
In the Matter of the Appeal of

M O

:
DECISION
: AFTER
FAIR
HEARING

from a determination by the Suffolk County
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 January 12, 1993, in Suffolk County, before Richard S. Levchuck, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

M O , Appellant; Barbara Liese, Esq., Appellant's Representative;
E J , Witness; A F , Witness

For the Social Services Agency

Paul Robinson, Fair Hearing Representative

ISSUES

Was the Appellant's request for a fair hearing to review the Agency determination to discontinue the Appellant's Home Relief, Medical Assistance and Food Stamp benefits timely?

Assuming the request was timely, was the Agency's determination to discontinue the Appellant's Home Relief, Medical Assistance and Food Stamp benefits because Appellant's whereabouts were unknown to the Agency 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 has been in receipt of Public Assistance, Medical Assistance and Food Stamp benefits for a one person household.
2. On June 10, 1992, the Agency sent a Notice of Intent to the Appellant setting forth its determination to discontinue Appellant's Public

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Assistance, Medical Assistance and Food Stamp benefits on the grounds that Appellant's whereabouts were unknown to the Agency.

3. On June 2, 1992, the Agency mailed a letter to the Appellant at her address of record. This letter was returned to the Agency on June 4, 1992 by the post office with a notation that delivery of the letter was attempted and that it was not known whether the Appellant resided at her address.

4. At the time of the Agency's determination, the Appellant was residing at the address listed in the Agency's records.

5. The notice advised the Appellant that a fair hearing must be requested within sixty days of the date of the Agency's action concerning Public Assistance and Medical Assistance and within ninety days of the Agency's action concerning Food Stamps.

6. The Agency mailed the notice to the Appellant's address as contained in the Appellant's case record.

7. On November 23, 1992, the Appellant requested this fair hearing.

APPLICABLE LAW

Department Regulations define an investigation of eligibility and degree of need as a continuous process concerned with all aspects of eligibility for Public Assistance and care, including Medical Assistance, 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 of eligibility and the degree of need is made. As part of this investigation, it is the responsibility of an applicant or recipient of Public Assistance and care to verify his/her place of residence. 18 NYCRR 351.1, 351.2 and 360-1.2, 360-2.3.

The application process for Food Stamp benefits includes the completion and submission of an application form, a personal interview and the verification of information. Statements made on the application must be documented or otherwise verified. Except in unusual circumstances such as homelessness where verification cannot be reasonably accomplished, residency must be verified. Residency may be verified either through readily available documentary evidence or through a collateral investigation. 7 CFR 273.2; 18 NYCRR 387.8(c). An otherwise eligible household cannot be required to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. 18 NYCRR 387.9(a)(1).

Households receiving Food Stamp benefits have a continuing responsibility to report changes in residence. 7 CFR 273.12, 18 NYCRR 387.17(e).

A household which has been determined eligible for Food Stamp benefits is certified as eligible for a specified time period. When the

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certification period ends, entitlement to Food Stamp benefits expires and the household is not entitled to Food Stamp benefits until it submits a new application and is redetermined to be eligible for Food Stamp benefits. 7 CFR 273.10; 18 NYCRR 387.17(a).

Where Food Stamp benefits are lost due to an error by the Agency, the Agency is required to restore lost benefits. However, lost benefits shall be restored for not more than twelve months prior to whichever of the following occurred first:

1. The date the Agency received a request for restoration from a household; or
2. The date the Agency is notified or otherwise becomes aware that a loss to a household has occurred.

7 CFR 273.17; 18 NYCRR 387.18 and Department of Social Services Food Stamp Source Book, Section X-H-1.

Section 22 of the Social Services Law provides that a request for a fair hearing to review an Agency's determination must be made within sixty days of the date of the Agency's action or failure to act.

The Food Stamp Program is a federal program regulated by the United States Department of Agriculture Food and Nutrition Service. Program regulations are set forth in the Code of Federal Regulations (7 CFR). Section 273.15 of 7 CFR requires that a state must provide a fair hearing to any household aggrieved by an action which affects the household's participation in the Food Stamp Program. New York Department of Social Services Regulations at 18 NYCRR 358-3.1 set forth the situations in which an applicant or recipient has a right to a fair hearing.

A person is allowed to request a fair hearing on any action of a local social services agency relating to food stamp benefits or loss of food stamp benefits which occurred in the ninety days preceding the request for a hearing. Such action includes a denial of a request for restoration of any benefits lost more than ninety days but less than a year prior to the request. In addition, at any time within the period for which a person is certified to receive food stamp benefits, such person may request a fair hearing to dispute the current level of benefits. Social Services Law Section 22.4(b), 18 NYCRR 358-3.1, 18 NYCRR 358-3.5, 7 CFR 273.15.

DISCUSSION

On June 10, 1992, the Agency notified the Appellant that it had determined to discontinue the Appellant's Home Relief, Medical Assistance and Food Stamp benefits.

Although the Agency's notice advised the Appellant that a fair hearing must be requested within sixty days of its action concerning Public

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Assistance or Medical Assistance and within ninety days of its action concerning Food Stamp benefits, the Appellant failed to request this fair hearing until November 23, 1992, which was more than ninety days after the Agency's determination.

At the hearing, the Appellant testified that she did not request a fair hearing within the proscribed time period because she did not receive the Agency's Notice of Intent due to a dispute with her landlord, who was withholding some mail from her and returning some of her correspondence to the post office. This testimony was plausible and was corroborated in part by a letter written by her attorney to her landlord in June of 1992 which responded to a threatened eviction. The Appellant has established a valid basis for tolling the statute of limitations.

The Appellant further testified that she was residing at her address of record at the time of the Agency's determination. This testimony was again corroborated by the letter from her attorney which indicated that on June 10, 1992, at the time of the Agency's determination, the Appellant was attempting to resist the attempts of her landlord to evict her. The Appellant's current landlord testified at the hearing that the Appellant moved into her current residence on June 15, 1992. This testimony was persuasive as well. Accordingly, the Agency's determination to discontinue the Appellant's Public Assistance, Medical Assistance and Food Stamp benefits cannot be sustained.

DECISION AND ORDER

The Agency's determination to discontinue Appellant's Public Assistance, Medical Assistance and Food Stamp benefits because the Appellant's whereabouts were unknown to the Agency is not correct and is reversed.

1. The Agency is directed to continue the Appellant's Public Assistance, Medical Assistance and Food Stamp benefits and to restore any assistance withheld as a result of the Agency's action, retroactive to the date of discontinuance.

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

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

JAN 28 1993

By


Commissioner's Designee