

STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST September 22, 1999  
CASE #  
CENTER # 51 and Suffolk  
FH # 3196315Z

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In the Matter of the Appeal of :

M K

DECISION  
: AFTER  
FAIR  
HEARING

from determinations by the New York City and Suffolk County  
Departments 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 Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on March 26, 2002, in New York City, before Yvette H. Pomeranz, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Eugene Doyle, Representative

For the Social Services Agency

Michelle Rollison, Fair Hearing Representative (for New York City  
Department of Social Services)

Suffolk County Department of Social Services, by papers only

ISSUE

Was the March, 1999 determination to discontinue Appellant's Public Assistance, Medical Assistance, and Food Stamp benefits correct?

Was the failure to act on a March, 1999 request for a Public Assistance grant, Medical Assistance Authorization, and Food Stamp benefits separate from Appellant's wife correct?

Was the failure to act on March 8, 1999, March 11, 1999, April 16, 1999, July 1, 1999, July 26, 1999, and July 30, 1999 requests for preinvestigation grants correct?

Was the failure to act on March 8, 1999, April 16, 1999, and April 20, 1999 requests to apply for Public Assistance, Medical Assistance, and Food Stamp benefits correct?

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Was the failure to provide Public Assistance from March 8, 1999 through September 7, 1999 correct?

Was the August 25, 1999 determination to deny Appellant's application for Food Stamp 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. Appellant had been in receipt of a regularly recurring grant of Public Assistance, Medical Assistance, and Food Stamp benefits provided by the New York City Department of Social Services.
2. In March, 1999 the New York City Department of Social Services determined to discontinue Appellant's Public Assistance, Medical Assistance and Food Stamp benefits.
3. On August 25, 1999, the New York City Department of Social Services determined to accept Appellant's July 1999 application for Public Assistance, effective September 8, 1999 and Medical Assistance, and to deny Food Stamp benefits based on Appellant's having lost eligibility as a result of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.
4. On September 22, 1999 Appellant requested this fair hearing to review the foregoing determinations, as well as to review the Suffolk County Department of Social Services' failure to act on a March, 1999 request for a Public Assistance grant, Medical Assistance Authorization, and Food Stamp benefits separate from Appellant's wife, failure to act on March 8, 1999, March 11, 1999, April 16, 1999, July 1, 1999, July 26, 1999, and July 30, 1999 requests for preinvestigation grants, failure to act on March 8, 1999, April 16, 1999, and April 20, 1999 requests to apply for Public Assistance, Medical Assistance, and Food Stamp benefits, and failure to provide Public Assistance from March 8, 1999 through September 7, 1999, as well as the New York City Department of Social Services' August, 1999 determination to deny Appellant's application for Food Stamp benefits.

#### APPLICABLE LAW

Section 22 of the Social Services Law provides that a request for a fair hearing to review an Agency's determination must be made within sixty days of the date of the Agency's action or failure to act with respect to Public Assistance and Medical Assistance.

The Food Stamp Program is a federal program regulated by the United States Department of Agriculture Food and Nutrition Service. Program regulations are set forth in the Code of Federal Regulations (7 CFR). Section 273.15 of 7 CFR requires that a state must provide a fair hearing to any household aggrieved by an action which affects the household's participation in the Food Stamp Program. New York Department of Social

Services Regulations at 18 NYCRR 358-3.1 set forth the situations in which an applicant or recipient has a right to a fair hearing.

A person is allowed to request a fair hearing on any action of a local social services agency relating to food stamp benefits or loss of food stamp benefits which occurred in the ninety days preceding the request for a hearing. Such action includes a denial of a request for restoration of any benefits lost more than ninety days but less than a 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. Social Services Law Section 22.4(b), 18 NYCRR 358-3.1, 18 NYCRR 358-3.5, 7 CFR 273.15.

Pursuant to Sections 358-3.3(a) and 358-2.2 of the Regulations, the Agency is obliged to provide timely and adequate written notice of Agency determinations to discontinue Public Assistance, Medical Assistance, and Food Stamp 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).

When a Food Stamp household requests a hearing to review the Agency's determination to discontinue, suspend or reduce its Food Stamp benefits, Federal regulations require that the local Agency must appear at the hearing with the household's case record. Federal Regulations also require that the contents of the case file be made available to the Food Stamp household during the hearing. Such information is essential in order to provide for the proper review of the Agency's determination. (7 CFR 273.15(p))

Where Food Stamp benefits are lost due to an error by the Agency, the Agency is required to restore lost benefits. However, lost benefits shall be restored for not more than twelve months prior to whichever of the following occurred first:

1. The date the Agency received a request for restoration from a household; or
2. The date the Agency is notified or otherwise becomes aware that a loss to a household has occurred.

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7 CFR 273.17; 18 NYCRR 387.18 and Department of Social Services Food Stamp Source Book, Section X-H-1.

To be eligible for Food Stamps, a person must be a citizen of the United States or be an eligible alien in accordance with the following rules:

- o Prior to November 1, 1998, Food Stamp eligibility is limited to five years from the date of admission or the granting of status for refugees admitted to the United States under Section 207 of the Immigration and Nationality Act (INA), asylees admitted under Section 208 of the INA, aliens for whom deportation is withheld under Section 241(b)(3) or 243(h) of the INA, aliens granted status as Cuban/Haitian entrants as defined in Section 501(e) of the Refugee Education Assistance Act of 1980, and aliens who entered the United States as Amerasian immigrants as described in Section 402(a)(2)(A)(i)(V) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193). Pursuant to the Agricultural Research, Extension and Education Reform Act of 1998 (P.L. 105-85), effective November 1, 1998, Food Stamp eligibility is limited to seven years, rather than five years, for these individuals.
- o Aliens lawfully admitted for permanent residence under the Immigration and Nationality Act who have worked 40 qualifying quarters of coverage under Title II of the Social Security Act may receive Food Stamps if otherwise eligible and are not subject to the five-year limit. In determining the number of qualifying quarters, an alien is also credited with qualifying quarters worked by the alien's parent while the alien was under age 18 or by the alien's spouse during their marriage (if the alien remains married to such spouse or the spouse is deceased). Quarters earned after December 31, 1996, do not count if the alien (or the alien's parent or spouse, if applicable) receives any Federal means-tested public benefits during the quarter.
- o Lawfully residing aliens who are honorably discharged veterans, active duty military personnel (other than duty for training), and spouses and unmarried dependent children of such veterans or personnel, may get Food Stamps and are not subject to the five-year limit.

Personal Responsibility and Work Opportunity Reconciliation Act of (PRWORA; P.L. 104-193); 18 NYCRR 387.1; 18 NYCRR 387.9(a).

Effective November 1, 1998, an alien may be eligible for Food Stamps if that alien was lawfully in the U.S. on August 22, 1996, and

- o was 65 years of age or older on August 22, 1996 (DOB of August 22, 1931 or earlier), or
- o is currently under 18 years of age, or

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o is disabled as defined under rules of the Food Stamp Program.

Agricultural Research, Extension and Education Reform Act of 1998 (AREERA; P.L. 105-85).

Section 388.3 of 18 NYCRR provides that the Food Assistance Program is an optional program for the provision of Food Stamp benefits to certain non-citizens who are otherwise ineligible to receive federal Food Stamp benefits. In order to be eligible to receive benefits in the Food Assistance Program, a person must:

- (1) be otherwise fully eligible to receive federal Food Stamp benefits except for federal rules relating to ineligibility of non-citizens;
- (2) have been residing in the same social services district in which the Food Assistance Program application is being made on August 22, 1996;
- (3) be either under 18 years of age, or elderly or disabled according to Food Stamp Program rules;
- (4) not have been absent from the United States for more than a total of 90 days within the 12 months immediately preceding the date of application; and
- (5) apply for United States citizenship no later than 30 days from the date of application if the applicant is eligible for citizenship, or no later than 30 days after the person becomes eligible to apply for citizenship. The applicant is exempt from this requirement if good cause exists, which includes a verifiable physical or mental condition which prevents compliance, the failure to comply is directly attributable to district error or there are other extenuating circumstances which prevent the applicant from being reasonably expected to comply.

#### DISCUSSION

Appellant requested this fair hearing on September 22, 1999 in part to review the New York City Department of Social Services March, 1999 determination to discontinue Public Assistance, Medical Assistance, and Food Stamp benefits to meet his needs. Generally, determinations regarding Public Assistance and Medical Assistance made more than 60 days preceding the fair hearing request and determinations regarding Food Stamp benefits made more than 90 days preceding the fair hearing request would be precluded from review. However, although duly notified of the time, place, and issue for the hearing, the Agency appeared but presented no evidence to refute Appellant's representation that the Agency did not provide advance written notice of its determinations, as required by Regulations. The record establishes a sufficient basis for tolling the statute of limitations in this case. Further the Agency failed to produce Appellant's case record and

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presented no evidence to support its actions. Inasmuch as the Agency has failed to establish it provided proper notice of its determination and did not establish its actions were proper, the Agency's determination cannot be sustained.

The record indicates that, on August 25, 1999, the New York City Department of Social Services determined to accept Appellant's July 1999 reapplication for Public Assistance, effective September 8, 1999, and Medical Assistance, and to deny Food Stamp benefits based on Appellant's having lost eligibility as a result of PRWORA. It is noted that Appellant is seeking lost Public Assistance benefits from the date of discontinuance until September 7, 1999.

As to the August, 1999 determination that Appellant was no longer eligible for Food Stamp benefits, the Agency submitted no evidence. This decision cannot be sustained at this time.

It appears that the Suffolk County determinations challenged by Appellant were based on a finding that the Appellant was not a resident of Suffolk County. However, since the March, 1999 discontinuance of Public Assistance, Medical Assistance, and Food Stamp benefits is being reversed in the instant Decision After Fair Hearing, the issues of the Suffolk County Department of Social Services' failure to act on a March, 1999 request for a Public Assistance grant, Medical Assistance Authorization, and Food Stamp benefits separate from Appellant's wife, failure to act on March 8, 1999, March 11, 1999, April 16, 1999, July 1, 1999, July 26, 1999, and July 30, 1999 requests for preinvestigation grants, failure to act on March 8, 1999, April 16, 1999, and April 20, 1999 requests to apply for Public Assistance, Medical Assistance, and Food Stamp benefits, and failure to provide Public Assistance from March 8, 1999 through September 7, 1999, are now moot.

#### DECISION AND ORDER

The March, 1999 determination of the New York City Department of Social Services to discontinuance of Appellant's Public Assistance, Medical Assistance, and Food Stamp benefits and the New York City Department of Social Services August, 1999 determination that he was no longer eligible for Food Stamp benefits, are not correct and are reversed.

1. The Agency is directed to restore lost Public Assistance, Medical Assistance, and Food Stamp benefits retroactive to the date of discontinuance.

No issue remains to be decided as to the Suffolk County Department of Social Services' failure to act on a March, 1999 request for a Public Assistance grant, Medical Assistance Authorization, and Food Stamp benefits separate from Appellant's wife, failure to act on March 8, 1999, March 11, 1999, April 16, 1999, July 1, 1999, July 26, 1999, and July 30, 1999 requests for preinvestigation grants, failure to act on March 8, 1999, April 16, 1999, and April 20, 1999 requests to apply for Public Assistance, Medical Assistance, and Food Stamp benefits, and failure to provide Public

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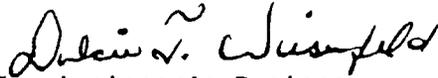
Assistance from March 8, 1999 through September 7, 1999.

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

DATED: Albany, New York  
May 30, 2002

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

  
Commissioner's Designee