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

:  
: **DECISION**  
: **AFTER**  
: **FAIR**  
: **HEARING**  
:  
:

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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 November 9, 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

R. Scarpatti, Fair Hearing Representative

**ISSUES**

Was the Agency's failure to accept the Appellant's July 26, 2010 application for Public Assistance, Medical Assistance and Food Stamp benefits and provide him with such benefits in a timely manner correct?

Was the Agency's determination to deny the Appellant a transportation allowance to enable the Appellant's witness to come to the hearing correct?

**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. On or about July 26, 2010, the Appellant applied for Public Assistance, Medical Assistance and Food Stamp benefits for himself alone.

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2. By a notice dated August 19, 2010, the Agency informed the Appellant of its determination to deny his application for assistance benefits on the grounds that he allegedly had income from Unemployment Insurance benefits that exceeded his needs.

3. In or about early October 2010, the Agency acknowledged its error in denying the Appellant's application for assistance benefits and it accepted the Appellant's July 26, 2010 application and provided him with the benefits owed to him through the first semi-monthly Public Assistance payment cycle of October 2010.

4. The Agency has failed to issue the Appellant the Public Assistance benefits that he is entitled to receive for the second semi-monthly Public Assistance payment cycle of October 2010 and it is not yet known if the Agency is going to issue the benefits that the Appellant has been found eligible to receive effective November 2010.

5. The Appellant requested this fair hearing to appeal the Agency's actions/determinations.

6. The Appellant requested that the Agency provide him with a transportation allowance for the cost of bringing a witness to the hearing.

7. The Agency denied the Appellant's request for carfare for his witness and it therefore became an issue to be heard at this hearing.

### **APPLICABLE LAW**

Section 351.8(b) of 18 NYCRR provides that the decision to accept an application for Public Assistance and care must be made within 30 days from the date of application for Family Assistance and within 45 days from the date of application for Safety Net Assistance, except where the applicant requests additional time or where difficulties in verification lead to an unusual delay, or for other reasons beyond the Agency's control. The applicant must be notified in writing of the Agency's determination.

Regulations at 18 NYCRR 351.1 and 351.2 require that to demonstrate eligibility, applicants for and recipients of Public Assistance must present appropriate documentation of such factors as identity, residence, family composition, rent payment or cost of shelter, income, savings or other resources and, for aliens, of lawful residence in the United States. These obligations also apply to non-legally responsible caretaker relatives of children receiving public assistance, as well as minor siblings of such children residing in the same household. Section 351.5 of the Regulations provides that if the applicant or recipient has previously verified necessary information which is not subject to change and the Agency possesses documentation of such verification in its files, the applicant or recipient is not required to resubmit verification of such information. Section 351.6 of the Regulations provides that verification of data is an essential element of the eligibility investigation process. The applicant or recipient is the primary source of the required information. However, when the applicant or recipient is unable

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to provide the required verification, the Agency must assist the applicant or recipient in obtaining the verification or make collateral investigation. 18 NYCRR 351.5 and 351.6. If a third party seeks to impose a charge or fee for providing required information to the applicant or recipient, the Agency must pay such fee or must assist the applicant or recipient in obtaining the information by other means. 18 NYCRR 351.5. The applicant's or recipient's failure or refusal to cooperate in providing necessary information is a ground for denying or discontinuing Public Assistance.

An applicant for or recipient of public assistance is exempt from complying with any requirement concerning eligibility for public assistance if the applicant or recipient establishes that good cause exists for failing to comply with the requirement. Except where otherwise specifically set forth in regulations, good cause exists when the applicant or recipient has a physical or mental condition which prevents compliance; the applicant's or recipient's failure to comply is directly attributable to Agency error; or other extenuating circumstances, beyond the control of the applicant or recipient, exist which prevent the applicant or recipient from being reasonably expected to comply with an eligibility requirement. The applicant or 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. The Agency must review the information and evidence provided and make a determination of whether the information and evidence supports a finding of good cause. 18 NYCRR 351.26.

Social services officials are responsible for determining good cause. The 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 the age of six but are under age 13. The applicant or 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. The Agency must review the information and evidence provided and make a determination of whether the information and evidence supports a finding of good cause. 18 NYCRR 385.12(c).

Federal Regulations at 7 CFR 273.2(g) provide that the Agency shall provide eligible households which complete the initial application process an opportunity to participate in the Food Stamp Program as soon as possible but no later than thirty days following the date that the application was filed. Households determined to be ineligible shall be sent a denial notice as soon as possible but not later than thirty days following the date the application was filed.

The Food Stamp application process includes filing and completing the application form, being interviewed and having certain information verified. If the household refuses to cooperate with the Agency in completing this process, the application shall be denied. In order for a determination of refusal to be made, the household must be able to cooperate but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. 7 CFR 273.2(d); 18 NYCRR 387.5, 387.6, 387.7.

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For households initially applying for Food Stamp benefits mandatory verification shall be completed regarding: gross nonexempt income, alien status, shelter expenses, medical expenses, residency, household size, Social Security number, identity, date of birth, utility expenses, resources, disability and, if questionable, household composition and citizenship and any other questionable information that has an effect on the household's eligibility and benefit level. 7 CFR 273.2(f); 18 NYCRR 387.8(b).

To be considered questionable, the information on the application must be inconsistent with statements made by the applicant, or inconsistent with other information on the application or previous applications. The local department shall determine if information is questionable based on the household's individual circumstances. 7 CFR 273.2(f); 18 NYCRR 387.8(b).

Written documentary evidence is to be used as the primary source of verification of all items except residency and household size. Residency and household size may be verified either through readily available documentary evidence or through a collateral contact. Residency is to be verified except where verification cannot reasonably be accomplished such as in homeless cases. 7 CFR 273.2(f); 18 NYCRR 387.8(b).

The household has the primary responsibility for providing documentary evidence to support its application and to resolve any questionable information. The local Agency, however, is obligated to offer assistance in situations where the household cannot obtain the documentation in a timely manner. Such assistance may include using a collateral contact or home visit unless otherwise required by Federal or State Regulations. 7 CFR 273.2(f); 18 NYCRR 387.8(b).

If the Agency determines to verify a deductible expense and such verification has not been obtained and obtaining the verification may delay the household's certification, then the Agency may determine eligibility and benefit level without providing a deduction for the claimed but unverified expense, including medical expense. If the household subsequently provides verification, benefits shall be redetermined. 7 CFR 273.2(f).

If the Agency is unable to determine eligibility within thirty days of the filing of the application, the Agency must first determine whether it is the household's fault or the Agency's fault. 7 CFR 273.2(h), 18 NYCRR 387.14(a)(4).

The delay shall be considered to be the household's fault if the household has failed to complete the application process and the Agency has taken the following actions:

- (1) offered to assist or has assisted the applicant in completing the application if the application form is incomplete;
- (2) informed the household of the need to register for work, when any member who is required to register has not done so, and has given the household at least ten days from the date of notification within which to register;

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(3) assisted the household in obtaining the required verification and documentation and allowed the household at least ten days from the date of the initial request to provide such documentation; and

(4) attempted to reschedule the interview if the household has failed to appear at the initial interview.

7 CFR 273.2(n); 18 NYCRR 387.14(a)(4).

Delays that are the fault of the Agency include failures to assist the applicant to complete the application process as set forth above.

If, due to the Agency's fault, the application process is not completed by the end of the second thirty-day period, the Agency must continue to process the application until an eligibility decision is reached. If the household is found eligible and the Agency was at fault for the delay in the initial thirty days, the household must receive benefits retroactive to the day of application. However, if the initial thirty-day delay was the household's fault, the household must receive benefits retroactively to the date final verification of all required eligibility factors was received. If the household was at fault for not completing the application process by the end of the second thirty-day period, the application must be denied and the household will not be entitled to any lost benefits, even if the delay in the initial thirty days was the fault of the Agency. 18 NYCRR 387.14(a)(4).

