

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: March 23, 2011
[REDACTED]
AGENCY: New York City
FH #: 5758902N

In the Matter of the Appeal of
[REDACTED]
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 June 16, 2011, 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

Vani Stirrup, Fair Hearing Representative, on May 10, 2011
Mohammad K. Ahmet, Fair Hearing Representative, on June 16, 2011

ISSUES

Was the Appellant's request for a hearing to review the Agency's determination to discontinue the Appellant's Public Assistance benefits, timely?

Assuming the Appellant's request for a hearing was timely, was the Agency's determination to discontinue the Appellant's Public Assistance benefits, correct?

FACT FINDINGS

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:

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1. The Appellant, age 27, has been in receipt of Public Assistance benefits. The Appellant's household consists of the Appellant and the Appellant's two children, ages of 7 and 3.

2. By Notice of Intent dated December 22, 2010, the Agency determined to discontinue the Appellant's Public Assistance benefits, effective January 2, 2011 on the grounds that the Appellant's household's countable income of \$748.20 exceeds the limit of \$653.05 for a household of 3.

3. The Notice of Intent stated that a fair hearing must be requested within sixty days of the Agency's action.

4. Appellant is self-employed as a Family Day Care Provider.

5. On March 23, 2011, the Appellant requested this fair hearing.

APPLICABLE LAW

Section 22 of the Social Services Law provides that applicants for and recipients of Public Assistance, Emergency Assistance to Needy Families with Children, Emergency Assistance for Aged, Blind and Disabled Persons, Veteran Assistance, Medical Assistance and for any services authorized or required to be made available in the geographic area where the person resides must request a fair hearing within sixty days after the date of the action or failure to act complained of. In addition, any person aggrieved by the decision of a social services official to remove a child from an institution or family home may request a hearing within sixty days. Persons may request a fair hearing on any action of the social services district relating to food stamp benefits or the loss of food stamp benefits which occurred in the ninety days preceding the request for a hearing. Such action may include a denial of a request for restoration of any benefits lost more than ninety days but less than one 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.

Regulations at 18 NYCRR 358-3.7(a) provide that an appellant has the right to examine the contents of the case record at the fair hearing. At the fair hearing, the agency is required to provide complete copies of its documentary evidence to the hearing officer. In addition, such documents must be provided to the appellant and appellant's authorized representative where such documents were not provided otherwise to the appellant or appellant's authorized representative in accordance with 18 NYCRR 358-3.7. 18 NYCRR 358-4.3(a). In addition, a representative of the agency must appear at the hearing along with the case record and a written summary of the case and be prepared to present evidence in support of its determination. 18 NYCRR 358-4.3(b). Except as otherwise established in law or regulation, in fair hearings concerning the discontinuance, reduction or suspension of Public Assistance, Medical Assistance, Food Stamp benefits or Services, the Agency must establish that its actions were correct. 18 NYCRR 358-5.9(a).

352.17 Definition and computation of earned income. (a) Earned income means income in cash or in kind earned by an individual through the receipt of wages, salary, commissions, or profit from activities in which he/she is engaged as a self-employed individual or as an employee. Such earned income may be derived from his/her own employment such as a business enterprise or farming; or derived from wages or salary received as an employee. It may include earnings over a period of time for which settlement is made at one given time, as in the instance of sales of farm crops, livestock or poultry. Income received by an individual on a contractual basis or income received intermittently on a quarterly, semiannual or yearly basis must be prorated over the period of the contract or the period of the contract or the period covered by the income with appropriate monthly exclusions.

- (1) With reference to commissions, wages or salary, the term earned income means gross earned income prior to deduction of any taxes or other personal and nonpersonal expenses incident to employment.
- (2) With respect to self-employment, the term earned income means the total profit from a business enterprise, farming, etc., resulting from the gross income received less the business expenses, i.e., total cost of the production of the income as defined in paragraph (b)(2) of this section.

(b) Computation of net applicable income.

- (1) In computing the amount of net applicable income to be applied against the estimate of needs, the following must be applied sequentially:
 - (i) the prescribed work expense disregard;
 - (ii) the applicable amount of exempt earned income; and
 - (iii) prescribed child care expenses.

The net amount remaining must be applied against public assistance needs in determining the amount of the assistance payment.

- (2) For self-employed individuals, those expenses directly related to producing the goods or services, including expenses for inventory, and without which the goods or services could not be produced must be excluded to determine the amount of earned income. However, depreciation, personal business and entertainment expenses, personal transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods are not excluded.

Section 360-4.3 of the Regulations provides in part:

- (c) Income from self-employment or small business. Income from a person's self-

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employment or from a small business owned and operated by the person, after allowable business expenses are deducted, is considered available earned income. The following allowable business expenses may generally be deducted:

- (1) rental of quarters and equipment;
- (2) salaries and fringe benefits of employees;
- (3) cost of goods for re-sale;
- (4) business taxes, licenses and permits;
- (5) cost of tools, supplies and raw materials;
- (6) insurance for the business;
- (7) lights, heat, water, sewage and telephone charges;
- (8) advertising and travel;
- (9) taxes and carrying charges on any property used in the business (other than payments on the principal of a mortgage) . . .
- (11) any other expense necessary for and directly related to the operation of the business.

DISCUSSION

With regard to the issue of the Agency's determination to discontinue the Appellant's Public Assistance benefits, the record establishes that by Notice of Intent dated December 22, 2010, the Agency determined to discontinue the Appellant's Public Assistance benefits, effective January 2, 2011 on the grounds that the Appellant's household's countable income of \$748.20 exceeds the limit of \$653.05 for a household of 3.

Although the Appellant failed to request this hearing until more than sixty days after the Agency's determination, at the hearing, the Appellant stated that she suffers from depression; and that she loses memory. The Appellant further testified that due to her condition she cannot handle deadlines related to her personal affairs. Furthermore, at the hearing the Appellant presented medical evidence from Beth Israel signed by [REDACTED] dated May 27, 2011 indicating as follows: " (Appellant) is a patient under my care for Depressive Disorder NOS and Generalized Anxiety Disorder. These illnesses include disturbed sleep patterns, chronic anxiety, and depression." . The Appellant's testimony based on the evidence presented in this fair hearing was credible and persuasive. Based on the foregoing the record shows that the Appellant had a good cause for her delay in requesting this fair hearing; and thus, the statute of limitations does not apply in this case.

Furthermore, although duly notified about the time and place of this fair hearing, the Agency appeared at the hearing without having the Appellant's complete case record. In particular, the record establishes that Appellant is self-employed as a Family Day Care Provider. At the hearing, the Agency's representative presented the Agency's Notice of Decision dated December 22, 2010 to show that the Appellant is earning income as a Family Day Care Provider in the amount of \$1,176.00 monthly. However, at the hearing, the Agency's representative presented only copy of the Appellant's Voucher Payments for the periods January 1, 2011 and February 1, 2011 to show that the Appellant received the amounts of \$970.80 and \$931.80 respectively. It is further noted, that at the hearing the Appellant presented a copy of her **Form 1099-MISC for 2010 Miscellaneous** indicating that in that year the Appellant had from her self-employment activities earnings in the amount of \$4,343.00, that is only \$361.91 monthly ($\$4,343.00 : 12 = \361.91).

With respect to self-employment income pertinent Regulations dictate that " the term earned income means the total profit from a business enterprise, farming, etc., resulting from the gross income received less the business expenses, i.e., total cost of the production of the income as defined in paragraph (b)(2) of Section 352.17 Definition and computation of earned income which indicates that for self-employed individuals, those expenses directly related to producing the goods or services, including expenses for inventory, and without which the goods or services could not be produced must be excluded to determine the amount of earned income.

Herewith, the record fails to establish that the Agency calculated the Appellant's self-employment income pursuant to the applicable Regulations. Therefore, the Agency failed to meet its burden of proof in this case, and thus, the Agency's determination to discontinue the Appellant's Public Assistance benefits cannot be sustained.

DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Public Assistance benefits was not correct and is reversed.

1. The Agency is directed to cancel its Notice of Intent dated December 22, 2010.
2. The Agency is directed to continue the Appellant's Public Assistance benefits and to restore any assistance and benefits withheld as a result of the Agency's action retroactive to the date of discontinuance.

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.

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

DATED: Albany, New York
08/30/2011

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink that reads "D A Traumm". The signature is written in a cursive style with a horizontal line above the "A".

Commissioner's Designee