

STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST August 21, 2002  
CASE # PXXXXXX  
CENTER # Nassau  
FH # 3767336Z

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In the Matter of the Appeal of :

T H

**DECISION**  
: **AFTER**  
**FAIR**  
**HEARING**

from a determination by the Nassau County  
Department 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 October 3, 2002, in Nassau County, before Irene Biggs, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

T H, Appellant  
Herbert Harris, Esq., Representative

For the Social Services Agency

Sue Swenson, Fair Hearing Representative

ISSUE

Was the determination of the Agency that the Appellant is ineligible for Public Assistance, Medical Assistance and Food Stamp benefits because such individual is fleeing to avoid prosecution, custody or confinement after conviction or who is violating a condition of probation or parole 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.
2. By NCIC Match Albany Region May 2002, the Agency was advised that an outstanding warrant was out in the name of the Appellant from C County District Attorney, Las Vegas, Nevada. The NCIC Match also indicated that the warrant was last validated on December 9, 1998, that cash bail was paid and that an extradition order good in adjoining states was in effect.
3. The Agency contacted the C County District Attorney's office and verified that the warrant was active and was for a felony offense.

4. By notice dated August 19, 2002, the Agency determined that the Appellant was ineligible for Public Assistance, Medical Assistance and Food Stamp benefits because such individual was found by the Agency to be fleeing to avoid prosecution, custody or confinement after conviction or who is violating a condition of probation or parole.

5. On August 21, 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 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.

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.

There is no provision of law requiring that Medical Assistance be discontinued for an individual who is fleeing to avoid prosecution, custody or confinement after conviction or who is violating a condition of probation or parole. Administrative Directive 97 ADM-23 Section V-D-2-c.

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 now ineligible for public assistance (FA and SNA) in New York State include fugitive felons.

## 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. 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), should be referred to the IU prior to any action of 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.

## DISCUSSION

The Agency's representative stated that she contacted the responsible law enforcement agency and verified that the warrant is for a felony and that it remains active. The Agency's representative stated that she was advised that the warrant remained active. The Agency's representative stated that the information contained on the NCIC Match indicates that bail was set and paid, which means that the Appellant had been arrested.

The Appellant stated that he was in Las Vegas in 1998 and incurred some gambling debts, but was not arrested and at that time he left Nevada he was not aware of any warrant out for his arrest. The Appellant testified that he left Las Vegas that same year. The Appellant maintained that he only learned of the warrant recently, in or about July 2002, when he was stopped by a police officer on an unrelated traffic matter. The Appellant stated that the police officer advised him that if he went west of the Mississippi River, he could face extradition to Nevada for an outstanding warrant.

The Appellant's representative argued that as the Appellant was not arrested in 1998, did not know of the warrant in 1998, and did not leave Nevada to flee said warrant or prosecution, the Agency cannot discontinue his Public Assistance or Food Stamp benefits on the ground that he is a fleeing felon without evidence to rebut the Appellant's testimony.

The Appellant's attorney also maintained that in accordance with Decision After Fair Hearing #3561826L, the Agency is required to clarify the Appellant's fleeing felon status and contended that the Agency did not make such an investigation. The Appellant's attorney further argued that the notice of intent cannot be affirmed based on the Agency's failure to comply with the procedures set forth in 97 ADM-23.

Based on the Agency's representative's testimony, the Agency did obtain a verbal follow-up report regarding the Appellant's warrant. The follow-up report referred to in 97 ADM-23 concerning whether an individual had been taken into custody, had fled, or if the referral had been found erroneous, does not relate to if the Appellant was originally taken into custody or fled, but, rather, what is the outcome of the Agency's current contact with the law enforcement agency regarding the warrant and the person's whereabouts. The Agency's representative's testimony was credible regarding her contact with the appropriate law enforcement agency and her verification that the warrant was still active.

Regarding the Appellant's representative's reliance on Decision After Fair Hearing #3561826, said decision is an incorrect interpretation of the controlling Regulations and Agency policy. The intent of the Regulation is not to put the burden on the Agency to research warrants. It is enough for the Agency to be advised of the existence of an outstanding warrant.

The Agency's evidence was sufficient to establish that the felony warrant existed at the time of the Agency's August 19, 2002, notice of intent. The Appellant's claim that he did not know of the issuance of the warrant is not controlling and does not rebut the Agency's evidence establishing that there is currently an active felony warrant out for his arrest. It is also noted that the Appellant's mere testimony that he was not arrested and did not flee Las Vegas without any supporting documentation does not rebut the Agency's evidence that references the existence of a bail payment. The Agency's determination to discontinue the Appellant's Public Assistance and Food Stamp

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benefits is correct and must be affirmed.

There is no provision of law requiring that Medical Assistance be discontinued for an individual who is fleeing to avoid prosecution, custody or confinement after conviction or who is violating a condition of probation or parole. Accordingly, the Agency's determination to discontinue the Appellant's Medical Assistance is reversed.

DECISION AND ORDER

The Agency's determination that the Appellant is ineligible for Public Assistance and Food Stamp benefits is correct.

The Agency's determination that the Appellant's is ineligible for Medical Assistance is not correct and is reversed.

1. The Agency is directed to continue the Appellant's Medical Assistance benefits.

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  
November 19, 2002

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee