

**STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE**

REQUEST: July 7, 2005
CASE #: BAXXXXXXX
AGENCY: Monroe
FH #: 4366001J

In the Matter of the Appeal of
JD
from a determination by the Monroe County
Department of Social Services

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**DECISION
AFTER
FAIR
HEARING**

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 13, 2005 and December 23, 2005, in Monroe County, before Thomas Rebhan, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

JD, Appellant; Peggy Lee, Esq., Monroe County Legal Assistance

For the Social Services Agency

Rick Marchese, Esq., Fair Hearing Representative; Tony Wechsler, Agency Investigator

ISSUE

Was the determination of the Agency that the Appellant is ineligible for Public Assistance and Food Stamp benefits because such individual has been found by the Agency to be fleeing to avoid prosecution or custody or conviction for a felony correct?

FINDINGS OF FACT

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, age 46, has been in receipt of Public Assistance and Food Stamp benefits for a household of three persons, including herself and her two sons, ages 14 and 6.
2. On April 26, 2005, the Agency's Special Investigation Unit received an NCIC Match, indicating that one "RR" had an outstanding arrest warrant for larceny from the State of

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Colorado (XXXX County), which warrant was dated March 19, 1997. The social security number identifying “RRr” matched the social security number of the Appellant. However, the Appellant’s name was not listed as an alias on the NCIC Match report.

3. On or about May 16, 2005, the Agency’s Special Investigation determined that RR and the Appellant were the same person, and advised the Appellant’s caseworker to delete the Appellant’s needs from the Public Assistance and Food Stamp grant on the grounds the Appellant was a “fugitive felon”.

4. By notice dated June 8, 2005, the Agency determined that the 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.

5. On July 7, 2005, the Appellant requested this fair hearing.

6. On July 14, 2005, the Appellant wrote to the Fourth Judicial District of Colorado, (XXXX County where the arrest warrant was issued), asserting that her identity had been stolen, and seeking verification that there was no arrest warrant outstanding against her.

7. On July 28, 2005, Hon. Edward S. Holt, District Court Judge for the Fourth Judicial District of Colorado responded to the Appellant’s inquiry, stating that the “Court’s records show that there is an active bench warrant for the arrest of RR.”. Judge Holt went on to state, “I am unsure what the Court could do to assist you, but I will see that your letter is filed with the criminal case”.

8. On August 2, 2005, the Appellant presented the letter from Judge Holt to the Agency. After reviewing the letter the Agency maintained that RR was an alias for the Appellant.

9. On September 7, 2005, the Agency received a statement from law enforcement in Colorado, confirming a warrant for the arrest of “RR” for theft, and referenced a case number “1997 CR 1037”. While the Appellant’s name (JD) was listed on the information, she was not listed as a party, nor expressly listed as an alias for the named defendant.

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.

DISCUSSION

The Agency's determination that the Appellant is ineligible for Public Assistance and Food Stamps benefits because the Appellant has been found to fleeing to avoid prosecution for a felony was not correct and is reversed.

The uncontroverted evidence presented at the hearing established that the Agency received a NCIC Match report identifying "RR" as the subject of an outstanding arrest warrant for larceny. It was also undisputed that the social security number listed for the defendant (RR) matched the social security number of the Appellant (JD), and that the physical description provided (height, weight, eye color, skin color) approximated the appearance of the Appellant at the hearing. Based upon this evidence, the Agency issued the notice at issue, removing the Appellant from her Public Assistance and Food Stamp case on the grounds she was fleeing to avoid prosecution for a felony.

In making this determination, the Agency was faced with the difficult burden of establishing by a preponderance of the evidence that the named suspect, RR, was in fact the same person as the Appellant, JD. The evidence presented by the Agency failed to meet that burden. First, the NCIC Match report itself fails to list any alias names for the named defendant. Second, the Agency offered no evidence to establish that there is an arrest warrant of any kind outstanding against the Appellant. While the Agency presented evidence of a criminal action by the People of Colorado against RR, the Appellant was not listed as a defendant in that action. The Agency was unable to explain with any reliability that a reference to the Appellant on the document was meant to be an alias for the named defendant, RR. There was no "also known as", or alias reference on the document, nor is the Appellant identified as even a party to the action. The vague and double hearsay evidence presented by the Agency's investigator concerning contacts with Colorado law enforcement through the New York State Police that somehow linked the Appellant to RR was wholly unsubstantiated and found to be unreliable. Recognizing the

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proliferation of identity theft crimes in the past ten years, the mere match of a social security number, even when coupled with a vague physical resemblance, would not support a reliable link to the Appellant. The Agency's inability to obtain probative evidence from the State of Colorado or the NCIC system identifying the Appellant's name as an alias for RR, prevents a finding that the Appellant herself is a "fleeing felon" for Public Assistance and Food Stamp purposes.

Moreover, any inference to be afforded to the Agency's evidence was wholly refuted by the conduct and testimony of the Appellant at bar. The Appellant consistently maintained from her first notice of the Agency's investigation that she was the victim of a stolen identity while she lived in Colorado, that she was never aware of any arrest warrant against her in Colorado, and that she did not return to New York in an attempt to avoid prosecution for a felony. The credibility of the Appellant's contention was enhanced by her prompt and candid contact with the Court that issued the arrest warrant in an attempt to resolve the issue, as well as the Court's response confirming that the outstanding arrest warrant at issue was against RR only. In addition, the record showed that the Appellant voluntarily made her finger-prints on file with the Agency available to the Agency's investigator for the purpose of matching any finger prints kept by law enforcement agencies in Colorado. While the record subsequently showed that there were no fingerprints on file in Colorado for RR or the Appellant, the Appellant's willingness to make her own fingerprints available for comparison sake stands in stark contrast to an individual allegedly fleeing prosecution. Accordingly, without additional evidence confirming that the Appellant and RR are one and the same, the Agency determination under review must be reversed. The Agency is directed to restore the needs of the Appellant to her Public Assistance and Food Stamp case retroactive to July 1, 2005, and provide supplemental benefits retroactive to that date.

It is noted that the Agency stipulated to cancel its notice dated September 27, 2005 that proposed to discontinue the Appellant's Public Assistance, Medical Assistance and Food Stamps, and further stipulated to continue the Appellant's benefits unchanged with respect to such notice, and to restore any benefits lost as a result of such notice. The Appellant accepted the Agency's stipulation in satisfaction of her hearing request on this matter, leaving no issue for the Commissioner to decide.

DECISION AND ORDER

The Agency's determination that the Appellant is ineligible for Public Assistance and Food Stamp benefits 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 restore lost benefits retroactively to July 1, 2005, the effective date of the Agency's action.

Pursuant to its stipulation at the hearing, the Agency is directed to withdraw its notice dated September 27, 2005 that proposed to discontinue the Appellant's Public Assistance, Medical Assistance and Food Stamp benefits, and is further directed to restore any benefits lost as a result of such notice retroactive September 27, 2005.

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

DATED: Albany, New York
January 11, 2006

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee