

benefits. The worker went over each item on the form orally with the petitioner. At the end of the interview both the worker and the petitioner signed the form, and the worker gave it to the petitioner. The form is reproduced below.

Following the interview on November 28, 1988, the worker heard nothing at all from the petitioner. On December 8, 1988, the worker sent the petitioner the following notice:

When the petitioner again did not contact the department by the deadline given on the second notice (December 19, 1988), the worker sent the petitioner a notice terminating her ANFC, Food Stamps, Medicaid, and Fuel Assistance because of the petitioner's refusal to cooperate in furnishing information necessary to determine her benefits under those programs. The petitioner promptly filed a written appeal of this decision.

As of the date of the hearing, held on January 19, 1989, the petitioner (who appeared with legal representation) still had not furnished the requested information. She did not allege that she did not understand the notices or the worker's instructions. She stated only that she had had "trouble" with her landlord and that he had refused to furnish her with a shelter expense statement (as of the date of the hearing, the petitioner had been evicted).

The petitioner also stated that she had told her worker

at the interview that she would have difficulty getting the landlord to furnish the statement. The worker testified that she was aware of some previous problems the petitioner had had with her landlord (in October, 1988, the landlord had called the department to report that the petitioner was no longer living in the apartment and that she was not paying rent), but that the petitioner had not mentioned any continuing problems during her interview in late November.

As for the requested verification of her sister's income and resources, the petitioner testified that she did not furnish this information only because she (the petitioner) felt it had "nothing to do with my grant". At the hearing the petitioner alleged that her sister did not eat meals with her and her son.

Based on the testimony and demeanor of the petitioner and her worker, it is found that the petitioner fully understood what she was required to provide and the reasons why it was necessary in order for the department to correctly determine her eligibility for the programs in question. At the hearing, the petitioner's testimony was dubious and overly-terse. She did not credibly explain why, despite her alleged "problems" in obtaining the information, she did not make any attempt whatsoever to contact her worker following the interview and her receipt of the two warning notices.¹ Given the petitioner's apparent intelligence and her general experience with and knowledge of the department's procedures, the only reasonable

explanation for her failure to contact her worker is that she knew full-well that the information would have a negative affect on her benefits (i.e., from the evidence presented as well as from the petitioner's demeanor, it appears that the petitioner did not want the department to know the details of her living arrangement).

Despite the above finding, however, the board will note that the department's notices (reproduced above) did not inform the petitioner that she was at risk of being found ineligible for all the benefit programs in question. On the form given to the petitioner on November 28, 1988, only the boxes next to ANFC, Food Stamps, and Fuel Assistance are checked. Medicaid (as well as AABD/EP, which the petitioner does not receive) is not checked. On the December 8th notice, only ANFC and Food Stamps are checked. Medicaid and Fuel Assistance are not. Thus, it must be found that the department did not adequately inform the petitioner that her failure to furnish the requested verification could adversely affect her Medicaid and Fuel Assistance benefits.

It is concluded, however, that the petitioner was informed of the risk of losing her ANFC and Food Stamps, and that she willfully and knowingly refused to verify information regarding these programs.

ORDER

The department's decision is affirmed regarding the termination of the petitioner's ANFC and Food Stamps. The department's decision is reversed regarding the termination

of the petitioner Medicaid and Fuel Assistance.

REASONS

All the programs in question provide that benefits may be terminated if the recipient "refuses" to provide verification of information necessary to determine her eligibility. W.A.M. §§ 2211 (ANFC) and 2905 (Fuel Assistance), Medicaid Manual § M133, and Food Stamp Manual § 273.2. As noted above the evidence in this matter supports the department's determination that the petitioner's failure to contact her worker after November 28, 1988, constituted a "refusal" to cooperate within the meaning of the pertinent regulations. See Fair Hearings No. 7677, 7748, 7432, and 5738. Unlike in recently-decided Fair Hearing No. 8776, there is ample evidence that the petitioner herein not only understood her duty to verify the information in question, but also deliberately withheld this information from the department. Thus, for the programs for which she was adequately warned--ANFC and Food Stamps--the department's decision is affirmed. However, for those programs for which she was not warned--Fuel Assistance and Medicaid--the department's decision is reversed.²

FOOTNOTES

¹The petitioner testified that her worker repeatedly failed to return her phone messages. However, in response to further questioning by the hearing officer, the petitioner admitted that this had not occurred after her November 28th interview.

²In light of the nature of the evidence in this case,

it is not necessary, for the board at this time to consider whether an individual's failure to respond to the department's "new" notice forms constitutes a prima facie showing that he or she has "refused" to provide the requested information. The board feels this question is best left to a case-by-case analysis. As this case illustrates, however, the department's reliance on the forms creates a two-way street concerning the adequacy of the notice given.

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