STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

REQUEST August 15, 1994
CASE#
CENTER# 51
FH# 2167737H

In the Matter of the Appeal of

J F

DECISION AFTER FAIR HEARING

from a determination by the New York City Department of Social Services

JURISDICTION

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on September 20, 1994, and on October 25, 1994, in New York City, before Thora Murray, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

J F , Appellant; Eugene Doyle, People Organized for Our Rights

For the Social Services Agency

Paul Shulkes and Ronald D'Alessio, Fair Hearing Representatives

ISSUE

Was the Agency's determination that Appellant was entitled to receive a refund of $842.91 from the initial Supplemental Security Income payment correct?

FACT FINDING

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 was a recipient of Home Relief benefits.

2. On or about March 18, 1994, the Appellant applied for Supplemental Security Income benefits.

3. On January 3, 1994, the Appellant signed an authorization to allow the Social Security Administration to send the initial payment of Supplemental Security Income benefits to the Agency and to allow the Agency to deduct from such initial payment the amount of interim assistance provided to the Appellant while the application for Supplemental Security Income benefits was pending.

4. The Appellant's application for Supplemental Security Income benefits was approved by the Social Security Administration retroactive to March 22, 1994.

5. On July 8, 1994, the Agency received from the Social Security Administration an initial Supplemental Security Income payment in the amount of $2299.62.

6. The Appellant received interim Public Assistance in the amount of $1456.71 from the time period of March 1994 through July 1994.

7. The Agency deducted $1456.71 from the initial Supplemental Security Income payment and determined that the Appellant was entitled to a balance of $842.91 to be refunded to the Appellant.

8. On August 15, 1994, the Appellant requested this Fair Hearing.

APPLICABLE LAW

Section 158 of the Social Services Law provides that an applicant for Home Relief who reasonably appears to meet the criteria for Supplemental Security Income (SSI) is required as a condition of eligibility for Home Relief to apply for SSI. Section 158 further provides that, as a condition of eligibility, a Home Relief applicant or recipient must sign a written authorization which allows the Social Security Administration to pay to the Agency the initial SSI payment and allows the Agency to deduct from the initial payment the amount of Home Relief (interim assistance) provided for any month for which the applicant or recipient is subsequently determined eligible for SSI benefits. The term "initial payment" refers to the first payment of SSI benefits after a person files an application for benefits or after a person who has been terminated or suspended from eligibility for SSI benefits subsequently is found eligible for such benefits.

Section 211 of the Social Services Law authorizes reimbursement from an initial SSI payment for Home Relief or any other payments made from State or local funds furnished to the recipient for basic needs for any month when such recipient is subsequently determined eligible to receive SSI for such month.

Section 353.2 of the Department's Regulations defines interim assistance as Home Relief grants or any other payments for basic needs made exclusively from State and/or local funds and furnished to an applicant for SSI during the period in which the application is pending or to a recipient or former recipient of SSI for any period for which the recipient's SSI payment is reinstated after a period of suspension or termination. Payments for basic needs made exclusively from State and/or local funds include, but are not limited to, costs incurred for Home Relief, veteran assistance, pre-determination grants, institutional care for adults, shelter care and child care at public expense.

Section 353.2 of the Regulations further provides that upon receipt of an initial SSI payment the Agency must deduct therefrom the amount of interim assistance provided to the recipient. Furthermore, within ten working days after receipt of the initial payment, the Agency must send the

balance of such payment, if any, to the Appellant and notify the Appellant of the following: the initial date of eligibility for SSI; the amount of the initial payment received by the district; the period in which interim assistance was provided and a monthly accounting of interim assistance; the amount deducted as reimbursement of interim assistance; and the recipient's right to a fair hearing if he/she objects to the amount deducted.

Social Services Law Section 158(a) states in part that "An applicant for or recipient of home relief shall be required, as a condition of eligibility for home relief, to sign a written authorization allowing the secretary of the federal department of health and human services to pay to the social services district his or her initial supplemental security income payment and allowing the social services district to deduct from his or her initial payment the amount of home relief granted for any month for which he or she subsequently is determined eligible to receive supplemental security income benefits".

Department Regulations at 18 NYCRR 358-6.3 provide that, "when a fair hearing decision indicates that a social services agency has misapplied provisions of law, Department regulations, or such agency's own State-approved policy, the Commissioner's letter transmitting such decision to such agency may contain a direction to the agency to review other cases with similar facts for conformity with the principles and findings in the decision".

DISCUSSION

On or about March 18, 1994, the Appellant applied for Supplemental Security Income benefits. The Appellant's application for said benefits was approved by the Social Security Administration retroactive to March 22, 1994. On July 8, 1994, the Agency received from the Social Security Administration an initial Supplemental Security Income payment in the amount of $2299.62. Since the Appellant received interim Public Assistance in the amount of $1456.71 for the time period of March 1994 through July 1994, the Agency deducted $1456.71 from the initial Supplemental Security Income payment and determined that the Appellant was entitled to a refund in the amount of $842.91. The Appellant acknowledged the amount of assistance received and the receipt of said refund.

It is the Appellant's contention that the Agency should not have deducted any interim assistance from the initial payment of Supplemental Security Income payment since the Appellant did not knowingly authorize such deduction. Nonethless, the record clearly establishes that on January 3, 1994, the Appellant signed an authorization to allow the Social Security Administration to send the initial payment of Supplemental Security Income benefits to the Agency and to allow the Agency to deduct from such initial payment the amount of interim assistance provided to the Appellant while the application for Supplemental Security Income benefits was pending. The Agency presented the authorization at the hearing and the Appellant identified his signature on said document.

As a part of his case, the Appellant submitted into evidence many voluminous documents. In an affidavit of Jill Ann Boskey, dated November 4, 1994, the affiant states that she is a typesetter with seventeen years of

experience, that the text of the re-payment Authorization does not fall within the parameters of "readable" type, that the human eye has difficulty following the lines of type across from left to right without jumping from line to line or losing its place and that the light color used on the form exacerbates the problem. She concludes that the re-payment Authorization is neither clear nor legible. In spite of these assertions, she then implies, in a confusing statement, that the print is, at least on occasion, clear and legible when she states that a reader would be able to read the print if he or she had a high degree of attention and concentration. Although the affiant did not establish her credentials to make many of the assertions in her Affidavit, it is worth noting at this point that, shortly after the Appellant signed the repayment authorization, the Appellant's treating Physician and Psychiatrist did make very positive statements about the Appellant's abilities to concentrate and to understand. These statements are discussed below. It would also be fair to say that an unbiased reader of the relevant print would find it legible.

In a Supporting Statement, dated October 25, 1994, the Appellant's Representative, Eugene Doyle, takes the view that the Appellant has severe mental limitations and visual impairments which prevented him from locating and reading the agreement to re-pay the interim assistance amount from the SSI lump sum amount. The Doyle statement refers to the Appellant's anxiety and depression. Curiously enough, Mr. Doyle attaches to his statement remarks from medical doctors which appear to contradict his view of the Appellant's abilities. For example, in a report dated April 26, 1994, the Appellant's treating Psychiatrist states that the Appellant's attention and concentration are good, that his memory is intact, that he has average intelligence and a fair ability to perform calculations, that he is bright and is capable of handling his payment benefits; he concludes that there is no limitation on his understanding and memory. In another attachment to Mr. Doyle's statement, the Appellant's treating Physician says, on May 6, 1994, that the Appellant has no limits on his understanding and memory or on sustained concentration and persistence. It is noted that these statements by the Appellant's treating doctors were made only a few months after the date when the Appellant signed the re-payment agreement now in issue on January 3, 1994.

In his own Memorandum, the Appellant initially maintains that he is visually impaired and that he has worn glasses for myopia since 1968. He states that his glasses hinder his ability to read so he takes them off to read but that he still has difficulty in reading. He further maintains that the Agency never informed him that he must re-pay the interim assistance and states that he never asked any questions of the Agency about the form's contents because he did not feel free to do so. It is noted that, at this point, the Appellant did not say he could not read and did not set forth any basis for his not feeling free to ask questions.

In Point 1 of his Memorandum, the Appellant argues that any repayment authorization that he signed on May 30, 1991 has expired. Even if this were true, it is unimportant because of the re-payment agreement in issue dated January 3, 1994.

In Point 2 of his Memorandum, the Appellant argues that the form he signed was not approved by the USA Department of Health and Human Services

or by New York State and he contends that Social Security funds are protected from creditors. This argument is not persuasive because the Agency does not seek re-payment as a creditor but merely seeks to prevent the Appellant from receiving multiple benefits during the interim period in accordance with the re-payment Authorization. The Appellant argues that, since he did not sign an approved form, the Agency can not require re-payment of the interim assistance. In fact, the language used on the Agency's application form is identical to that required by the USA Department of Health and Human Services. The Appellant's contention that the fact that the Authorization is not separately set forth on a single sheet of paper renders it null and void is without merit.

In Point 3 of the Memorandum, the Appellant cites irrelevant cases and law pertaining to print size requirements for contracts relating to consumer transactions and leases. No such documents are in issue in this case. The Appellant reiterates his contention that he was unable to read the print in issue, again states that he must read without his glasses and now claims that his mental impairments prevent him from doing frustrating tasks. The Appellant explains that he failed to ask any questions about the form prior to signing it because of anxiety and the need to get out of the center. He then characterizes the "loan" as a consumer transaction. The Appellant's argument is wrong: there is no consumer transaction in issue. There is no evidence from an expert that the Appellant can not read and the treating Doctors mentioned above have already established his abilities to understand.

