

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: June 1, 2011
[REDACTED]
AGENCY: New York City
FH #: 5821578L

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 28, 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

Morris Biderman, Fair Hearing Representative

ISSUES

Was the Appellant's request for a fair hearing to review the Agency determination to discontinue the Appellant's Public Assistance benefits on the grounds that the Appellant failed to appear for a recertification interview timely?

Assuming the request was timely, was the Agency's determination to discontinue the Appellant's Public Assistance on the grounds that the Appellant failed to appear for a recertification interview correct?

Was the Agency's determination discontinuing the Appellant's Food Stamp benefits because the Appellant failed to recertify 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 had been receiving Public Assistance and Food Stamp benefits for himself.
2. The Appellant has been diagnosed with bipolar disorder and the Agency has determined that he should be completely exempt from Public Assistance work requirements.
3. The Agency prepared a notice dated October 28, 2010 informing Appellant that he needed to recertify for both Public Assistance and Food Stamp benefits and that a recertification interview was scheduled for November 17, 2010 at 2:30 PM.
4. The Appellant did not appear on November 17, 2010 and did not take action otherwise to be recertified, until reapplying in June, 2011.
5. By Notice of Intent dated November 23, 2010, the Agency informed the Appellant of its determination to discontinue the Appellant's Public Assistance because the Appellant failed to appear for a recertification interview. The notice also informed the Appellant that his Food Stamp benefits will be discontinued as stated in a previous notice and that he needed to reapply to receive benefits again.
6. On June 1, 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.

Continuing eligibility for Public Assistance must be established by investigation and documentation at specified intervals through the process of recertification, which includes reevaluation and reconsideration of all variable factors of need and other factors of eligibility,

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including the recipient's identity, residence, family composition, rent payment or cost of housing, income, savings or other resources, and, for aliens, their lawful residence in the United States. 18 NYCRR 351.20. A recipient present appropriate documentation as required to substantiate both categorical and financial eligibility. 18 NYCRR 351.21.

Section 351.1 and 351.2 of the Regulations require recipients of Public Assistance to present appropriate documentation to the Agency in order to demonstrate eligibility. 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 351.6 of the Regulations provides that verification is an essential element of the investigation of continuing eligibility. Sections 351.6(b) and 351.20(b)(4) of the Regulations provide that where the recipient is unable to secure eligibility documentation for a recertification interview, the Agency shall conduct a collateral investigation.

Failure or refusal to cooperate in providing necessary information establishing the factors of eligibility is a ground for discontinuing Public Assistance.

In the event a legally responsible relative residing in the recipient's household fails or refuses to cooperate in providing necessary information about his/her financial circumstances, such refusal is a ground for denying or discontinuing assistance to the person for whom he/she is legally responsible. 18 NYCRR 351.6(c)(2).

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.

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).

Federal Regulations at 7 CFR 273.14 and State Regulations at 18 NYCRR 387.17 provide that the Agency shall deny a reapplication for Food Stamp benefits if the household fails to attend any interview scheduled on or after the deadline for timely filing of the recertification application or to submit all necessary verification within the time frame established by this Office.

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Households which are not subject to periodic reporting and are certified for one or two months, have fifteen days from the date that the notice of expiration is received to file a timely application for recertification.

All other non-periodic reporting households must submit an application for recertification by the fifteenth day of the last month of certification. Households subject to periodic reporting must file by the normal date for filing their periodic report.

Any household receiving a notice of expiration must attend an interview scheduled on or after the date the application is filed. If the household fails to appear for such interview, the Agency need not take any further action.

The Agency must allow the household at least ten calendar days from the interview to submit any additional or missing verification. The Agency need not provide continued benefits if the household fails to submit the verification within the time frame specified by the Agency.

DISCUSSION

By Notice of Intent dated November 23, 2010, the Agency informed the Appellant of its determination to discontinue the Appellant's Public Assistance because the Appellant failed to appear for a recertification interview. Appellant requested this fair hearing on June 1, 2011 in part to challenge this determination.

This hearing was requested well after sixty days after the Agency's determination, the normal limit for requesting a hearing on an issue involving Public Assistance. The Appellant stated that he suffers from bipolar disorder and was homeless and living on the street from Autumn, 2010 onward. The Appellant further stated he did not receive the Notice of Intent. The Appellant's testimony was reasonably clear and consistent. The Appellant meanwhile submitted documents from the Agency, a biopsychosocial summary and notification of work status, confirming that the Agency subsequently found him to suffer from bipolar disorder and to not be fully functional. Accordingly, the Appellant is found credible that he did not receive the Notice of Intent and was not otherwise in a condition to request a hearing sooner. The Statute of Limitations is therefore tolled.

As to the merits of Appellant's failure to recertify for Public Assistance, Appellant stated he never received the recertification notice either. The Appellant had become homeless before he could receive it. The Appellant also reiterated that his bipolar condition made it impossible for him to recertify. The Appellant said he needed someone to help with appointments and other basic functions. The Appellant's testimony again was reasonably clear and consistent and corroborated by subsequent Agency documents. The Appellant is found credible and possessing good cause. However, the Appellant only contacted the Agency in June, 2011 as to changing his address of record, being homeless and then finding a new residence, and did not previously ask for assistance with recertifying. Therefore, the Agency's determination as to Public Assistance was correct when made.

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The Appellant also requested this hearing to review the Agency's determination to discontinue his Food Stamp benefits for failure to recertify.

The November 23, 2010 Notice of Intent reminded Appellant that Food Stamp benefits were to be discontinued. Recertification by reapplication in order to continue to receive Food Stamps is a strict requirement under the pertinent regulations. The Appellant's prior certification for Food Stamp benefits ended on December 31, 2010. If there is no recertification, there can be no Food Stamp benefits and discontinuance is appropriate. As discussed regarding Public Assistance, the Appellant was found to have good cause for not complying. However, even in light of good cause for non-compliance, Food Stamp benefits must cease when the prior certification period ended. The Agency thus must be upheld as to Food Stamps.

DECISION AND ORDER

The Agency's November 23, 2010 determination to discontinue the Appellant's Public Assistance for failure to attend a recertification interview was correct when made. However, as good cause was found to exist:

1. The Agency is directed to restore any lost Public Assistance benefits retroactive to the effective date of the Notice of Intent.

The Agency's determination to discontinue the Appellant's Food Stamp benefits for failure to recertify is correct. However, as good cause was found to exist, the Agency is directed as follows:

1. if the Agency has not already done so, to give the Appellant a new opportunity to recertify for Food Stamp benefits.
2. if the Agency has not already done so, to inform the Appellant in writing as to the Agency's determination as to Appellant's eligibility for Food Stamp benefits.
3. if Appellant is otherwise found eligible, to recertify eligibility retroactive to the last day of prior certification period and to restore all lost benefits.

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.

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DATED: Albany, New York
08/19/2011

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

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

Commissioner's Designee