

STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County SUMMIT	District Hearings Section CLEVELAND	Assistance Group Name		Assistance Group Number
Place of Hearing SUMMIT CDHS	Initial Hearing Date 12/06/1999	Rescheduled Postponed to 12/21/1999	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation G. Wilson-Summit County Hearing Officer

Date Notice Mailed 12/30/1899	Date Received by Local Agency	Date Received by ODHS 11/17/1999	Date Appeal Summary Received 12/21/1999	Date Scheduling Notice Mailed 12/10/1999
Appeal Number(s)/Program(s) 9928508/FS				

Notice to Appellant

This is the official report of your hearing and is to inform you of the decision and order in your case. All papers and materials introduced at the hearing or otherwise filed in the proceeding make up the hearing record. The hearing record will be available for examination at the local agency during normal office hours.

If you believe the state hearing decision is wrong, you may request an administrative appeal by writing to: Ohio Department of Human Services, Office of Legal Services, 30 East Broad Street, 31st Floor, Columbus, Ohio 43266-0423 or FAX (614) 752-8298. Your request should include a copy of this hearing decision and an explanation of why you think it is wrong. The department will respond to your request quickly, so any information, arguments, or documents you want considered must be sent with your request. Your written request must be received by the Office of Legal Services within 15 calendar days from the date this decision is issued. ***(If the 15th day falls on a weekend or holiday this deadline is extended to the next work day.)***

During the 15th day administrative appeal period, you may request a free copy of the tape recording of the hearing by contacting the district hearings section.

If you want information on free legal services, but don't know the number of your local legal aid office, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888, for the local number.

ISSUE:

Issue #9928508: Whether the Summit County Department of Human Services' (Agency) 10/31/99 termination of Food Stamps (FS) due to failure to cooperate in establishing continuing eligibility was correct.

FINDING OF FACT:

The assistance group (AG) contains the appellant and her four year old child. The appellant was on a three month certification period for FS due to earned income. The certification was set to expire effective 10/31/99. The appellant failed to appear for a recertification interview. FS assistance was terminated due to untimely appeal.

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Appeal(s) SUSTAINED 9928508	Date Issue 01/06/2000	Compliance 9928508
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Distribution: Original to appellant, one copy to local agency; one copy to district Hearing section; one copy to district office; two copies to State Hearings. (Photocopy to appellant's authorized representative, if any, and to ODHS units as appropriate.)

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Agency Testimony:

The Agency hearing officer stated that due to employment, the appellant was certified to receive FS for a three month certification period. The certification period was due to expire on 10/31/99. On 9/13/99, the Agency mailed the appellant a notice that her FS certification period was scheduled to end effective 10/31/99 (Ex.A).

On 9/16/99, the Agency mailed the appellant a notice that she had been scheduled for a recertification interview for 10/14/99 (Ex.B). The appellant failed to appear for the 10/14/99 interview and a termination notice was mailed on 10/19/99 (Ex.C). Appellant appealed on 11/16/99. The termination took effect due to untimely appeal.

All notices were mailed to the appellant's new address which was reported to the Agency on 9/8/99 (Ex.D). The record also contains pay stubs for 7/99. The case running comments record that the Agency worker recorded the new address change on 9/14/99. There is no indication that any notices from this case were returned to the Agency undelivered.

The Agency worker testified that the appellant had an appointment to come in 7/99 because her FS certification period was scheduled to end in 8/99. The appellant failed to appear. The appellant missed that meeting so it was rescheduled for 8/99. The appellant appeared and provided some documentation.

The appellant provided pay stubs for the 8/99, 9/99, and 10/99 certification period but not for the new three month certification period that would have been effective 11/99. During the 8/99 meeting, the Agency worker informed the appellant that she would have a recertification appointment coming up in 10/99.

The appellant objected to the need to come in again for another interview. Notice was sent for the 10/99 interview but the appellant failed to appear for the appointment. When questioned about a 9/29/99 letter mailed to the appellant, the worker could not recall why the 9/28/99 letter was sent.

Appellant Testimony:

The appellant states that she moved to her new address on 9/1/99. She states that she provided the Agency worker with this verification within 10 days. The appellant conceded that she appeared for a 8/99 interview. At that time, she provided verification of her income, day care expenses, and utility costs. After the interview, she was approved for \$25 in FS assistance.

The appellant denies that she received any notices from the Agency related to a recertification

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interview or pending termination of the certification period. The appellant states that the only thing that she received from the Agency was an envelope which contained verification documents from someone else's assistance case (Ex.E). The post mark on the letter was 9/28/99.

The appellant denies that she has missed any appointments that the Agency has scheduled with her and that the workers testimony concerning her past failures is very mistaken. The appellant stated that she has had to have a lot of mail forwarded to her new address. She also filed a change of address with the post office.

EXHIBITS:

Agency:

A-Expiration Notice

B-Appointment Notice

C-Termination Notice

D-Lease Verification

Appellant:

E-9/28/99 letter from Agency worker

CONCLUSIONS OF FACT:

1. The appellant's certification period was scheduled to end effective 10/31/99. Notice history shows that notice of the expiration of the certification period was requested on 9/10/99 and mailed to the appellant on 9/13/99 (See Ex.B). Although the appellant reported an address change on 9/8/99 (See Ex.D), the Agency testified that it did not make to appropriate change in the system until 9/14/99. There is a presumption of delivery when notice is correctly addresses and not returned to the Agency by the Post Office as undelivered.The above facts support that the expiration notice was mailed to the appellant's old address. As the Agency failed to support that the expiration notice was correctly address, they have failed to support the presumption of delivery even though the notice was not returned to the Agency.
2. The Agency scheduled an interview for the appellant for 10/14/99. The notice history indicates that this notice was requested on 9/15/99 and mailed to the appellant on 9/16/99. There is a presumption of delivery when notice is correctly addresses and not returned to the Agency by the Post Office as undelivered. The facts of this case support that the appointment notice was correctly addressed to the appellant new address and was not returned to the Agency undelivered. The appellant testified that she had received some correspondence from the Agency at her new address and failed to provide any support for a finding of non-receipt.
3. The appellant failed to appear for the 10/14/99 interview.
4. The appellant's failure to appear for an interview does not rise to the level of refusal required by the

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Ohio Administrative Code when the appellant has demonstrated in the past a desire to cooperate, has cooperated in the past, and indicates a present desire to cooperate.

CONCLUSIONS OF POLICY:

According to the Ohio Administrative Code (OAC), as part of the reapplication process, the Agency shall conduct a face to face interview (OAC 5101:4-7-07(D)). If an AG refuses to cooperate with the county agency in completing any part of the application process, the application shall be denied. For a determination of refusal to be made, the AG must be able to cooperate, but clearly demonstrate that it will not take the actions which are required to complete the application. The model example listed would be refusing to be interviewed not merely failing to appear for an interview (OAC 5101:4-2-07(J)).

HEARING OFFICER'S RECOMMENDATIONS:

Appeal #9928508 should be **SUSTAINED**. The Summit County Department of Human Services' 10/31/99 termination of Food Stamps due to failure to cooperate in establishing continuing eligibility was incorrect. The appellant's actions do not rise to the level of refusal required under the Ohio Administrative Code.

Summit County should be instructed to provide the appellant with notice for another recertification appointment. Further, the Agency should provide the appellant with the opportunity to verify Food Stamp eligibility back to 11/1/99. The appellant should be afforded all appeal rights.

FINAL ADMINISTRATIVE DECISION AND ORDER:

The Hearing Officer's recommendations are adopted. The Summit County Department of Human Services' 10/31/99 termination of Food Stamps due to failure to cooperate in establishing continuing eligibility was incorrect. Summit County is instructed to provide the appellant with notice for another recertification appointment. Further, the Agency shall provide the appellant with the opportunity to verify Food Stamp eligibility back to 11/1/99. If eligibility is established, the agency shall issue corrective benefits accordingly. The appellant shall be afforded all appeal rights. Appeal #9928508 is **SUSTAINED**.

COMPLIANCE IS REQUIRED

O.A.C. Section 5101: 6-7-03 requires prompt compliance with state hearing decisions. For decisions involving public assistance, social services or child support, compliance shall be achieved within 15 calendar days from the date the decision is issued, but in no event later than 90 calendar days from the date of the hearing request.

For decisions involving food stamps, any increase in benefits must be reflected in the coupon

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allotment within ten calendar days of receipt of this decision, even if the local agency must provide a supplement. The local agency may take longer than ten days if it elects to make the decision effective in the assistance group's normal issuance cycle, provided that issuance will occur within 60 calendar days of the date of the hearing request. If the agency elects to follow this procedure, the benefit increase may be reflected in the normal issuance cycle or with a supplement.

Compliance shall be promptly reported to the Bureau of State Hearings, ODHS, via "State Hearing Compliance," ODHS 4068, accompanied by appropriate documentation.

Date Issued: 01/06/2000