, the Agency clearly does not often receive requests for those other necessary costs and expenditures related to fair hearings. The Agency is not used to this and does not know what to do with them outside of the fair hearing where petty funds and tokens were routinely provided simply for the reimbursement of transportation expenses to and from the hearings.

The Appellant's attorney submitted into the record of this hearing, three Decisions After Fair Hearing numbers 0736229R (DSS, December 3, 1985), 1541494Q (DSS, June 11, 1990), and 4125861K (DOH, April 6, 2006) which were precisely on point and each reminded the Agency of the existence of the prevailing law cited in this case and each directed the Agency to make reimbursements of necessary costs and expenditures related to Fair Hearings.

Accordingly, the Agency's failure in this case is not correct. The Agency is directed to issue to the Appellant forthwith the amount of \$70.90 which is the sum of money incurred by the Appellant pursuant to his challenge of an Agency's determination at a Fair Hearing. This directive is not for the Agency to evaluate further because the Agency has proof of the expenses and proof of how they were incurred and said proof was also part of the record of the prior fair hearing.

DECISION AND ORDER

The Agency's failure to reimburse the cost of expenses incurred by the Appellant pursuant to the Appellant's Fair Hearing number 5226639H is not correct and is reversed.

1. The Agency is directed to issue the sum of \$70.90 forthwith to the Appellant to reimburse the Appellant's necessary costs and expenditures related to Fair Hearing number 5226639H.

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2. The Agency's stipulation dated, January 19, 2010, is hereby set aside because the record is complete and an evaluation of the expenses is not necessary. Moreover, the Agency failed to honor its own stipulation which resulted in revisiting the same issue at this fair hearing.

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 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
April 27, 2010

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee