

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST November 6, 2003
CASE # FXXXXXX RX
CENTER # Erie
FH # 4012187K

In the Matter of the Appeal of :

YM

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 January 23, 2004, in Erie County, before Vera R. Johnson, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

YM, Appellant; JT, Appellant's husband; Marilyn Bradley, Neighborhood Legal Services

For the Social Services Agency

Karen Lutman, Senior Social Welfare Examiner; Chavonne Washington, Social Welfare Examiner

ISSUE

Was the Agency's determination that the Appellant's household received an overissuance of food stamps because a household member (JT) had been ineligible for participation in the Food Stamp Program during June 2003 due to his "fleeing felon" status 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 was in receipt of Food Stamp benefits for a household of three persons including Appellant's husband, JT, age 29.
2. The Appellant was in receipt of Food Stamp benefits in the amount of \$203.00 in June 2003 for the three person household.
3. The Agency determined that deleting the needs of Appellant's husband from the food stamp household results in a monthly entitlement of \$93.00.
4. On May 7, 2003, the Agency accessed a NCIC Match Buffalo Region

report for April 2003 reflecting warrant number 01CR272 issued by A County Court, SL citing contempt of court as the basis for the offense and then indicating miscellaneous statement concerning forgery amounting to a fraud.

5. The NCIC report indicates that the warrant has been issued against one T-R, J (a/k/a JA, LLR, LL). The A County Sheriff's office cites the suspect as being age 26, and having a date of birth of XX/XX/XX.

6. On May 15, 2003 the Agency sent a letter to the Appellant requesting proof to show that the arrest warrant against her spouse has been satisfied.

7. On September 4, 2003, the Agency issued a CNS Notice setting forth its determination to reduce the Appellant's monthly Food Stamp benefits from \$259 to \$233 as of September 14, 2003 to implement a recoupment at the rate of \$26 per month. The Notice advised that the Appellant's household had received an overissuance of Food Stamps in the amount of \$110, having received \$203 in benefits in June 2003 and being entitled to receive \$93 in benefits during said month, because a household member (JT) was ineligible to participate in the Food Stamp Program during the said period as an individual who was fleeing to avoid prosecution or custody or conviction for a felony.

8. On November 6, 2003, 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.

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.

DISCUSSION

The Appellant brought this hearing to dispute the Agency's proposed action to reduce her monthly food stamps from \$259 to \$233 as of September 14, 2003 to implement a recoupment to recover a \$110 overissuance of benefits. The action was based on the Agency's finding that a household member--Appellant's husband, JT--was ineligible to participate in the Food Stamp Program during June 2003 because he was fleeing to avoid prosecution or custody or conviction for a felony. Based on the evidence adduced at the hearing, however, the Agency's finding as to Mr. T' "fleeing felon" status was not correct.

The Agency's based its finding on NCIC report match showing that a warrant had been issued against J T-R by a law enforcement agency located in the State of Colorado [Agency Exh. 1/p.4].

At the hearing the Appellant's husband claimed that he is not the individual cited in the NCIC report. This contention is found to have merit for a number of reasons. First, the name cited by the report--T-R, J--differs from the Appellant's husband's name ("JT"). Second, the year of

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birth cited by the report--XXXXXX XX, XXXX--does not conform to the Appellant's spouse's DOB (XXXXXX XX, XXXX), as shown by Agency records [Agency Exh. 1/p.5]. Third, the Agency presented what appears to be a police "mug shot" generated by fax from the records of the Colorado law enforcement Agency, the A County Sheriff's Office, and the parties were in substantial agreement at the hearing that the depicted felon on Agency Exh. A/p.2 does not match Appellant's spouse's likeness.

It bears noting that the offense set forth in the NCIC report would not support a finding of ineligibility for participation in the Food Stamp Program. The original violation is cited as "contempt of court" and the miscellaneous field indicates "FTC-Forgery-Issued by Government/False Reporting" [Exh. 1, p.2], an offense which appears to constitute a type of fraud. The applicable law set forth above states that a fleeing felon determination by the Agency may not be predicated upon fraud. Further, there is no indication by the available documentation that the crime(s) for which the suspect is charged is a felony.

Lastly, the Appellant's husband further testified that he is financially unable to go to Colorado in order to clear up the Agency's erroneous conclusion in this matter. He further stated that, after receipt of the Agency's notification of an NCIC match on May 15, 2003, he personally attempted to resolve the matter via the local Sheriff's office in Buffalo and was only able to learn that the Colorado law enforcement agency was not interested in extraditing him even if he were the individual for whom the arrest warrant was issued. This evidence, in addition to supporting a finding that the offense was likely not a felony, indicates that the Appellant's husband was not fleeing to avoid prosecution.

Accordingly, on this hearing record the Agency's finding that the Appellant's spouse was a "fleeing felon" during the month of June 2003 and therefore ineligible for food stamps cannot be sustained. The Agency's determination to recover an overissuance of benefits must be reversed.

DECISION AND ORDER

The Agency's determination that the Appellant's household received an overissuance of benefits in June 2003 because JT was ineligible to participate in the Food Stamp Program due to his "fleeing felon" status was not correct and is reversed.

The Agency is directed to:

1. Take no action to reduce the Appellant's Food Stamp benefits or to institute a claim against the food stamp household for \$110 under its September 4, 2003 Notice of Intent.
2. Restore any benefits withheld or recouped as a result of the Agency's proposed action retroactive to September 14, 2003.

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 requested, 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
January 16, 2004

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee