
In the Matter of the Appeal of
[REDACTED]
[REDACTED]

:
: **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 October 6, 2010, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[REDACTED]

For the Social Services Agency

Carol Barrios, Fair Hearing Representative

ISSUES

Was the Appellant's request for a fair hearing to review the Agency determination to reduce the Appellant's Public Assistance benefits and reduce the Appellant's Food Stamp benefits timely?

Assuming the request was timely, was the Agency's determination to reduce the Appellant's Public Assistance benefits and reduce the Appellant's Food Stamp benefits correct?

Was the determination of the Agency not to provide the Appellant with a furniture allowance 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's household has been in receipt of Public Assistance and Food Stamp benefits.
2. By notice dated June 16, 2010, the Agency advised the Appellant of its determination to reduce the Appellant's Public Assistance benefits and reduce the Appellant's Food Stamp benefits on the grounds that the Appellant failed to comply with employment requirements.
3. The notice advised the Appellant that a fair hearing must be requested within 60 days of the date of the Agency's action concerning Public Assistance and within 90 days of the Agency's action concerning Food Stamps.
4. The Agency mailed the notice to the Appellant's address as contained in the Appellant's case record.
5. On June 16, 2010, the Agency sent a notice to the Appellant setting forth its intention to sanction the Appellant by reducing the Appellant's Public Assistance benefits to reflect the removal of the Appellant's pro rata needs and by removing the Appellant from the Food Stamp household because the Appellant failed to comply with employment requirements.
6. On August 23, 2010, the Appellant applied for a furniture allowance.
7. The Agency has failed to act on the Appellant's request for such grant.
8. On August 27, 2010, the Appellant requested this fair hearing.

APPLICABLE LAW

Section 22.4 of the Social Services Law provides that, for actions other those concerning food stamp benefits, a request for a fair hearing to review an Agency's determination must be made within sixty days of the date of the Agency's action or failure to act.

A person is allowed to request a fair hearing on any action of a local social services agency relating to food stamp benefits or loss of food stamp benefits which occurred in the ninety days preceding the request for a hearing. Such action includes a denial of a request for restoration of any benefits lost more than ninety days but less than a year prior to the request. In addition, at any time within the period for which a person is certified to receive food stamp benefits, such person may request a fair hearing to dispute the current level of benefits. Social Services Law Section 22.4(b), 18 NYCRR 358-3.1, 18 NYCRR 358-3.5, 7 CFR 273.15.

FH# 5598985Y

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 person 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.

Pursuant to Section 336-c of the Social Services Law, districts may establish work experience programs meeting State and federal requirements. 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, in accordance with the regulations.

The number of hours of work activities a participant may be assigned under section 336-c of the Social Services Law may not exceed a number which equals the amount of assistance payable with respect to such individual (inclusive of the value of food stamps received by such individual, if any) divided by the higher of (a) the federal minimum wage provided that such hours shall be limited to 40 hours a week, or (b) the state minimum wage.

The agency must issue a notice to each applicant or recipient who refuses or fails to comply with the employment requirements of Title 9-B of the Social Services Law (Sections 330-342). Such notice must advise the participant of the refusal or failure to comply and that he or she may request conciliation with the district within seven days under the Safety Net Assistance Program or ten days under the Family Assistance Program. At the conciliation, it will be the individual's responsibility to provide reasons for such refusal or failure to comply. If the district and the participant cannot resolve the issues related to the refusal or failure to comply, or if the individual does not request conciliation, and if the district determines that the refusal or failure to comply was willful and without good cause, the district must issue a timely and adequate notice of intent to reduce or discontinue assistance or an adequate notice to deny assistance.

The Agency is responsible for determining good cause in those instances where the individual has failed to comply with the requirements of this Part. In determining whether or not good cause exists, the social services 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 age 6 but are under age 13. The 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. 18 NYCRR 385.12(c).

FH# 5598985Y

The parent or caretaker relative of a child under 13 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, 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 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 provides that the Public Assistance benefits otherwise available to a household will be reduced pro-rata if an applicant or recipient has failed to comply with the requirements of Public Assistance employment programs, as follows:

- (1) Where the applicant/recipient is a parent or caretaker of a dependent child:

For the first instance of such failure, until the individual is willing to comply;

For the second instance of such failure, for a period of three months and thereafter until the individual is willing to comply; and

For the third and all subsequent instances of such failure, for a period of six months and thereafter until the individual is willing to comply.

- (2) Where the applicant/recipient is a member of a household without dependent children applying for or in receipt of Safety Net Assistance:

For the first instance of such failure, until the failure or refusal ceases or 90 days, whichever period of time is longer;

For the second instance of such failure, until the failure ceases or for 150 days, whichever period of time is longer; and

For the third and all subsequent instances of such failure, until the failure ceases or for 180 days, whichever period of time is longer.

Pursuant to 7 U.S.C. 2015 (Section 6 of the federal Food Stamp Act of 1977), as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), if a disqualification is imposed on a member of a household because of that member's failure to perform an action required under a federal, State or local law relating to a means-tested public assistance program, the Agency may also impose a disqualification on the household member under the Food Stamp Program.

If the Agency determines that an individual has refused or failed without good cause to comply with Food Stamp employment requirements, that individual is ineligible to receive Food Stamp benefits for two months for the first instance, four months for the second instance, and six

FH# 5598985Y

months for the third and subsequent instance of a failure to comply within a three-year period from the last such failure. 7 CFR 273.7(g); 18 NYCRR 385.12(e).

Prior to sending a notice of adverse action, the Agency must determine whether good cause for non-compliance with work registration requirements exists. In determining whether good cause exists, the Agency must consider the facts and circumstances, including information submitted by the household member involved and the employer. Good cause shall include circumstances beyond the member's control such as, but not limited to, illness, 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 age six but are under age 13. 7 CFR 273.7(m); 18 NYCRR 385.12(c). The 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. 18 NYCRR 351.26.

Administrative Directives 02 ADM-2 provides that a request for assistance to meet an identified emergency must be acted upon on the same day on which it was requested. Where no emergency need is identified, the Agency must make a decision regarding the granting of a additional allowance within 30 days of the request.

State regulations at 18 NYCRR 352.6 and 352.7 list the special grants and allowances which may be provided to eligible Public Assistance recipients. Among the special grants which the Agency is authorized to provide to a Public Assistance recipient who is eligible therefor are grants for: household moving expenses, rent security deposits and brokers' or finders' fees (Section 352.6(a)); storage of furniture and personal belongings due to eviction, relocation or temporary shelter (Section 352.6(f)); purchase of necessary and essential furniture, furnishings, equipment and supplies (Section 352.7(a)); additional cost of meals for persons unable to prepare meals at home (Section 352.7(c)); replacement of clothing or furniture lost in a fire, flood or other catastrophe (Section 352.7(d)); rent, property taxes or mortgage arrears for the time prior to the month in which the Public Assistance case was opened (Section 352.7(g)(3)); payment of a recoupable grant to a recipient of Public Assistance who is threatened with eviction or foreclosure for nonpayment of rent or mortgage arrears incurred during a period for which a Public Assistance grant had been previously issued (Section 352.7(g)(4)); and monthly allowance of \$50 to pay for additional needs due to pregnancy (Section 352.7(k)).

DISCUSSION

On June 16, 2010, the Agency notified the Appellant that it had determined to reduce the Appellant's Public Assistance benefits and reduce the Appellant's Food Stamp benefits on the grounds that the Appellant failed to comply with employment requirements.

Although the Agency's notice advised the Appellant that a fair hearing must be requested within sixty days of its action concerning Public Assistance benefits and within ninety days of its action concerning Food Stamp benefits, the Appellant failed to request this fair hearing until August 27, 2010, which was more than 60 days after the Agency's action concerning Public Assistance and more than 90 days after the Agency's determination concerning Food Stamps.

At the present hearing, the Appellant testified that she did not request a fair hearing within the applicable time limits due to a diagnosis of cancer. Appellant stated that the consequent attendance to treatment procedures caused her to be forgetful. The Appellant's testimony is found to be credible because it was candid, appeared sincere and the diagnosis was supported with documentary evidence. Therefore, the record does establish a sufficient basis for tolling the statute of limitations.

In this case, the Agency determined to reduce the Appellant's Public Assistance benefits to reflect the removal of the Appellant's pro rata needs and to remove the Appellant from the Food Stamp household based upon a failure to comply with employment related requirements. The Appellant failed to comply with employment requirements and failed to advise the Agency of the reason for such failure prior to the Agency's determination. Therefore, the Agency's determination was correct when made. At the hearing, however, the Appellant established that this failure occurred because due to a medical condition. The Appellant's testimony is found to be credible because it was because it was candid, appeared sincere and was supported with documentary evidence. Accordingly, the Appellant established good cause for the failure to comply.

The uncontroverted evidence in this case establishes that the Appellant requested that the Agency provide a furniture allowance. The Agency failed to present evidence at the hearing to establish that it has acted on the Appellant's request for such grant. Accordingly, its failure to provide the requested grant cannot be sustained.

DECISION AND ORDER

The Agency's determination to reduce the Appellant's grant of Public Assistance and Food Stamp benefits was correct when made.

However, the Agency is directed to continue the Appellant's Public Assistance and Food Stamp benefits and to restore any assistance and benefits withheld as a result of the Agency's action, retroactive to the date of reduction.

FH# 5598985Y

The determination of the Agency not to provide the Appellant with a furniture allowance is not correct and is reversed.

1. The Agency is directed immediately to investigate the Appellant's eligibility for a special grant for the purchase of furniture, to provide the Appellant with written notification as to the results of such investigation and to provide the Appellant with a grant for the purchase of furniture to the extent permitted by 18 NYCRR 352.7(a) if the Appellant is found eligible.

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
12/03/2010

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in cursive script, appearing to read "Gerard Mans".

Commissioner's Designee