

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

REQUEST: December 18, 2007
CASE #: 00008019941H
CENTER #: 54
FH #: 4935015P

In the Matter of the Appeal of
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from a determination by the New York City
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 April 22, 2008, in New York City, before Kevin McGorman, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant
Eugene Doyle, Appellant Representative;

For the Social Services Agency
M. Hammond, Fair Hearing Representative

ISSUE

Has the Agency acted correctly with respect to its determination to discontinue the Appellant's Public Assistance and Food Stamp benefits?

Was the Agency's failure to make a determination regarding the Appellant's November 2007 application for approval of a Safety Net Assistance Plan of Self Support correct?

Was the Agency's failure to provide the Appellant with written information concerning all rental assistance programs administered by the Agency 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 has been in receipt of Public Assistance and Food Stamp benefits.

2. On December 14, 2007, the Agency sent a Notice of Intent to the Appellant setting forth its intention to discontinue the Appellant's Public Assistance and Food Stamp benefits because the Appellant is in receipt of excess income.

3. On November 28, 2007, the Appellant requested that the Agency approve his proposed Safety Net Assistance (SNA) Plan of Self Support.

4. On November 28, 2007, the Appellant requested that the Agency provide written information about all rental assistance programs administered by the Agency or other governmental agencies.

5. On December 18, 2007, the Appellant requested this fair hearing.

6. On December 28, 2007, which was seven or more business days before the date of the hearing, the Appellant requested that the Agency provide copies of documents which it intended to present at the fair hearing in support of its determination.

7. On December 28, 2007, which was more than five business days before date of the hearing, the Appellant requested that the Agency provide copies of documents which the Appellant specifically identified as necessary in order to prepare for the hearing but the Agency did not provide all of such documents to the Appellant either before or at the hearing.

APPLICABLE LAW

Regulations at 18 NYCRR 358-3.7(b), which summarize an Appellant's rights regarding examination of a case record before the hearing, provide as follows:

- (1) Upon request, you have a right to be provided at a reasonable time before the date of the hearing, at no charge, with copies of all documents which the social services agency will present at the fair hearing in support of its determination. If the request for copies of documents which the social services agency will present at the hearing is made less than five business days before the hearing, the social services agency must provide you with such copies no later than at the time of the hearing. If you or your representative request that such documents be mailed, such documents must be mailed within a reasonable time from the date of the request; provided however, if there is insufficient time for such documents to be mailed and received before the scheduled date of the hearing such documents may be presented at the hearing instead of being mailed;
- (2) Upon request, you have the right to be provided at a reasonable time before the date of the hearing, at no charge, with copies of any additional documents which you identify and request for purposes of preparing for your fair hearing. If the request for copies of

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documents is made less than five business days before the hearing, the social services agency must provide you with such copies no later than at the time of the hearing. If you or your representative request that such documents be mailed, such documents must be mailed within a reasonable time from the date of the request; provided however, if there is insufficient time for such documents to be mailed and received before the scheduled date of the hearing such documents may be presented at the hearing instead of being mailed;

- (3) Your request for copies of documents pursuant to paragraphs (1) and (2) of this subdivision may at your option be made in writing, or orally, including by telephone.
- (4) If the social services agency fails to comply with the requirements of this subdivision the hearing officer may adjourn the case, allow a brief recess for the appellant to review the documents, preclude the introduction of the documents where a delay would be prejudicial to the appellant, or take other appropriate action to ensure that the appellant is not harmed by the agency's failure to comply with these requirements.

For New York City cases, the term "reasonable time" referred to in Section 358-3.7(b) is defined by the terms of the Stipulation and Order of Settlement in the case of Rivera v. Bane, signed on February 22, 2005. With respect to requests for an evidence packet made seven or more business days before the scheduled date of the hearing, the evidence packet must be mailed within five business days after the request is made. If a request for an evidence packet is made less than seven business days before the scheduled date of the hearing, the packet must be provided by the date of the hearing or at the hearing. If the request is made five or more business days before the scheduled hearing date and the applicable standard is not met, the New York City Human Resources Administration (HRA) is required to withdraw its notice.

With respect to requests for specifically identified documents necessary to prepare for a hearing, the Stipulation and Order provides that a reasonable time for providing the requested documents will be before the date of the hearing, except that for requests made less than five business days before the hearing, the documents may be provided at the hearing. If HRA fails to produce the specifically identified documents within the applicable time frames, the hearing officer must either allow a brief recess to review the documents, adjourn the case if necessary to allow sufficient time to review the documents, direct HRA to withdraw its notice, or take other appropriate action to ensure that the Appellant is not harmed. In taking any action, the hearing officer must consider the nature and size of the request and the date the request was made. If HRA does not provide a requested document on the grounds that it is not necessary for preparing for the hearing, HRA must notify the Appellant of its objection in writing within the above time frames. The hearing officer must determine whether or not the documents are necessary. If the hearing officer determines that they are necessary, the requirements set forth above regarding a failure to provide necessary documents will apply.

Regulations at 18 NYCRR 358-3.7(a) provide that an appellant has the right to examine the contents of the case record at the fair hearing. At the fair hearing, the agency is required to provide complete copies of its documentary evidence to the hearing officer. In addition, such

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documents must be provided to the appellant and appellant's authorized representative where such documents were not provided otherwise to the appellant or appellant's authorized representative in accordance with 18 NYCRR 358-3.7. 18 NYCRR 358-4.3(a). In addition, a representative of the agency must appear at the hearing along with the case record and a written summary of the case and be prepared to present evidence in support of its determination. 18 NYCRR 358-4.3(b). Except as otherwise established in law or regulation, in fair hearings concerning the discontinuance, reduction or suspension of Public Assistance, Medical Assistance, Food Stamp benefits or Services, the Agency must establish that its actions were correct. 18 NYCRR 358-5.9(a).

Regulations at Title 18 NYCRR provide that "All of the earned income and/or resources of an SNA, or Veteran Assistance (VA) recipient which are necessary to fulfill a plan of self-support, which has been authorized and approved by a social services official, are exempt and must be disregarded when determining eligibility for or degree of need for such assistance for a period not to exceed one year." 18 NYCRR 352.20(f)

Regulations at Title 18 NYCRR Section 351.1 provide that " Investigation.

(a) Definition. Investigation is a continuous process which is concerned with all aspects of eligibility for public assistance or care from the period of initial application to case closing. Investigation means the collection, verification, recording and evaluation of factual information on the basis of which a determination is made of eligibility and degree of need, or of ineligibility, for any form of public assistance or care.

(b) Responsibility for furnishing information.

(1) The social services official shall:

(i) provide applicants and recipients, and others who may inquire, with clear and detailed information concerning programs of public assistance, eligibility requirements therefore, methods of investigation and benefits available under such programs; and

(ii) inform each applicant and recipient, at the time of application and subsequently, of such person's initial and continuing responsibilities to furnish the information described in paragraph (2) of this subdivision." 18 NYCRR 351.1

DISCUSSION

The Appellant contended that the Agency's determination by Notice dated December 14, 2007, to discontinue Public Assistance and Food Stamp benefits was incorrect. On December 28, 2007, which was seven or more business days before the date of the hearing, the Appellant requested that the Agency provide copies of documents which it intended to present at the fair hearing in support of its determination. The Appellant also requested that the Agency provide copies of documents which the Appellant specifically identified as necessary in order to prepare for the hearing. The Agency provided a packet it intended to introduce at the hearing and some of the specifically requested documents, but it did not provide all of such documents to the Appellant either before or at the hearing. As these documents were necessary for preparing for the hearing, HRA must be directed to withdraw its notice.

The Appellant contended that that Agency failure to act on the Appellant's application for approval of a Safety Net Assistance Plan of Self Support is incorrect. In addition, the Appellant contended that the Agency has failed to make a determination regarding the Appellant's request for all written information regarding rental assistance programs administered by the Agency.

The Agency was duly notified of the time and place of the hearing, however the Agency did not provide any evidence regarding the Appellant's contentions concerning the request for approval of a Safety Net proposed plan of self support nor did the Agency provide evidence regarding the Appellant's request for written information regarding all Agency administered rental assistance programs. The Agency has failed to establish that its determinations were correct.

DECISION AND ORDER

The Agency is directed to take the following actions if it has not already done so:

1. Withdraw its Notice of Intent dated December 14, 2007, with respect to Appellant's Public Assistance and Food Stamp benefits.
2. Take no further action on its Notice of Intent dated December 14, 2007, with respect to Appellant's Public Assistance and Food Stamp benefits.
3. Continue to provide Public Assistance and Food Stamp benefits to the Appellant.
4. Restore Appellant's Public Assistance and Food Stamp benefits retroactive to the date of the Agency action.

Should the Agency in the future determine to implement its previous action, it is directed to issue a new Notice of Intent and, in the event that the Appellant requests a fair hearing to review such determination, to comply with the requirements contained in 18 NYCRR 358-3.7(b) concerning the timely provision of documents.

The Agency's failure to make a determination regarding the Appellant's November 2007 application for approval of a Safety Net Assistance Plan of Self Support is not correct and is reversed.

1. The Agency is directed to investigate and make a determination concerning the Appellant's proposed Safety Net S Assistance Plan of Self Support .
2. The Agency is directed to notify the Appellant in writing of its determination.

The Agency 's failure to make a determination regarding the Appellant's request for written information concerning all rental assistance programs administered by the Agency is not correct and is reversed.

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1. The Agency is directed to provide the Appellant with written information regarding all rental assistance programs administered by the Agency .

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
08/06/2008

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink, appearing to read 'M. P. ...', is written over a horizontal line.

Commissioner's Designee