

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST June 18, 2002
CASE # P00XXXXXX
CENTER Suffolk
FH # 3737787Q

In the Matter of the Appeal of :

E. W.

DECISION
:
AFTER
FAIR
HEARING

from a determination by the Suffolk 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 September 4, 2002, in Suffolk County, before Richard S. Levchuck, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

E. W., Appellant; Nora Gonzalez, Appellant's Representative

For the Social Services Agency

Randi Delirod, Fair Hearing Representative

ISSUES

Was the determination of the Agency to reduce the Appellant's grant of Public Assistance in order to recover an overpayment of assistance in the amount of \$3,969.67 on the ground that Appellant was ineligible for Public Assistance benefits during the period from September, 2001 through February, 2002 because such individual has been found by the Agency to be fleeing to avoid prosecution or custody or conviction for a felony correct?

Was the determination of the Agency to discontinue the Appellant's Public Assistance grant and Medical Assistance due to a failure of the Appellant to complete an out-patient rehabilitation program for alcohol and substance abuse correct?

Was the Agency's determination dated June 12, 2002 to reduce the Appellant's 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. The Appellant has been in receipt of Public Assistance, Medical Assistance and Food Stamp benefits for herself only.

2. On April 1, 2002, the Agency's Office of Special Investigations advised the income maintenance unit of the Agency that a felony warrant had been issued for the Appellant on August 15, 2001 by the New York City Police Department and had been vacated on March 1, 2002.

3. The Appellant received Public Assistance in the amount of \$3,969.67 during the period from September, 2001 through February, 2002.

4. The Agency presented no evidence at the hearing of the warrant in question or that it had obtained a follow-up report to determine if the Appellant had been taken into custody, had fled or if the referral that it received was erroneous.

5. By notice dated May 29, 2002, the Agency determined that Appellant was ineligible for Public Assistance and Food Stamp benefits because such individual was found by the Agency to be fleeing to avoid prosecution or custody or conviction for a felony.

6. The Agency requested a formal alcohol and substance abuse assessment of Appellant.

7. On April 16, 2002, based on such formal assessment, the Agency requested that Appellant participate in an out-patient rehabilitation program for alcohol and substance abuse based on a determination that Appellant was unable to work because of a need for treatment for alcohol and substance abuse.

8. The Appellant enrolled in the L G Treatment Center on April 17, 2002.

9. The Appellant participated in substance abuse rehabilitation at the L G Treatment Center until May 9, 2002 when she discharged herself from the program.

10. By notice dated June 12, 2002, the Agency determined to discontinue the Appellant's assistance and Medical Assistance because the Appellant failed to complete an out-patient rehabilitation program for alcohol and substance abuse. The Agency determined that Appellant should be sanctioned for at least 45 days and until willing to complete the program.

11. By notice dated June 12, 2002, the Agency determined to reduce the Appellant's Food Stamp benefits from \$107.00 to \$87.00 per month due to a change in her Public Assistance income.

12. On June 18, 2002, 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

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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, probation or parole includes conditional release, wherever applicable.

Under the provisions of Administrative Directive 97-ADM-23 at page 63, concerning the eligibility of Public Assistance and Food Stamp benefits for fleeing felons, 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 Public Assistance or Food Stamp action to be taken.

Section 132(4) of the Social Services Law and 18 NYCRR 351.2(i) provides for a screening for alcohol and/or substance abuse for heads of households and adult applicants and recipients using a standardized screening. Such screening shall be performed by a social services district at the time of application and periodically thereafter unless the recipient is actively participating in alcoholism and/or substance abuse treatment, but not more frequently than every six months, unless the district has reason to believe that an applicant or recipient is abusing or dependent on alcohol or drugs.

Regulations at 18 NYCRR 351.2(i) provide that an adult is any individual in the household who is age 18 or over who is applying for or in receipt of Public Assistance, except an individual 18 years of age who is a full time student regularly attending a secondary school, or in the equivalent level of vocational or technical training.

When the screening process indicates that there is reason to believe that an applicant or recipient is abusing or dependent on alcohol or drugs, or there is other evidence that an applicant or recipient is abusing or dependent on alcohol or drugs, the social services district must require the applicant or recipient to undergo a formal alcohol or substance abuse assessment, which may include drug testing, to be performed by an alcohol and/or substance abuse professional credentialed by the Office of Alcoholism and Substance Abuse Services. The assessment may be performed directly by the district or pursuant to contract with the district.

If the formal assessment determines that the applicant or recipient is unable to work by reason of his or her need for treatment for alcohol or substance abuse, or, for determinations prior to April 27, 1998, the applicant or recipient has been ordered to participate in alcoholism or substance abuse treatment by a court of competent jurisdiction, the social services official must refer the individual to an appropriate alcoholism

and/or substance abuse treatment program.

Regulations at 18 NYCRR 351.2(i) provide that to be considered an appropriate treatment program, the treatment program must:

- (a) be licensed or certified by the Office of Alcoholism and Substance Abuse Services or operated by the United States Department of Veterans Affairs and be determined by the social services official to meet the rehabilitation needs of the individual, in accordance with standards developed by the Office of Alcoholism and Substance Abuse Services;
- (b) develop a treatment plan for the individual which includes an expected date of availability for work related activities and provide a copy of such plan to the local district responsible for payment, in a manner consistent with 41 CFR Part 2;
- (c) provide at a minimum of every three months, a treatment progress report for each recipient of public assistance to the local district responsible for payment of public assistance benefits; and
- (d) request approval by the local district responsible for payment of public assistance benefits prior to changing an individual's level of treatment care.

If the local district is responsible for payment of treatment, the district can require in-district treatment, provided an appropriate treatment program is available. When residential treatment is appropriate for a single custodial parent, the social services official must make diligent efforts to refer the parent to a program that would allow the family to remain intact for the duration of the treatment.

A person who fails to participate in the screening or in the assessment is ineligible for Public Assistance and Medical Assistance. Other members of a household which includes a person who has failed to participate in the screening or assessment shall, if otherwise eligible, receive Medical Assistance and shall receive Public Assistance only through non-cash Safety Net Assistance if they are otherwise eligible for Public Assistance and Medical Assistance. The Public Assistance benefits otherwise available to the household of which the sanctioned individual is a member will be reduced prorata. 18 NYCRR 352.30(d).

Regulations at 18 NYCRR 351.2(i) provide that if a person required to participate in treatment pursuant to that subdivision fails to consent to disclosure of necessary treatment information by the treatment program to the social services district, or subsequently revokes such consent, such person will be ineligible for public assistance. Other members of the household which includes such person will, if otherwise eligible, receive public assistance only through non-cash safety net assistance.

A person referred to a treatment program and the household with which he or she resides shall receive non cash Safety Net Assistance and Medical Assistance while the person is participating in such treatment, if the household is otherwise eligible for Public Assistance and Medical Assistance. If a person referred to treatment cannot participate in that treatment because treatment is not presently available, that person and the household

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with which he or she resides shall receive non-cash Safety Net Assistance and Medical Assistance if the household is otherwise eligible for Public Assistance and Medical Assistance.

If an applicant or recipient is required to participate in an appropriate rehabilitation program and fails to participate in such program without good cause or leaves such program prior to completion of the program without good cause, provided that program completion shall be solely determined by the guidelines and rules of such rehabilitation program, or if an applicant or recipient has been suspended from the receipt of Social Security Disability benefits or Supplemental Security Income benefits because of noncompliance with requirements of the federal Social Security Administration for treatment for substance abuse or alcohol abuse, the person will be disqualified from receiving Public Assistance and Medical Assistance as set forth below. Failure to participate in such program is defined as failure to comply with the established treatment plan including scheduling treatment sessions. The disqualifications are as follows:

- (i) for the first failure to participate in or complete the program, or to comply with the requirements of the Federal Social Security Administration, until the failure ceases or for 45 days, whichever period of time is longer;
- (ii) for the second such failure, until the failure ceases or for 120 days, whichever period of time is longer; and
- (iii) for the third and subsequent failures, until the failure ceases or for 180 days, whichever period is longer.

The household with which the person resides shall continue to receive safety net assistance and medical assistance if otherwise eligible.

The applicant or recipient must be considered to have good cause for failing to participate or failing to complete a rehabilitation program when:

- (a) the local district, the facility and the applicant or recipient agree that the applicant or recipient is in need of a different program than the one to which he or she was referred or which he or she is attending and the applicant or recipient has enrolled in a rehabilitation program which the local district has determined appropriate; or
- (b) a verified unforeseen circumstance occurs that is beyond the applicant's or recipient's control such as illness or a death in the family.

18 NYCRR 351.2(i)(2)(iv)

A person who has been disqualified from receiving Public Assistance or Medical Assistance because of a refusal to participate in or complete a required rehabilitation program or who has been suspended from the receipt of Social Security Disability benefits or Supplemental Security Income benefits because of noncompliance with requirements of the federal Social Security Administration for treatment for substance abuse or alcohol abuse and who is otherwise eligible for Public Assistance and Medical Assistance shall be eligible for non-cash safety net assistance if such person returns to

required treatment prior to the end of the disqualification period and is receiving care in an Office of Alcoholism and Substance Abuse certified congregate care Level II facility as defined in 18 NYCRR 352.8 or United States Veterans Hospital residential treatment program.