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 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.

Regulations at 18 NYCRR 358-3.4 provide that an appellant has the right to bring witnesses to present written and oral evidence at any conference or fair hearing and, upon request to the social services agency, to receive necessary transportation or transportation expenses to and from the fair hearing for the Appellant and the Appellant's representatives and witnesses and to receive payment for any other necessary costs and expenditures related to the fair hearing.

**DISCUSSION**

The Appellant initially requested this hearing to appeal the Agency August 19, 2010 determination to deny his July 26, 2010 application for assistance benefits. However, the Agency acknowledged at the hearing that it erred in denying the Appellant's application for assistance benefits and it stated that it had accepted the Appellant's July 26, 2010 application and provided him with the benefits owed to him through the first semi-monthly Public Assistance payment cycle of October 2010. Nevertheless, by the date on which the hearing was held, the Appellant was due Public Assistance benefits for the second semi-monthly Public Assistance payment cycle of October 2010 and the Agency has failed to issue the same. And it was not known as of the date of the hearing if the Agency has sufficiently processed the Appellant's application to ensure that he is issued the benefits that the Appellant has been found eligible to receive in a regular recurring manner. Accordingly, although the Agency has accepted the Appellant's July 26, 2010 application for assistance benefits, it is directed to ensure that the Appellant receives all of his benefits in a regular recurring manner.

The Appellant is reminded that due to the Agency's failure to produce the records that it is legally required to bring to hearings, the Commissioner cannot determine the exact amount in benefits that the Appellant is owed or the exact period for which the Appellant is owed such benefits. Therefore, inasmuch as the Agency will be making further determinations in this matter that will obviously not be subject to review at the instant hearing, the Appellant is advised of the right to request a new Fair Hearing to appeal any new determination and/or explanation made pursuant to the directives of this hearing decision that he may disagree with.

It is noted that at the close of the hearing, the Appellant requested that the Agency provide him with carfare for himself and an individual/potential witness that accompanied him to the hearing. However, the Agency refused to provide carfare for the Appellant's witness, maintaining that the Appellant did not establish the necessity of bringing a witness to the hearing.

The above cited regulations provide that an appellant has the right to bring witnesses to present written and oral evidence at a fair hearing. And such a right is clearly a individual choice that the Appellant must have the subjective right to make as to how s/he wants to present his/her case and, absent some objective and exception circumstances, the Agency has no right to question or substitute its judgment for the Appellant's. Therefore, inasmuch as the Agency failed to articulate any objective reason for denying the Appellant carfare for his potential witness, the Agency's determination to deny the Appellant carfare for his witness was incorrect and cannot be sustained.

**DECISION AND ORDER**

The Agency's failure to provide the Appellant with Public Assistance, Medical Assistance and Food Stamp benefits in a timely manner was not correct and is reversed. Therefore, in accordance with the above findings of fact, discussion and applicable law, the Agency is directed to take the following action:

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1. The Agency is directed to continue to provide Public Assistance, Medical Assistance and Food Stamp benefits to the Appellant in a regular recurring manner and to ensure that he receives all the benefits that he is owed retroactive to the second semi-monthly Public Assistance payment cycle of October 2010.

2. The Agency is directed to advise the Appellant in writing of its actions, specifically informing him of the individual semi-monthly and/or monthly amounts of benefits provided in accordance with this decision and the periods of time covered by the said benefits.

The Agency's determination to deny the Appellant a transportation allowance to enable the Appellant's witness to come to the hearing was not correct and cannot be sustained. Therefore, in accordance with the above findings of fact, discussion and applicable law, the Agency is directed to take the following action:

1. The Agency is directed to provide the Appellant with a Public Assistance grant in the amount of \$4.50 representing carfare owed for the attendance of his witness at the 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  
12/15/2010

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By



Commissioner's Designee