

**STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE**

REQUEST: March 7, 2011

AGENCY: Onondaga
FH #: 5743926Z

In the Matter of the Appeal of

from a determination by the Onondaga County
Department of Social Services

:
: **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 April 25, 2011, in Onondaga County, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[REDACTED]

For the Social Services Agency

Tara Newcomb, Fair Hearing Representative

ISSUE

Was the Agency's determination to deny the Appellant's application for Food Stamps for failure to provide documentation necessary to determine the Appellant's eligibility for such benefits 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 applied for Food Stamps benefits for a household of one person on November 22, 2010.

2. The Appellant was advised by the Agency on November 22, 2010 to submit the following documentation to the Agency by December 2, 2010: verification of her residence and

household composition; copies of her last four pay stubs; and verification of her work-study program.

3. The Agency determined that the Appellant failed to provide the Agency with the requested eligibility documentation by the due date.

4. On January 5, 2011 the Agency sent a Denial Notice setting forth its determination to deny the Appellant's application for Food Stamps benefits because the Appellant failed to provide documentation necessary to determine the Appellant's eligibility for such benefits.

5. On March 7, 2011, the Appellant requested this fair hearing.

APPLICABLE LAW

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(b).

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(b).

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(b).

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(b).

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).

When a household's eligibility cannot be determined within thirty days of filing of the application, the Agency must determine the cause of the delay. If the delay is the fault of the household, then the application must be denied. However, if the household takes the required action within sixty days of the filing of the application, the case must be processed without requiring a new application. Prorated benefits must then be provided to the household from the date the necessary verification was provided. If the delay is the fault of the Agency, then the Agency must notify the household as to what action it must take to complete the application. The cause of the delay in failing to complete verification shall be considered the household's fault only if the Agency has assisted the household in trying to obtain the verification and allowed the household at least ten days to obtain the missing verification. If the household is found to be eligible during the second thirty-day period, prorated benefits must be provided from the date of application. 7 CFR 273.2(h); 18 NYCRR 387.14(a)(4).

DISCUSSION

The Appellant applied for Food Stamps benefits for a household of one person on November 22, 2010.

The Agency Representative (AR) testified that the Appellant filed her application online. She stated that the Appellant was sent a Documentation Requirements form which advised her to submit certain listed eligibility documentation by December 2, 2010. She maintained that the Appellant failed to submit the requested documentation and the Agency therefore determined to deny her application for Food Stamps benefits by Notice dated January 5, 2011.

The AR submitted several documents into the hearing record in support of the Agency's determination. She explained that the notation "V21" in the case narrative notes meant that the Appellant failed to submit requested eligibility documentation.

The Appellant testified that she received the Agency's Documentation Requirements (DR) form in the mail. She contended that she faxed the requested documents to the Agency on December 2, 2010. The Appellant explained that she gathered the requested eligibility documents and then took them to a Fed Ex store so that they could be faxed to the Agency. She stated that she saw the Fed Ex worker fax the requested documents to the Agency.

The Appellant submitted a Fax Transmission Verification Report, dated December 2, 2010. She also submitted a Fax Cover Sheet which indicated that 11 pages of documents were

faxed to Mrs. Pinkasiewicz from the Appellant on December 2, 2010. The listed fax number was 435-3599. The Appellant also submitted eligibility documentation including a NYS Driver License, a Social Security Card, two written statements from her landlord, four pay stubs, and other documents.

The Appellant further testified that she called the telephone number listed on the DR form after the documents were faxed to the Agency to find out if they were received. She stated that she called this number and the general Agency phone number several times both before and after she received the Agency denial notice.

The AR responded that the Agency did not have the documentation presented by the Appellant at the fair hearing. She conceded that the fax number listed on the Fax Cover Sheet was the correct Agency fax number.

The Appellant then requested reimbursement for her transportation expenses to travel to and from the fair hearing. After a discussion, the AR stipulated to provide the Appellant with mileage reimbursement for the number of miles she drove to and from her home in [REDACTED] to the Agency.

The Agency's determination to deny the Appellant's application for Food Stamp benefits cannot be sustained. The weight of the hearing evidence establishes that the Appellant did provide the Agency with the requested eligibility documentation by the due date of December 2, 2010. The Appellant's testimony is found to be credible because it was persuasive and was supported by the documentation partially described above. Therefore the Agency will be directed to reevaluate the Appellant's eligibility for Food Stamp benefits.

DECISION AND ORDER

The Agency's determination to deny the Appellant's application for Food Stamps benefits is not correct and is reversed.

1. The Agency is directed to continue to process the Appellant's application and afford the applicant the opportunity to submit any other documents necessary to establish eligibility.

2. The Agency is directed to reevaluate the Appellant's household's eligibility for Food Stamp benefits.

3. In the event that the Appellant is determined to be eligible for Food Stamp benefits, the Agency is directed to provide such benefits retroactive to the date on which the Appellant originally applied therefore.

4. The Agency is directed to advise the Appellant in writing of its determination.

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

5. Provide the Appellant with automobile mileage reimbursement at the standard mileage rate (51 cents per mile) for the number of miles driven by the Appellant from her residence [REDACTED] to and from the Agency to attend the fair hearing pursuant to the provisions of 18 NYCRR 358-4.3(d).

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
05/05/2011

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By



Commissioner's Designee