

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST July 16, 2001
CASE # M112527 AL
CENTER # Erie
FH # 3561826L

In the Matter of the Appeal of :

DECISION
: **AFTER**
FAIR
HEARING

from a determination by the Erie 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 August 17, 2001, in Erie County, before James Parwulski, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Appellant; Bernadette Heppe & Penny Selmonsky, Neighborhood Legal Services

For the Social Services Agency

Mr. Gardinier & Mr. Acevedo, Fair Hearing Representative; Mr. Wawrzyniak & Mr. Baczkowski, Special Investigators

ISSUES

Was the determination of the Agency that Appellant is ineligible for Public Assistance and Food Stamp benefits because she was fleeing to avoid prosecution or custody or conviction for a felony correct?

Was the determination of the Agency to deny the Appellant's application for Medical Assistance benefits for failure to appear at a scheduled face-to-face interview 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 applied for Public Assistance, Medical Assistance and Food Stamp benefits for her own needs.
2. The Appellant is pregnant.
3. On or about June 8, 1998, a warrant was issued in the State of Michigan for the Appellant's arrest for fraud.

4. On May 18, 2001, the Agency the Agency sent a Denial Notice setting forth its determination to deny the Appellant's application for Public Assistance and Food Stamp benefits on the ground that the Appellant was ineligible for assistance because she was fleeing to avoid prosecution or custody or conviction for a felony.

5. The Agency determined to make a separate determination of the Appellant's eligibility for Medical Assistance.

6. By letter addressed to W Street in Buffalo, the Agency requested the Appellant to report for a face-to-face interview on June 13, 2001 to determine her eligibility for Medical Assistance.

7. The Appellant did not report to the scheduled interview because she did not receive the letter mailed to W Street. The Appellant moved to M Street on or about May 1, 2001.

8. On June 19, 2001, the Agency sent a Denial Notice setting forth its determination to deny the Appellant's application for Medical Assistance benefits because the Appellant failed to report to the scheduled face-to-face interview.

9. On July 16, 2001, the Appellant requested this fair hearing.

APPLICABLE LAW

Regulations at 18 NYCRR 351.2(k)(3) provides that an individual will be ineligible for Public Assistance if he or she is fleeing to avoid prosecution or custody or conviction under the laws of the place from which the individual flees for a crime or attempt to commit a crime which is a felony under the laws of the place from which the individual flees, or which, in the case of the state of New Jersey, is a high misdemeanor under the laws of such state. In addition, an individual will be ineligible for Public Assistance if he or she is violating a condition of probation or parole imposed under federal or state law. The Agency must consider a person to be violating a condition of probation or parole only if he or she is currently an absconder from probation or parole supervision and a warrant alleging such a violation is outstanding; or the person has been found by judicial determination to have violated probation or by administrative adjudication by the division of parole to have violated parole. Such person must be considered to be violating a condition of probation or parole only until he or she is restored to probation or parole supervision or released from custody, or until the expiration of the person's maximum period of imprisonment or supervision, whichever occurs first. A person considered to be violating a condition of probation or parole includes a person who is violating a condition of probation or parole imposed under federal law. For purposes of this paragraph,

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probation or parole includes conditional release, wherever applicable.

Administrative Directive 97 ADM-23 sets forth Department policy pertaining to the ineligibility of persons fleeing to avoid prosecution or custody or conviction for a felony as follows:

M. CRIMINAL MATCHES

1. Program Implications

This Department and the Division of Criminal Justice Services (DCJS) have entered into an agreement to cooperate in the sharing of information in order to implement federal requirements for the ineligibility for PA and FS benefits of criminals who are fleeing to avoid prosecution, custody or confinement after conviction. This directive also presents recommendations for procedures for SSDs notification of local law enforcement agencies when an applicant or recipient of PA or FS is matched with the DCJS file.

The New York State legislation extends the penalties mandated for FA to all public assistance programs in the State. The following categories of individuals are now ineligible for public assistance (FA and SNA) in New York State:

- o Fugitive felons.
- o Probation and parole violators.
- o Persons convicted for misrepresenting their identity or place of residence in order to receive PA, SSI, MA, or FS simultaneously in two or more states. Such persons are ineligible for ten years, beginning with the date of conviction.

The specific program implications of these penalty criteria are explained in Section D of this directive. Sections III, 1(b), (c) and (d) of 97 ADM-8 are cancelled. These sections specified recategorization of the above types of individuals from ADC to PG-ADC; they are now ineligible for any PA program.

2. Required Action

- a. Section 136 of the Social Services Law authorizes SSDs to provide to law enforcement officials the addresses of

fugitive felons, parole and probation violators. It was amended by the Welfare Reform Act of 1997 to also authorize the provision of addresses of persons that have information that is necessary for a law enforcement officer to conduct his or her duties.

- b. Under the agreement between DSS and DCJS, when a positive match is made between a WMS individual and a DCJS individual, the SSD will report the individual's address to law enforcement officials. (see Section E of this directive). In addition, the SSD must also take action to deny the applicant or close the recipient's case if the individual's criminal status makes him or her ineligible. SSDs should therefore plan for controlling receipt of the match information and for appropriate follow-up on the application or PA case.
- c. It is recommended that the SSD designate the local fraud/investigative unit (IU) as the controlling unit for "hits" on the DSS/DCJS match. The IU should receive the monthly BICS match report and any matches there or through the Recipient Identification and Client History (RICH), (see WMS Implications below) should be referred to the IU prior to any action on the application or case. It will be the responsibility of the IU to evaluate the match report and, if appropriate, to contact the local sheriff or State Police with the report of the individual's whereabouts. This report should be made only for individuals who are fleeing felons or probation or parole violators, not for those convicted of fraud. The IU should establish a recommended procedure from the local law enforcement regarding the normal sequence of referral - for example, sheriff first, then State Police, depending upon the crime and/or local law enforcement arrangements.
- d. The investigation unit 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. It should also establish the basis for notification to the individual of the PA or FS action to be taken. After obtaining a report from the law enforcement agency, the investigation unit should evaluate whether a notice can now be sent. Worker safety as well as successful completion of the law enforcement action must be given paramount importance in

this decision and carefully coordinated.

Regulations at 18 NYCRR 387.1(w)(4) provide that 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 or that, in the case of the state of New Jersey, is a high misdemeanor under the law of New Jersey. In addition, an individual is ineligible to receive Food Stamp benefits if such individual is violating a condition of probation or parole imposed under a Federal or State law.

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.).

Regulations at 18 NYCRR 360-7.5(a)(5) 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 services or care were provided for paid medical bills for medical expenses incurred during the period beginning three months prior to the month of application for Medical Assistance and ending with the recipient's receipt of a Medical Assistance identification card, provided that the recipient was eligible in the month in which the medical care and services were received and that the medical care and services were furnished by a provider enrolled in the Medical Assistance Program. The provisions of this regulation which limit reimbursement for paid medical bills only to providers enrolled in the Medical Assistance Program when such bills were incurred during the period from three months prior to the month the recipient applied for Medical Assistance to the date of application has been declared invalid in the courts in Seittelman, et al v. Sabol, et al. (N.Y., 1998) and Carroll et al. v. DeBuono, et al. (N.D.N.Y., 1998). Further, the Court in Seittelman held that limiting reimbursement to the Medical Assistance fee or rate was permissible for such period.

Section 360-2.4(c) of the Regulations provides that an initial authorization for Medical Assistance will be made effective back to the first day of the first month for which eligibility is established. A retroactive authorization may be issued for medical expenses incurred during the three month period preceding the month of application for Medical Assistance, if the applicant was eligible for Medical Assistance in the month such care or services were received.

DISCUSSION

The Agency determined to deny the Appellant's application for Public Assistance and Food Stamp benefits on the ground that the Appellant was ineligible for assistance because she was fleeing to avoid prosecution or custody or conviction for a felony.

The uncontroverted evidence established that on or about June 8, 1998 a warrant for the Appellant's arrest on a charge of fraud was issued in the State of Michigan.

The Appellant testified at the hearing that she was not arrested in Michigan, that she was unaware of the arrest warrant when she moved to Buffalo in 1998, that she was not attempting to avoid arrest on the outstanding warrant and that she was arrested in New York State on more than one occasion but the State of Michigan declined to extradite. The Appellant stated that she does not want to return to Michigan at the present time because her presence is required in court proceedings relating to the murder of her son.

The Appellant submitted a letter from Colleen Curtin Gable, an assistant district attorney in the Office of the District Attorney of Erie

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County, stating that the warrant remains in effect in Michigan but that the authorities in Michigan had advised her that they would not extradite the Appellant.

The Agency argued that, pursuant to Department policy, a person is ineligible for assistance so long as there is an outstanding valid warrant and that the Appellant cannot qualify for assistance unless she returns to Michigan and the warrant is vacated. The Appellant argued that a person can qualify for assistance despite the existence of an outstanding warrant if the person is not fleeing to avoid prosecution or custody or conviction.

The Agency is correct that the fact that the State of Michigan declined to extradite, by itself, does not qualify the Appellant for assistance. If necessary, a fleeing felon must return to the place from which he/she fled at his/her own expense. However, the Appellant is correct that the Appellant could qualify for assistance despite the existence of an outstanding warrant. Pursuant to Department regulation and policy, as set forth above, a person is not ineligible unless there is flight to avoid prosecution, custody or confinement after conviction. Department policy, as set forth above, provides that the investigation unit should obtain a timely follow-up report from the law enforcement agency, which "should establish whether the individual had been taken into custody, had fled, or if the referral had been found erroneous." This was not done in this case. The Agency provided no evidence to controvert the Appellant's testimony that she was never arrested in Michigan and that she was not attempting to avoid prosecution. Under the circumstances here, the Agency's determination cannot be sustained and the Agency should review the Appellant's circumstances in accordance with the policy set forth above.

The case is remanded to the Agency for redetermination of the Appellant's eligibility for Public Assistance and Food Stamp benefits.

The uncontroverted evidence established that the Appellant was unaware that a face-to-face certification interview had been scheduled to determine her eligibility for Medical Assistance because the Agency mailed notice of the interview to the wrong address. The Appellant moved from W Street on or about May 1, 2001 and a completed landlord statement for the Appellant's new address had been received by the Agency. Inasmuch as the Appellant was not notified to report for the face-to-face interview, she had good cause for failing to report. Accordingly, the Agency's determination to deny the Appellant's application for Medical Assistance will not be affirmed.

DECISION AND ORDER

The Agency's determination that Appellant is ineligible for Public

Assistance and Food Stamp benefits because she was fleeing to avoid prosecution or custody or conviction for a felony is not correct and is reversed.

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

1. The Agency is directed to continue to process the Appellant's application.

2. The Agency is directed to redetermine the Appellant's eligibility for Public Assistance, Medical Assistance and Food Stamp benefits.

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

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

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee