

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST August 29, 2003
CASE # PXXXXXX
CENTER # Nassau
FH # 3974403L

In the Matter of the Appeal of :

BH

DECISION
: **AFTER**
FAIR
HEARING

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

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 October 23, 2003, in Nassau County, before Dennis D'Andrea, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

BH, Appellant
Douglas Ruff, Esq., Nassau-Suffolk Law Services

For the Social Services Agency

Ellen Fishman and Will Denson, Fair Hearing Representatives

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. The Appellant was advised by the Agency on June 24 to submit the following documentation to the Agency by July 8, 2003:

Medical Report for Determination of Disability/Employability, Form Number 279, to be completed by a physical medicine and rehabilitation specialist.

3. The Appellant did not timely return to the Agency the Medical Report

for Determination of Disability/Employability, Form Number 279, completed by a physical medicine and rehabilitation specialist.

4. On August 14, 2003, 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.

5. On August 29, 2003, the Appellant requested this fair hearing.

APPLICABLE LAW

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 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 18 NYCRR 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.

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

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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.

Section 360-2.2(f) of the Regulations requires that a personal interview be conducted with all applicants for Medical Assistance. Such personal interview shall be conducted before a decision on Medical Assistance eligibility is authorized or reauthorized. The State may grant a waiver of the personal interview requirement for recertification of aged, certified blind or certified disabled recipients when the Agency demonstrates that alternative procedures have been established to verify that recipients continue to meet all eligibility requirements for Medical Assistance. 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.

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. Note: the policy contained in the regulation limiting corrective payment to the Medical Assistance rate or fee at the time such care or services were provided has been enjoined by Greenstein et al. v. Dowling et al. (S.D.N.Y.).

Changes reported during a Food Stamp certification period shall be subject to the same verification procedures which apply at initial certification. However, the local Agency is not required to verify income, medical expenses, or actual utility expenses if the source has not changed and the amount has changed by \$25.00 or less since the last verification. 7 CFR 273.2(f)(8); 18 NYCRR 387.8(b)(5).

At recertification the local Agency shall verify a change in income or actual utility expenses if the source has changed or the amount has changed by more than \$25.00. Previously unreported medical expenses and total recurring medical expenses which have changed by more than \$25.00 shall also be verified at recertification. The local Agency shall not verify income, total medical expenses, or actual utility expenses claimed by households which are unchanged or have changed by \$25.00 or less, unless the information is incomplete, inaccurate, inconsistent or outdated. Other information which has changed may be verified at recertification. Unchanged information shall not be verified unless the information is incomplete, inaccurate, inconsistent or outdated. 7 CFR 273.2(f)(8); 18 NYCRR 387.8(b)(6).

The local agency shall act upon upon changes that decrease a household's benefit level or make a household ineligible to participate in the Food Stamp

Program no later than the allotment for the month following the month in which the notice of adverse action period has expired, provided a fair hearing and continuation of benefits have not been requested.
7 CFR 273.12(c)(2); 18 NYCRR 387.17(e).

DISCUSSION

The Agency stated for the fair hearing record that it was withdrawing that part of the Notice of Determination which discontinued Medical Assistance.

The Appellant contended through counsel that she did not receive the Medical Report for Determination of Disability/Employability, Form Number 279, to be completed by a physical medicine and rehabilitation specialist and consequently did not timely respond.

The Agency described its routine mailing practice which created a rebuttable presumption of mailing.

The Appellant timely returned a prior Form 279, but upon review of that form the Agency sent a second form to be completed by a specialist. It is this second form that was not returned to the Agency. The Agency did not have in hand the completed specialist medical form prior to the notice date and therefore the Agency's notice was correct when made.

There are no allegations that there is any documentation outstanding from the Documentation Requirements of August 5, 2003. In a continuation of her compliance, the Appellant has an appointment with an orthopedist scheduled for November 3, 2003. Consequently, the Appellant has rebutted the presumption of mailing through her testimony, which was credible, because it was consistent and in agreement with known facts and the Appellant has a history of compliance. Therefore the Agency's determination, although correct when made, cannot be implemented at this time.

DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Public Assistance, Medical Assistance and Food Stamp benefits although correct when made, cannot be implemented at this time.

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 August 14, 2003, the date of discontinuance.

3. The Agency is further directed to allow the Appellant a reasonable opportunity to submit a completed Form 279 concerning her physical examination scheduled for November 3, 2003.

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 required, 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

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the directives set forth above.

DATED: Albany, New York
October 31, 2003

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee