

In the Matter of the Appeal of  
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DECISION  
AFTER  
FAIR  
HEARING

from a determination by the New York City Department  
of Social Services (hereinafter called the agency) \_\_\_\_\_:

A fair hearing was held at 80 Centre Street, New York, New York, on July 22, 1981, before Michelle Weston Patterson, Administrative Law Judge, at which the appellant, the appellant's representative and a representative of the agency appeared. The appeal is from a determination by the agency relating to the adequacy of a grant of aid to dependent children. An opportunity to be heard having been accorded all interested parties and the evidence having been taken and due deliberation having been had, it is hereby found:

(1) The appellant is in receipt of a grant of aid to dependent children for herself only. The appellant's two sons also reside in her household, but do not receive public assistance. They receive Social Security benefits sufficient to meet their needs.

(2) On June 16, 1981, the appellant requested a fair hearing to review the following agency actions:

- (a) the reduction of her grant in the amount of \$261.70 because of a utility advance;
- (b) the agency's failure to increase appellant's food stamp authorization for the month of June 1981, due to decreased income because of above reduction; and
- (c) the correctness of the agency's undue hardship determination, at its failure to make such a determination prior to initiating the recoupment.

(3) The agency is currently reducing the appellant's grant by \$11.50 semi-monthly to recover the amount of \$261.68 because of a utility advance. The appellant claims this is an undue hardship.

(4) The appellant's utility expenses for the period of four months prior to the advance is \$182.56.

(5) The agency determined the appellant's food stamp authorization to be \$59.00 for the month of June 1981. The appellant, however, received an authorization of \$52.00 for the month of June 1981.

(6) The appellant's claim, as to undue hardship, is determined as follows:

<u>EXPENSE</u>		<u>INCOME</u>	
Food Needs	\$ 70.00	Value of FS	\$ 52.00
Shelter as paid	\$175.00	Amount of PA	\$230.00
Average utilities for last three months	\$120.00	Total Income	\$282.00
Total expenses	\$365.00		

Pursuant to Section 352.31 (d) of the Regulations of the State Department of Social Services, the proportion of the current assistance grant that may be deducted for recoupment purposes shall be limited on a case-by-case basis so as not to cause undue hardship and in no case shall exceed ten percent of the household needs, except that where two or more recoupments are made simultaneously for different reasons or arising from different circumstances, the total reduction in the assistance grant shall not exceed fifteen percent of the household's needs.

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Administrative Directive 80 ADM 39 sets forth the guidelines for determining undue hardship when a portion of the assistance grant is being reduced for recoupment purposes, which is summarized as follows:

The existence of an undue hardship is determined by computing the difference between the recipient's income and his expenses.

Expenses are determined by adding together the following items of need:

Food Needs - as determined by the USDA's Thrifty Food Plan by family size.

Shelter as paid

Average of Utilities Incurred for last three months

Clothing and Personal Incidentals for children at \$16.75 per month for each child

Special needs necessary to meet a health condition, which are not covered by Medical Assistance.

Income is determined by adding together the following sources of income:

Value of Food Stamps

Amount of public assistance grant prior to the recoupment Exempt or Disregarded Income

All other income, including Supplemental Security Income, and all other income available to the household.

If the recipient's necessary expenses exceed his income, no recovery can be made. If the recipient's income exceeds his necessary expenses recovery can be made up to the amount of the excess.

Section 352.7 (g)(5) of the Regulations of the State Department of Social Services provides that for a recipient of public assistance an advance allowance may be provided to pay for utilities already furnished in the same dwelling in which he resides and for which a grant has been previously issued to prevent a shutoff. Such allowance shall not exceed the cost of such utilities for four month period immediately preceding the advance payment.

In this case, the credible evidence establishes that the agency determined to reduce the appellant's grant in the amount of \$261.70 because of a utility advance, at the same time the agency determined to increase the appellant's food stamp authorization. The amount of the advance clearly exceeds the appellant's utilities expense for a four month period. The record also establishes that the appellant's expenses exceed her income, thus, any reduction of her grant would cause an undue hardship. The undue hardship determination made by the agency was invalid for several reasons. First, the monthly food stamp entitlement was counted as semi-monthly (thus doubling it) in the calculation. The actual rent was not used and her actual total fuel utility and charges were not used. Accordingly, the agency's determination to reduce the appellant's grant was incorrect. The agency's determination as to the amount of such reduction was also incorrect. The agency is directed to cease further reduction of the appellant's grant until such time as the agency can establish that the amount of the reduction will not cause an undue hardship to the appellant and limit its reduction to the maximum as allowed by Section 352.7 of the Regulations and the guidelines contained in 80 ADM 39. The agency is further directed to review its procedures for determining undue hardship to ensure that they conform to the requirements cited above, since the evidence, in this case, establishes that no opportunity was offered to the appellant to claim undue hardship prior to the initiation of the recoupment.

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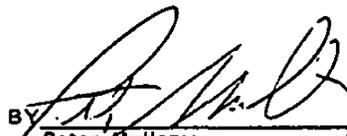
With respect to the appellant's claim that she is entitled to \$59.00 in food stamps for the month of June, the record established that the agency incorrectly determined to increase her food stamp allotment. Specifically, the agency allowed a deduction for the recoupment, whereas there is no such deduction authorized in the New York State Food Stamp Manual. Although there is an income exclusion (see Section (V)(B)(2)(d) of the New York State Food Stamp Manual) for monies withheld to repay prior overpayments, recoupments of advance allowances are not of this type. Specifically, where there is a recoupment for a prior public assistance overpayment, since the overpayment itself has already been counted as income in computing food stamp entitlement in the past, the amount necessary to repay the overpayment should be deducted in determining the current amount of public assistance counted as income so as to not count it twice. However, since an advance allowance is excluded itself as income (it is a loan to pay arrears), the amount necessary to repay it is not considered to be deductible. Even had the appellant been entitled to a food stamp increase in June, since the reduction in the public assistance grant took place on June 4, 1981, the increase in food stamps would not have been effective until July 1981. In accordance with Section VII (C)(6)(a), since July would have been the next regular issuance period after the change in the public assistance grant.

DECISION: The determinations of the agency are not correct and are reversed. The agency must immediately comply with the directives set forth above as required by Section 358.22 of the Department's regulations.

DATED: Albany, New York

SEP 28 1981

  
Barbara Blum  
COMMISSIONER

BY   
Peter Mullany  
DEPUTY COUNSEL