

STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: October 27, 2008  
CASE # [REDACTED]  
CENTER #: 67  
FH #: 5142356R

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In the Matter of the Appeal of  
[REDACTED]  
from a determination by the New York City  
Department of Social Services

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**DECISION  
AFTER  
FAIR  
HEARING**

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**JURISDICTION**

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on November 19, 2008, in [REDACTED] before Mojgan Sobhani, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[REDACTED], Appellant

For the Social Services Agency

S. Gordon, Fair Hearing Representative

**ISSUE**

Was the Appellant's request for a fair hearing to review the Agency determination to reduce the Appellant's Family Assistance benefits on the grounds that the Appellant received an overpayment of assistance in the amount of \$2,126.90 due to unreported receipt of income timely?

Assuming the request was timely, was the Agency's determination to reduce the Appellant's Family Assistance benefits on the grounds that the Appellant received an overpayment of assistance in the amount of \$2,126.90 due to unreported receipt of income correct?

**FINDINGS OF FACT**

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:

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1. The Appellant has been in receipt of Public Assistance benefits.
2. By notice dated June 24, 2008, the Agency advised the Appellant of its determination to reduce the Appellant's Public Assistance benefits on the grounds that the Appellant received an overpayment of assistance in the amount of \$2,126.90 due to unreported receipt of income.
3. On October 27, 2008, the Appellant requested this fair hearing.

### **APPLICABLE LAW**

Section 22 of the Social Services Law provides that applicants for and recipients of Public Assistance, Emergency Assistance to Needy Families with Children, Emergency Assistance for Aged, Blind and Disabled Persons, Veteran Assistance, Medical Assistance and for any services authorized or required to be made available in the geographic area where the person resides must request a fair hearing within sixty days after the date of the action or failure to act complained of. In addition, any person aggrieved by the decision of a social services official to remove a child from an institution or family home may request a hearing within sixty days. Persons may request a fair hearing on any action of the social services district relating to food stamp benefits or the loss of food stamp benefits which occurred in the ninety days preceding the request for a hearing. Such action may include a denial of a request for restoration of any benefits lost more than ninety days but less than one 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.

In general, a recipient of Public Assistance, Medical Assistance or Services (including child care and supportive services) has a right to a timely and adequate notice when the Agency proposes to discontinue, suspend, reduce or change the manner of payment of such benefits. An adequate, though not timely, notice is required where the Agency has accepted or denied an application for Public Assistance, Medical Assistance or Services; or has increased the Public Assistance grant; or has determined to change the amount of one of the items used in the calculation of a Public Assistance grant or Medical Assistance spenddown; or has determined that an individual is not eligible for an exemption from work requirements. 18 NYCRR 358-3.3(a). In addition, pursuant to 18 NYCRR 358-3.3(d), an adequate, though not timely, notice is required for a Public Assistance or Medical Assistance recipient when, for example, the Agency has factual information confirming the death of the recipient; the Agency has received a clear written statement from the recipient that he or she no longer wishes to receive Public Assistance or Medical Assistance; the Agency has reliable information that the recipient has been admitted to an institution or prison; the recipient's whereabouts are unknown and mail has been returned to the Agency; or the recipient has been accepted for Public Assistance or Medical Assistance in another district.

An adequate notice is a notice of action, an adverse action notice or an action taken notice which sets forth the action that the Agency proposes to take or is taking, and if a single notice is used for all affected assistance, benefits or services, the effect of such action, if any, on a recipient's other assistance, benefits or services. In addition, the notice must contain:

for reductions, the previous and new amounts of assistance or benefits provided. 18 NYCRR 358-2.2.

### **DISCUSSION**

The record in this case establishes that on June 24, 2008, the Agency notified the Appellant that it had determined to reduce the Appellant's Public Assistance benefits on the grounds that the Appellant received an overpayment of assistance in the amount of \$2,126.90 due to unreported receipt of income.

Although the Agency's notice advised the Appellant that a fair hearing must be requested within sixty days of its action, the Appellant failed to request this fair hearing until October 27, 2008, which was more than sixty days after the Agency's determination.

The Appellant testified that she did not request a hearing in a timely manner because she did not receive the Notice of Intent. The Agency failed to establish that the Notice of Intent was mailed, inasmuch as the Agency failed to show that the Notice of Intent was produced and mailed in the Agency's regular course of business. The Agency failed to establish a presumption of receipt of mail. Accordingly, there is a sufficient basis to toll the sixty day Statute of Limitations.

Pursuant to the Regulations cited above, the Agency is required to provide the Appellant with adequate notice when the Agency is making a determination to reduce the Public Assistance benefits. Adequate notice includes informing the Appellant of the amount of Public Assistance benefits being issued prior to the reduction and the amount of Public Assistance benefits that will be provided after the reduction. In this case the Notice of Intent submitted by the Agency failed to do so. The Notice of Intent is defective. The Agency's determination is not correct.

### **DECISION AND ORDER**

The Agency's determination to reduce the Appellant's Public Assistance benefits on the grounds that that the Appellant received an overpayment of assistance in the amount of \$2,126.90 due to unreported receipt of income was not correct and is reversed.

1. The Agency is directed to reinstate the Appellant's grant of Public Assistance benefits and to restore any assistance withheld as a result of the Agency's action retroactive to the date of the reduction.

Should the Agency need additional information from the Appellant in order to comply with the above directives, it is directed to notify the Appellant promptly in writing as to what documentation is needed. If such information is requested, the Appellant must provide it to the Agency promptly to facilitate such compliance.

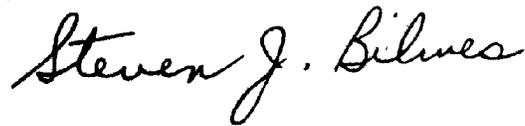
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As required by 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York  
03/09/2009

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink that reads "Steven J. Bilmes". The signature is written in a cursive style with a large, prominent initial "S".

Commissioner's Designee