

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: September 17, 2012

AGENCY: 54
FH #: 6194152P

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 December 5, 2012, 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

Varkey George, Fair Hearing Representative

ISSUES

Was the Agency's determination of September 20, 2012 to discontinue the Appellant's Public Assistance benefits correct?

Was the Agency's determination of November 16, 2012 to discontinue the Appellant's Public Assistance benefits correct?

Was the Agency's determination that the Appellant is employable correct?

Was the Agency's failure to act on the Appellant's request for transportation expenses to attend to this fair hearing 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 has been in receipt of Public Assistance benefits for a household of one.
2. On September 20, 2012, the Agency sent a Notice of Intent to the Appellant setting forth its intention to discontinue the Appellant's Public Assistance benefits because the Appellant failed to comply with employment requirements.
3. On November 16, 2012, the Agency sent a Notice of Intent to the Appellant setting forth its intention to discontinue the Appellant's Public Assistance benefits because the Appellant failed to report to an appointment with the Agency's physician.
4. The Agency determined that the Appellant was employable.
5. The Appellant requested the Agency to issue the Appellant transportation funds to attend this fair hearing. The Agency failed to act on this request and had no information on this issue.
6. On September 17, 2012, the Appellant requested this fair hearing. The Appellant further sought review of issues concerning the reduction of Public Assistance without notice and the failure to replace electronic cash benefits. At the hearing, however, the Appellant withdrew that portion of the request pertaining to such review.

APPLICABLE LAW

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. The Agency must provide complete copies of its documentary evidence to the hearing officer at the hearing and also to the Appellant or representative where such documents were not otherwise provided in accordance with 18 NYCRR 358-3.7. 18 NYCRR 358-4.3(a). Unless a waiver of appearance is approved by the Office of Administrative Hearings, 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. If a waiver has been approved, the hearing officer may require the Agency's appearance if necessary to protect the appellant's due process rights. 18 NYCRR 358-4.3(b) and (c). In fair hearings concerning the discontinuance, reduction or suspension of Public Assistance, Medical Assistance, SNAP benefits or services, the Agency must establish that its actions were correct. 18 NYCRR 358-5.9(a).

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. The Agency must provide complete copies of its documentary evidence to the hearing officer at the hearing and also to the Appellant or

representative where such documents were not otherwise provided in accordance with 18 NYCRR 358-3.7. 18 NYCRR 358-4.3(a). Unless a waiver of appearance is approved by the Office of Administrative Hearings, 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. If a waiver has been approved, the hearing officer may require the Agency's appearance if necessary to protect the appellant's due process rights. 18 NYCRR 358-4.3(b) and (c). In fair hearings concerning the discontinuance, reduction or suspension of Public Assistance, Medical Assistance, SNAP benefits or services, the Agency must establish that its actions were correct. 18 NYCRR 358-5.9(a).

Under section 358-4.3(d) of the regulations: upon the 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 the payment for appellant's necessary child care costs and for any other necessary costs and expenditures related to the fair hearing.

DISCUSSION

The evidence establishes that the Agency sent a Notice of Intent to the Appellant on September 20, 2012 advising the Appellant that it had determined to discontinue the Appellant's Public Assistance benefits because the Appellant failed to comply with employment requirements.

The Agency was duly notified of the time and place of the hearing. However, the Agency failed to present any documentation concerning the determination September 20, 2012. Therefore, with respect to the Agency's determination to discontinue the Appellant's Public Assistance, the Agency failed to meet its obligations under 18 NYCRR 358-4.3(b), and failed to establish that its determination was correct pursuant to 18 NYCRR 358-5.9(a).

The evidence establishes that the Agency sent a Notice of Intent to the Appellant on November 16, 2012 advising the Appellant that it had determined to discontinue the Appellant's Public Assistance benefits because the Appellant failed to report to an appointment with the Agency's physician.

The Agency was duly notified of the time and place of the hearing. However, the Agency failed to present any documentation concerning the determination November 16, 2012. Therefore, with respect to the Agency's determination to discontinue the Appellant's Public Assistance, the Agency failed to meet its obligations under 18 NYCRR 358-4.3(b), and failed to establish that its determination was correct pursuant to 18 NYCRR 358-5.9(a).

The Agency determined that the Appellant was employable.

At the hearing, the Agency agreed to withdraw its notice of employability and to reevaluate the Appellant's medical condition taking in to account the Appellant's medical problems.

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

The Appellant requested the Agency to issue the Appellant transportation funds to attend this fair hearing. The Appellant stated that he is disabled and that he incurred transportation expenses, including parking expenses, to attend this fair hearing. The Agency failed to act on this request and had no information on this issue. The Agency's failure to act in this matter cannot be sustained.

DECISION AND ORDER

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

1. The Agency is directed to withdraw its Notice of Intent dated September 20, 2012 with respect to the Appellant's Public Assistance benefits.
2. The Agency is directed to restore any Public Assistance benefits lost as a result of the Agency's action in accordance with the provisions of 18 NYCRR 352.31(f).

Should the Agency in the future determine to implement its previous action, it is directed to procure and review the Appellant's case record with respect to a determination relating to the Appellant's Public Assistance benefits, to issue a new Notice of Intent and to produce the required case record(s) at any subsequent fair hearing.

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

1. The Agency is directed to withdraw its Notice of Intent dated November 16, 2012 with respect to the Appellant's Public Assistance benefits.
2. The Agency is directed to restore any Public Assistance benefits lost as a result of the Agency's action in accordance with the provisions of 18 NYCRR 352.31(f).

Should the Agency in the future determine to implement its previous action, it is directed to procure and review the Appellant's case record with respect to a determination relating to the Appellant's Public Assistance benefits, to issue a new Notice of Intent and to produce the required case record(s) at any subsequent fair hearing.

In accordance with the Agency's agreements made at the hearing, the Agency is directed, if it has not already done so, to:

1. Withdraw its notice of employability and to reevaluate the Appellant's medical condition taking in to account the Appellant's medical problems.

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The Agency's failure to act on the Appellant's request for transportation funds to attend this fair hearing is not correct and is reversed.

1. The Agency is directed to investigate and determine the Appellant's eligibility for transportation expenses, including parking expenses, to attend this fair hearing, and to issue the Appellant the appropriate funds consistent with the above cited regulations.

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
12/06/2012

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By



Commissioner's Designee