

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

REQUEST: March 15, 2006
CASE #: BA0371898
AGENCY: Monroe
FH #: 4511762J

In the Matter of the Appeal of
Reginald Johnson

from a determination by the Monroe County
Department of Social Services

:
:
: **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 May 25, 2006 and July 14, 2006, in Monroe County, before Susan Hutchison, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Reginald Johnson (appearance on May 25, 2006), Appellant; Jason Hoge, attorney

For the Social Services Agency

Ms. Delaire, Fair Hearing Representative (appearance on May 25, 2006); Ms. Michniewicz, Fair Hearing Representative (appearance on July 14, 2006), John Melville, Investigator (appearance on May 25, 2006)

ISSUE

Was the determination of the Agency that the Appellant is ineligible for Public Assistance and Food Stamp benefits because he is 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 41, has been in receipt of Public Assistance and Food Stamp benefits for himself alone.
2. The Agency received an NCIC report matching Appellant to an outstanding warrant for a probation violation, issued by the Los Angeles County, California. The information provided

FH# 4511762J

indicated that Appellant had an outstanding warrant entered 3/29/1988 for a probation violation relating to a charge of dangerous drugs.

3. By notice dated March 10, 2006, 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 in violation of parole or probation or was fleeing to avoid prosecution or custody or conviction for a felony.

4. On March 15, 2006, 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.

DISCUSSION

The Agency's determination to discontinue the Appellant's Public Assistance and Food Stamp benefits on the grounds that Appellant was ineligible for such benefits due to an outstanding warrant for a violation of probation was correct when made. Based upon the evidence presented at the hearing, that determination will no longer be implemented.

FH# 4511762J

The evidence established that there was an outstanding warrant issued from Los Angeles against the Appellant for a violation of probation. The Agency pointed out the identifying factors of name, date of birth, social security number, as set forth by NCIC data. At the first hearing, the Appellant testified that he thought he had been released from probation in California, as his conviction was so old. He also stated that he thought a warrant would expire in 7 years, and he thought his warrant was no longer valid. At the next scheduled hearing, the Appellant's attorney submitted an Order from the Superior Court of California, County of Los Angeles, in which the warrant issued on 3/29/88 was "recalled and quashed" and that the Appellant's probation in California was "Ordered reinstated and terminated." Pursuant to Department regulation and policy, a person who has an outstanding warrant is not necessarily ineligible to receive assistance unless there is flight to avoid prosecution, custody or confinement after conviction. Given the Appellant's testimony that he believed that the warrant was no longer valid and given his subsequent evidence showing the warrant quashed and a valid warrant for a violation of probation no longer exists, the Agency determination, while proper when made, may not be implemented.

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 was correct when made. That determination will not now be implemented.

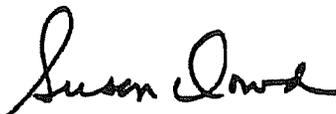
#1. The Agency is directed to continue the Appellant's grant of Public Assistance and Food Stamp benefits unchanged.

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

DATED: Albany, New York
07/24/2006

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By



Commissioner's Designee

From: New York State Office of Temporary and Disability Assistance
P.O. Box 1930
Albany, NY 12201 - 1930

TRANSMITTAL OF FAIR HEARING DECISION
TO REPRESENTATIVE

Fair Hearing #: 4511762J
Hearing Date: 07/14/06
Decision Date: 07/24/06
Case #: BA0371898
Category/Subcategory: SNA/PERS

Agency: MONROE
Appellant: REGINALD JOHNSON
1766 LAKE AVE #3
ROCHESTER, NY 14615

*
* ENCLOSED IS THE DECISION RENDERED *
* ON BEHALF OF THE ABOVE APPELLANT *
* FOR WHOM YOU SERVED AS REPRESENTATIVE *
*

TO: MONROE CTY LEGAL ASSISTANCE
JASON HOGE DOUGLAS
19 WEST MAIN ST. 4TH FL
ROCHESTER, NY 14614

If the decision is in favor of the Appellant, the local social service department is required to comply with the decision forthwith (as quickly as possible), and is required to notify the Appellant of its compliance. The Appellant has been advised to notify the State Office of Temporary and Disability Assistance if the Agency fails to comply with the decision within 10 days after receipt of the decision. Our address and phone number are:

New York State Office of Temporary and Disability Assistance
Office of Administrative Hearings
Compliance Unit
P. O. Box 1930
Albany NY 12201 - 1930

1-800-342-3334

A copy of this decision has been mailed to the Appellant.

#####