

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST July 9, 2002
CASE # P00XXXXXX
CENTER # Suffolk
FH # 3745731H

In the Matter of the Appeal of :

C E

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 October 8, 2002, in Suffolk County, before Thelma Lee, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

C E, Appellant; Nora Gonzales, Nassau Suffolk Law Services

For the Social Services Agency

Amie Salinero, Fair Hearing Representative; Thomas Liguorio III, witness

ISSUE

Was the Agency's determination to discontinue the Appellant's Public Assistance and Food Stamps on the grounds that she is in violation of an order of probation 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 is a 51 year old woman residing with two unrelated adults at G L, C, New York.
2. The Appellant is in receipt of Public Assistance and Food Stamps for herself.
3. In May 2002, the Agency received a computer generated document indicating that there was an outstanding felony warrant dated September 17, 2001 for the Appellant issued by the Sheriff's Office for P B County, Florida.
4. The Agency confirmed the existence and validity of the outstanding warrant from Florida through the Suffolk County Office of Probation.
5. By notice of determination dated July 13, 2002, the Agency advised

the Appellant of its determination to discontinue the Appellant's Public Assistance and Food Stamps on the grounds that she is currently in violation of parole or probation and currently fleeing to avoid prosecution or confinement after a felony conviction.

6. On July 9, 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.

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.

3. Food Stamp Implications

SSDs were informed in 96 LCM-83 and 97 ADM-4 of new federal penalties for certain categories of criminals in the FS program. The following are disqualified from receiving FS:

- o Persons trafficking in FS.
- o Persons who commit fraud to receive multiple FS benefits (10 years).
- o Fleeing felons.
- o Persons violating a condition of parole or probation.

DISCUSSION

The Agency sent a July 3, 2002 notice to terminate the Appellant's Public Assistance and Food Stamps after receiving information regarding a felony warrant based on a violation of a probation order issued from Florida. The existence of this warrant was confirmed by contact with the local law enforcement agency in Florida.

The evidence establishes that by court order dated September 8, 2000, from the Circuit Court of P B County, Florida the Appellant pled guilty to Grand Theft. She was given three years probation and required to submit to urinalysis, breathalyzer or blood tests and repay restitution of \$3861.00 to SFI, court costs and Public Defender fees as part of her probation.

The Appellant testified that her probation was transferred in September 2000 to New York State as authorized by Florida and that she meets with a probation officer in the Bronx periodically. The Appellant and her probation officer were not aware of any outstanding warrant based on a violation of the September 8, 2000 court order until the July 3, 2002 notice was issued. The results of the mandated blood tests, as set forth in the Florida court order, are submitted to the probation officer. The Appellant acknowledged that

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there have been no payments made towards any mandated restitution due to the lack of funds. Documentary proof was presented to verify the periodic visits of her probation officer.

The Agency's decision to discontinue the Appellant's Public Assistance and Food Stamps is not correct and is reversed. The Agency followed the directives set forth in 97 Administrative Directive -23 by verifying with the appropriate local enforcement agency the computer-generated information conveyed regarding the Appellant's outstanding warrant. However, the pertinent regulations state that 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. There is sufficient proof to establish that the Appellant still meets with and remains under the supervision of a parole officer. There were several conditions that the Appellant was required to meet to completely satisfy probation and she may have violated one of those conditions. However, there is no evidence that the September 17, 2001 felony warrant was issued on the grounds that she is an absconder or has failed to continue to report to probation. Accordingly, this determination cannot be affirmed.

DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Public Assistance and Food Stamps is not correct and is reversed.

1. The Agency is directed to provide the Appellant with Public Assistance and Food Stamps and to advise her in writing if there are any changes to her benefits.

As set forth by the Department's Regulations at 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York
November 13, 2002

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee