

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST April 26, 2002
CASE # FAXXXXXXX
CENTER # Monroe
FH # 3708876N

In the Matter of the Appeal of :

DECISION
: **AFTER**
FAIR
HEARING

from a determination by the Monroe 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 July 12, 2002, in Monroe County, before Thomas Rebhan, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Appellant; Andrew Conroy, Lorna Saltibus; Monroe County Legal Assistance Corporation; Appellant's wife

For the Social Services Agency

Barbara Meath, Fair Hearing Representative

ISSUE

Was the Agency's determination not to include Appellant as part of the Appellant's Food Stamp household 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, age 59, is in receipt of Food Stamps for a household consisting of himself and his wife.
2. On April 9, 2002, the Agency received a computer generated report from the State Department of Social Services, indicating that the Appellant's SSI benefits would be discontinued due to the fact he was considered to be a fleeing felon.
3. On April 19, 2002, the Agency determined to reduce the Appellant's monthly Food Stamp benefit from \$237.00 to \$124.00 to reflect the removal of Appellant from the Food Stamp household on the grounds the Appellant was ineligible for Food Stamps because he was a fleeing felon.

4. On April 26, 2002, the Appellant requested this fair hearing, and was granted aid continuing.

APPLICABLE LAW

Pursuant to 18 NYCRR 387.1(w)(4), an individual is ineligible to participate in the Food Stamp program as a member of any household for any period during which the individual is fleeing to avoid prosecution, or custody or confinement after conviction, under the law of the place from which the individual is fleeing, for a crime, or attempt to commit a crime, that is a felony under the law of the place from which the individual is fleeing. In addition, an individual is ineligible to receive Food Stamps benefits if such individual is violating a condition of probation or parole imposed under a federal or state law.

Pursuant to 97 ADM-23(M)(2)(d), the Agency should obtain a timely follow-up report from the law enforcement agency within 48 hours, or a reasonable equivalent arranged with the law enforcement unit. This report should establish whether the individual had been taken into custody, had fled, or if the referral had been found erroneous.

DISCUSSION

The Agency's determination that the Appellant was ineligible for Food Stamp benefits because he was a fleeing felon cannot be affirmed based upon the evidence presented at the hearing. The matter is remanded back to the Agency for further consideration consistent with the findings set forth herein.

The only evidence presented by the Agency to support the fact that the Appellant was fleeing to avoid prosecution was a computer report from the State Department of Social Services, indicating that the Appellant was a fleeing felon. There was no evidence presented to support this assertion, and more importantly no evidence presented from the jurisdiction from which the Appellant is allegedly fleeing. The Agency's failure to obtain a "timely follow-up report from the law enforcement agency" involved runs contrary to 97 ADM 23, as set forth in the applicable law above. The burden of proof is clearly on the Agency to prove that a recipient is a fleeing felon. The submission of a computer report indicating that the Appellant's SSI benefits were discontinued based upon allegations he was a fleeing felon fails to meet that burden of proof in the case at bar.

The Appellant did not dispute the fact that there exists an outstanding warrant for his arrest from the State of Oregon, but testified that he has no recollection of an arrest in Oregon, and stated he has never lived in Oregon. The Appellant testified that he did not become aware of this warrant until the Social Security Administration attempted to discontinue his SSI benefits. The Appellant testified that he has been living in New York State for at least the past two years, prior to having knowledge of the outstanding warrant, and therefore could not have intentionally fled to avoid prosecution. The Appellant testified that the State of Oregon is refusing to extradite the Appellant, and that local law enforcement agencies are refusing to take any action against the Appellant. The Appellant argued that it is too costly for him to travel to Oregon to clear his name. Without any evidence from Oregon law enforcement officials to otherwise controvert the Appellant's testimony, the Agency's determination cannot be affirmed. The Agency is free to review the Appellant's circumstances consistent with the

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above mentioned law, and take action in the future if warranted.

DECISION AND ORDER

The Agency's determination that the Appellant is ineligible for Food Stamps because he is a fleeing felon cannot be affirmed, and is remanded back to the Agency consistent with the findings set forth herein.

1. The Agency is directed to cancel its reduction notice dated April 19, 2002, and to continue the Appellant's Food Stamp benefits unchanged.

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 the directives set forth above.

DATED: Albany, New York
August 29, 2002

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee