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In the Matter of the Appeal of :

K J

DECISION  
: AFTER  
FAIR  
HEARING

from a determination by the Suffolk County  
Department of Social Services :

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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 the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on February 9, 1993, in Suffolk County, before Richard S. Levchuck, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

K J , Appellant; Barbara Liese, Esq., Appellant's  
Representative

For the Social Services Agency

Paul Robinson, Fair Hearing Representative

ISSUE

Was the Agency's determination to discontinue the Appellant's Public Assistance, Medical Assistance and Food Stamp benefits for failure to provide documentation necessary to determine the Appellant's continuing eligibility for such benefits 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. The Appellant has been in receipt of Public Assistance, Medical Assistance and Food Stamp benefits.
2. On September 10, 1992, the Agency mailed a letter to the Appellant requesting that he submit the following documentation to the Agency by September 20, 1992:

a completed confidential employment inquiry form.

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3. The Appellant did not receive the Agency's letter dated September 10, 1992.

4. The Appellant did not respond to the Agency's request for information dated September 10, 1992.

5. On September 30, 1992, the Agency sent a Notice of Intent setting forth its determination to discontinue the Appellant's Public Assistance, Medical Assistance and Food Stamp benefits because the Appellant had failed to return to the Agency with certain documentation necessary to determine Appellant's continuing eligibility for Public Assistance, Medical Assistance and Food Stamp benefits.

6. On November 16, 1992, the Appellant requested this fair hearing.

#### APPLICABLE LAW

Department 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. 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 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.

Section 351.21(a) of Department Regulations provides that contacts with recipients and collateral sources shall include face-to-face contacts, correspondence, reports on resources, eligibility mailouts and other documentation. Contacts with or concerning recipients shall be made as frequently as individual need, change in circumstances or the proper administration of assistance or care may require.

Section 360-2.2(f) of the Regulations requires that a personal interview be conducted with all applicants for Medical Assistance. Such personal

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interview shall be conducted before a decision on Medical Assistance eligibility is authorized or reauthorized. Section 360-2.3 of the Regulations provides that the Medical Assistance applicant and recipient has a continuing obligation to provide accurate and complete information on income, resources and other factors which affect eligibility. An applicant or recipient is the primary source of eligibility information. However, the Agency must make collateral investigation when the recipient is unable to provide verification. The applicant's or recipient's failure or refusal to cooperate in providing necessary information is a ground for denying an application for a Medical Assistance Authorization or for discontinuing such benefits.

Department Regulations at 18 NYCRR 360-7.5(a)(1) provide that payment for services or care under the Medical Assistance Program may be made to a recipient or the recipient's representative at the Medical Assistance rate or fee in effect at the time such care or services were provided when an erroneous determination by the Agency of ineligibility is reversed. Such erroneous decision must have caused the recipient or the recipient's representative to pay for medical services which should have been paid for under the Medical Assistance Program.

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.

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(c).

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(c).

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(c).

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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(c).

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).

#### DISCUSSION

At the hearing, the Appellant testified that he did not respond to the Agency's request for information because he did not receive it. The copy of the letter submitted into evidence at the hearing by the Agency was not fully legible and it was not possible to ascertain whether or not the letter was correctly addressed to the Appellant. The Appellant's testimony at the hearing was plausible and persuasive. The Appellant has established a valid basis for his failure to respond to the Agency's request for documentation. Accordingly, the Agency's determination to discontinue the Appellant's Public Assistance, Medical Assistance and Food Stamp benefits cannot be sustained.

#### DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Public Assistance, Medical Assistance and Food Stamp benefits is not correct and is reversed.

1. The Agency is directed to continue the Appellant's Public Assistance, Medical Assistance and Food Stamp benefits.

2. The Agency is further directed to restore lost benefits retroactively to the date of discontinuance.

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

DATED: Albany, New York

NEW YORK STATE DEPARTMENT  
OF SOCIAL SERVICES

FEB 18 1993

By

*Susan M. Miele*  
Commissioner's Designee