Section 132(4) of the Social Services Law provides that provisions regarding screening and rehabilitation for alcohol and substance abuse apply to Medical Assistance only to the extent that they are not inconsistent with applicable federal law. Therefore, singles, childless couples and parents in intact households who are between 21 and 64 years old and who are ineligible for ADC-U will need to comply with alcohol and substance abuse screening and treatment in order to receive or continue to receive Medical Assistance unless they are certified blind or disabled.

DISCUSSION

At the hearing, the Appellant and her representative contended that the Appellant can not be a Fleeing Felon if she did not know she was so. Additionally she claims that the Agency did not follow the procedure set forth in 97 ADM-23 including obtaining a timely follow-up report or equivalent from the law enforcement unit. Moreover, the Appellant testified that she became aware of the outstanding warrant at her appointment with the Department of Labor in February, 2002 and that she immediately contacted the Bronx Legal Aid Society, whom she stated represented her in the past. She further testified that she was advised by the Legal Aid Society that the warrant represented unpaid court surcharges on a felony warrant. In lieu of paying the charges, the Appellant stated that she appeared before a criminal court judge in the Bronx on March 1, 2002 and had the warrant vacated.

The Appellant's representative cited Regional Letter 02-03 from the United States Department of Agriculture(USDA) indicating "that Federal courts have interpreted Federal law to require that, in order for an individual to be fleeing, that individual must be acting with the intent to avoid prosecution. For cases where a warrant has been issued, the individual must have knowledge that a warrant has been issued for his arrest in order to be considered "fleeing".

The Agency presented no evidence of a copy of the warrant of arrest issued against the Appellant. As such, no inquiry could be made of the Appellant concerning her claim that she did not receive it or her knowledge of the circumstances and facts surrounding the warrant in question. In addition, the Agency acknowledged at the hearing that it did not know if the procedure described in 97-ADM-23 had been followed.

Accordingly, the record fails to establish that the Appellant was knowingly fleeing a warrant for her arrest from a felony. Accordingly, the determination of the Agency that the Appellant was ineligible for Public Assistance during the period from September, 2001 through February, 2002 and that she received an overpayment of assistance in the amount of \$3,969.67 cannot be sustained.

Regarding the determination of the Agency to discontinue Public Assistance and Medical Assistance, the Appellant contended that she voluntarily sought treatment at the L G Treatment Center and that she was placed in a program that was an alternative to incarceration and was a M.I.C.A. (Mentally Ill Chemically Addicted) substance abuse rehabilitation program. The Appellant further stated that a conflict with her primary

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counselor ensued over whether she should sign a treatment plan, which she refused to do. She also noted that she has been in attendance at and has been compliant with a substance abuse rehabilitation program at P Counseling Center.

However, under the provisions of 18 NYCRR 351.2(i)(2)(iv), barring unforeseen circumstances such as illness or a death in the family, a recipient cannot change rehabilitation programs unless the Agency and the program that the recipient had been attending agree that the recipient is in need of a different program than that to which the recipient had been referred or was attending. The Appellant presented no evidence such as a letter from substance abuse rehabilitation program or counselor to support her contention that her participation was voluntary. Accordingly, the Appellant has not established good cause for her failure to comply with substance abuse rehabilitation requirements. The Agency correctly determined to discontinue the Appellant's Public Assistance and Medical Assistance.

At the hearing, the Agency agreed to withdraw its Notice of Intent to reduce the Appellant's Food Stamp benefits dated June 12, 2002. The Agency agreed to continue to provide the Appellant with Food Stamp benefits and to restore any Food Stamp benefits lost to the Appellant as a result of this action retroactive to the date of reduction. As such, no further issues remain to be decided.

DECISION AND ORDER

The Agency's determination that Appellant received an overpayment of Public Assistance in the amount of \$3,969.67 on the ground that Appellant was ineligible for Public Assistance benefits during the period from September, 2001 through February, 2002 because such individual has been found by the Agency to be fleeing to avoid prosecution or custody or conviction for a felony is not correct and is reversed.

1. The Agency is directed to take no action to recover the overpayment of Public Assistance in the amount of \$3,969.67.

In accordance with its agreement entered into at the hearing, the Agency, if it has not already done so, is directed to take the following action:

1. The Agency is directed to cancel its Notice of Intent dated June 12, 2002 which advised the Appellant of its determination to reduce her Food Stamp benefits from \$107.00 to \$87.00 per month.

2. The Agency is directed to restore any Food Stamp benefits lost to the Appellant as a result of its action retroactive to the date of reduction.

3. Should the Agency determine to implement its previously contemplated action, it is directed to issue a new, timely and adequate Notice of Intent.

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.

The determination of the Agency to discontinue the Appellant's Public

Assistance grant and Medical Assistance due to a failure of the Appellant to complete an out-patient rehabilitation program for alcohol and substance abuse was correct.

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

DATED: Albany, New York
September 27, 2002

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee