

**STATE OF NEW YORK  
DEPARTMENT OF SOCIAL SERVICES**

**ASE No. 1293376-1  
CENTER No. 41  
FH No. 1367445J**

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In the Matter of the Appeal of :  
: :  
: :  
H C : **DECISION**  
: **AFTER**  
: **FAIR**  
from a determination by the New York City : **HEARING**  
Department of Social Services :  
:  
:

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**JURISDICTION**

This appeal is from a determination by the local Social Services Agency to reduce the Appellant's Public Assistance grant.

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 May 9, 1989, in New York City, before Kenneth Luciano, Administrative Law Judge. The following persons appeared at the hearing:

**For the Appellant**

H C

**For the Local Social Services Agency**

Carole Clayne

**FACT FINDINGS**

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 is in receipt of Public Assistance as payee for a grandchild and two great grandchildren.
2. On March 24, 1989, the Agency sent the Appellant a "Notice of Change in Grant" to notify the Appellant that her Public Assistance would be changed fro: \$198.00 to \$211.09 to recoup a utility advance, in accordance with a Notice of Intent previously sent to the Appellant.

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3. The Agency has reduced the Appellant's grant of Public Assistance by the rate of ten percent.

4. On April 11, 1989, the Appellant requested this hearing to review the Agency's determination to reduce the Appellant's Public Assistance.

#### ISSUE

Was the Agency's March 15, 1989, determination to reduce the Appellant's Public Assistance correct?

#### APPLICABLE LAW

Department Regulations at 18 NYCRR 358-3.3(a) provides that except as provided by 18 NYCRR 358-3.3(d) a recipient has a right to timely and adequate notice when a social services agency proposes to take any action to discontinue, suspend, or reduce a Public Assistance grant, Medical Assistance Authorization or services.

Department Regulations at 18 NYCRR 358-3.3(d) provides the following exception to timely notice requirements:

- (1) As a recipient of either public assistance or medical assistance you have the right to adequate notice sent no later than the effective date of the proposed action when:

...

- (ii) the social services agency has received a clear written statement signed by you which includes information that requires the social services agency to discontinue or reduce your public assistance or medical assistance and you have indicated in such statement that you understand that such action will be taken as a result of supplying such information; or

Department Regulations at 18 NYCRR 358-2.2 provides that an adequate notice means a notice which sets forth all of the following:

- (a) the action the social services 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. Otherwise the notice shall state that there will be a separate notice for other affected assistance, benefits or services. In addition, in the case of:

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- (1) a reduction of public assistance or food stamp benefits: both the dollar amount of assistance or benefits prior to the reduction and the reduced amount must be specified;
- ...
- (3) a recoupment: the total amount to be recouped and the rate of recoupment must be specified. In addition, in the case of a recoupment of a public assistance grant, the right to claim that the rate of recoupment will cause undue hardship must be specified;
- ...
- (b) except in the case of a denial, the effective date of the action;
- (c) except in the case of an acceptance of an application for a covered program or service, the specific reasons for the action;
- (d) the specific laws and/or regulations upon which the action is based;
- (e) the applicant's or recipient's right to request an agency conference and fair hearing;
- (f) the procedure for requesting an agency conference or fair hearing, including an address and telephone number where a request for a fair hearing may be made and the time limits within which the request for a fair hearing must be made;
- (g) an explanation that a request for a conference is not a request for a fair hearing and that a separate request for a fair hearing must be made. Furthermore, that a request for a conference does not entitle one to aid continuing, and that a right to aid continuing only arises pursuant to a request for a fair hearing.
- (h) when the agency action or proposed action is a reduction, discontinuance, restriction or suspension of public assistance, medical assistance, food stamp benefits or services, the circumstances under which public assistance, medical assistance, food stamp benefits or services will be continued or reinstated until the fair hearing decision is issued; that a fair hearing must be requested separately from a conference; and a statement that when only an agency conference is requested and there is no specific request for a fair hearing, there is no right to continued public assistance, medical assistance, food stamp benefits or services; and that participation in an agency conference does not affect the right to request a fair hearing and;

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- (i) the right of the applicant or recipient to review the applicant's or recipient's case record and to obtain copies of documents which the agency will present into evidence at the hearing and other documents necessary for the applicant or recipient to prepare for the fair hearing at no cost. The notice must contain an address and telephone number where the applicant or recipient can obtain additional information about: the applicant's or recipient's case; how to request a fair hearing; access to the case file; and/or obtaining copies of documents;
- (j) the right to representation by legal counsel, a relative, friend or other person or to represent oneself, and the right to bring witnesses to the fair hearing and to question witnesses at the hearing;
- (k) the right to present written and oral evidence at the hearing;
- (l) the liability, if any, to repay continued or reinstated assistance and benefits, if the recipient loses the fair hearing;
- (m) information concerning the availability of community legal services to assist an applicant or recipient at the conference and fair hearing; and
- (n) a copy of the budget or the basis for the computation, in instances where the social services agency's determination is based upon a budget computation.

Department Regulations at 18 NYCRR 358-2.23 provides that timely notice means a notice which is mailed at least 10 days before the date upon which the proposed action is to become effective.

Department Regulations at 18 NYCRR 358-1.4 provides that the provisions of the recodified section 358 are effective January 15, 1989; however, except as provided in section 358-1.4(c) social services agencies are required to utilize notices which meet the requirements of the recodified section 358 no later than June 1, 1989. Section 358-1.4(c)(2) provides that automated notices currently in use by social services districts must conform to the requirements of the recodified section 358 no later than October 1, 1989.

Section 358.8(a) of the Regulations of the State Department of Social Services provides that timely and adequate notice of any proposed action to discontinue or reduce Public Assistance payments or to discontinue or reduce a Medical Assistance Authorization must be sent to the recipient. Timely and adequate notice means a written notice mailed at least ten days prior to the effective date of the proposed action and which contains details of the

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reasons for the proposed action as well as information regarding conference and hearing rights and the right to continued Public Assistance and Medical Assistance Authorization.

### DISCUSSION

On March 24, 1989, the Agency sent the Appellant a "Notice of Change in Grant" to notify the Appellant that her Public Assistance would be changed from \$198.00 to \$211.09 to recoup a utility advance, in accordance with a Notice of Intent previously sent to the Appellant. The Agency has reduced the Appellant's grant of Public Assistance by the rate of ten percent.

The Appellant requested this hearing contending that she has not been provided timely and adequate notice of the Agency's action. The Appellant admits that she received the Agency's "Notice of Change in Grant," but stated that she had not received a notice of intent to reduce.

The Agency presented into evidence a copy of a "Notice of Intent to Recoup Utility Advance" dated February 15, 1989. The notice does not contain the Appellant's address, or any address, and the effective date on the notice has been changed from February 15, 1989, to February 26, 1989. The Agency did not present any evidence to establish that the February 15, 1989, notice had been mailed to the Appellant, or that the notice had been otherwise provided to the Appellant. Based upon the Agency's evidence and the Appellant's testimony, the record fails to establish that the Agency sent the Appellant the February 15, 1989, notice of intent, or otherwise provided the notice to the Appellant.

The Agency's "Notice of Change in Grant" dated March 15, 1989, is not a timely and adequate notice under section 358 as it was in effect prior to January 15, 1989, or in its recodified form since January 15, 1989. Among the notice's deficiencies as a timely and adequate notice is the notice's failure to provide the Appellant with ten days notice of the Agency action, the failure to provide information about conference and hearing rights, and the notice's indication that the Public Assistance grant will be increased from \$198.00 to \$211.09 during the recoupment.

The record establishes that the Agency, without sending timely and adequate notice, reduced the Appellant's Public Assistance grant by the rate of ten percent.

The Agency's failure to give timely and adequate notice of its proposed actions violates the above cited regulations.

### DECISION AND ORDER

The Agency's March 15, 1989, determination to reduce the Appellant's Public Assistance is not correct and is reversed.

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1. The Agency is directed to take no further action on its March 15, 1989, notice.
2. The Agency is directed to cease recouping from the Appellant's Public Assistance grant to recover a utility advance and to restore to the Appellant any Public Assistance benefits that have already been recouped.
3. Should the Agency in the future determine to implement its previous action, it is directed to issue a timely and adequate Notice of Intent.

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

MAY 16 1989

CESAR A. PERALES  
COMMISSIONER

By

*Sebastian Adolamo*

Commissioner's Designee