In Point 4 of his Memorandum, the Appellant contends that he is a handicapped person and that the Agency is in violation of laws which state that no qualified handicapped person may, solely because of a handicap, be denied benefits under any program receiving Federal financial assistance. He concludes that it might have been necessary to provide him with a reader and that he was discriminated against because he was unknowingly caused to waive his rights. In this case, the Appellant has failed to establish that he was denied any rights or benefits: he received Public Assistance until he was no longer eligible to receive said benefits and, since then, he has been in receipt of SSI. By requiring the Appellant to re-pay the Public Assistance that the Appellant received during the interim period, the Agency is merely enforcing the re-payment agreement so as to prevent the Appellant from receiving the two benefits at the same time because he would not have been eligible to receive both for the same period. In view of this, it can not be said that the Appellant has been denied any "right" because he had no right to receive Public Assistance and SSI for the same period. As for the Appellant's suggestion that the Agency might have had to provide him with a reader pursuant to law, the Appellant can be considered to have waived such a right because of his failure to establish that he requested, and was denied, such a service and his apparent failure to establish that he could not read the text. In this regard, it should be remembered that the Appellant has stated that he asked no questions and wanted to get out of the center as soon as possible. It should also be noted that the Appellant did not establish an inability to read and, by implication, he admits that he could read without glasses, albeit with some unspecified difficulty.

In Point 5 of his Memorandum, the Appellant contends that he did not knowingly or intelligently consent to re-pay the interim assistance because

he could not read the print of the Authorization and the Agency failed to inform him of the condition of eligibility. He also cites the law and cases which place an obligation on the Agency to inform applicants of their rights and obligations. He reiterates the Agency's obligation because of his inability to read and states that the Agency did not inform him that the authorization was a condition of receiving Public Assistance. Appellant contends that he thought that signing the form only meant that he was certifying the truth of what he had stated on the form and was not a relinquishment of any rights. The Appellant then invokes contract law and maintains that he could only waive an important right, according to contract law, knowingly and intelligently. At this point, it is worth remembering that the treating Physician and treating Psychiatrist both made statements shortly after the form was signed by the Appellant that the Appellant had the ability to understand and to take care of his affairs in spite of clear emotional problems. It is further important to note that the re-payment authorization is not a contract. Rather it is a condition of receiving Public Assistance. This point is conceded by the Appellant when he cites Section 158(a) of the Social Services Law, which is cited above, which states that an agreement to re-pay the interim assistance is a condition of establishing eligibility to receive Public Assistance. It can not be over-emphasized that the re-payment agreement is a condition of eligibility for Public Assistance, not a subject of negotiation.

In Point 6, the Appellant begs the issue when he states that the Agency can not recover anything from his SSI benefits without a valid re-payment agreement. Without any persuasive authority, the Appellant asserts that the United States Constitution prevents the Agency from recovering his "debt" from federally protected SSI benefits.

The Appellant's case, taken as a whole, is completely puzzling. From the medical documentation, it is clear that the Appellant's depression and anxiety were caused, at least in part, by his lack of funds for basic needs. Under these circumstances, it is inconceivable that the Appellant would have refused to complete his application for Public Assistance because of the requirement that he sign the application containing the re-payment agreement. Nonetheless, the Appellant's case is implicitly based on the entirely disingenuous pretext that he would not have signed the Public Assistance application had he known it contained the repayment Authorization and understood it.

The purpose of the applicable law is to insure that Public Assistance recipients continue to receive their Public Assistance benefits during the period when their application for SSI is pending. The law does not intend that Public Assistance recipients should receive <u>both</u> Public Assistance and SSI for the period of retroactivity. Since Appellant's contentions would defeat the purpose of the law, they can not be accepted. Such a result can not be sustained in common sense or law. Therefore, pursuant to the above stated law, the Agency's determination to deduct interim assistance from the Supplemental Security Income payment was correct.

It is noted that, at the hearing, the Appellant's Representative requested that the Agency be barred from submitting any documentary evidence on the grounds that the Agency failed to comply with the Appellant's Representative's request that free copies of such evidence be provided to

the Appellant and his Representative prior to the date of the hearing. Although the Agency failed to comply with the Representative's request, such copies were provided to the Appellant's Representative on the initial date of this hearing and an adjournment was granted for the purpose of allowing the Representative to examine such documents as well as the Appellant's case record. Although the Appellant's Representative contends that, notwithstanding such adjournment, the Appellant's due process rights have been prejudiced, the record fails to support this claim.

Lastly, the Appellant's Representative also requested that the Agency Notice sent to the Appellant in this case be found fatally defective and that the Agency be directed to restore the balance of the SSI lump sum payment to the Appellant as a result. Although the Notice used by the Agency is not in accordance with the provisions of Administrative Directive 89 ADM-21, dated May 22, 1989, the record again fails to establish that the Appellant's due process rights were prejudiced. As noted above, the Appellant was granted an adjournment for the purpose of examining the Agency's documentary evidence and the Appellant's case record. However, the Agency's use of the incorrect form does warrant a direction relative to similar cases pursuant to 18 NYCRR 358-6.3 as requested by the Appellant's Representative.

DECISION AND ORDER

The Agency's determination that Appellant was entitled to receive a refund of $842.91 from the initial Supplemental Security Income payment is correct.

1. However, the Agency is directed to cease its use of the outdated Notice of Recovery form (W-128HH, Revised 9/23/86) and to take immediate steps to utilize the current version of the Department's State-prescribed "Repayment of Interim Assistance Notice" (DSS-2425).

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

DATED: Albany, New York

DEC 27 1994

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

By William Roberts

Commissioner's Designee