
In the Matter of the Appeal of

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

DECISION
: WITHOUT
EVIDENTIARY
HEARING
:

By four letters dated April 6, 1987 and one dated April 7, 1987, the Appellant's representative, Eugene Doyle, requested that a decision without an evidentiary hearing be issued pursuant to 18 NYCRR 358.19 on five notices issued to the Appellant by the Agency. Pursuant to 18 NYCRR 358.19, by letter dated May 13, 1987, copies of the Appellant's request and supporting documents were sent to the Agency. At the request of the Agency, the Agency's time within which to present evidence in opposition to the Office of Administrative Hearings was extended to July 3, 1987. Despite this request, no evidence has been received from the Agency.

FACT FINDINGS

An opportunity to be heard having been afforded to all interested parties and evidence having been submitted and due deliberation having been had, it is hereby found that:

1. Appellant has been in receipt of Public Assistance.
2. By notice dated April 3, 1987, the Agency notified the Appellant that her Public Assistance grant would be reduced effective April 13, 1987 in order to recoup a \$175.00 overpayment.
3. On April 7, 1987, the Appellant's representative, Eugene Doyle, requested that a decision without an evidentiary hearing be issued pursuant to 18 NYCRR 358.19 to determine whether the Agency's notice dated April 3, 1987 to recoup \$175.00 violated the requirements of Rodriguez v. Blum, 79 Civ. 4518 (S.D.N.Y. 1983); whether the notice was defective due to the Agency's failure to include a copy of the budget computation; and whether such notice was inadequate because it failed to inform Appellant of the procedures for establishing that the proposed rate of recoupment would cause undue hardship.
4. By notice dated March 31, 1987 the Agency notified the Appellant that her Public Assistance grant would be reduced effective April 10, 1987, to recoup a \$238.60 utility advance issued on July 21, 1986.

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5. On April 6, 1987, the Appellant's representative, Eugene Doyle, requested that a decision without an evidentiary hearing be issued pursuant to 18 NYCRR 358.19 to determine whether the Agency's notice dated March 31, 1987 to recoup \$238.60 violated the requirements of Rodriguez v. Blum, 79 Civ. 4518 (S.D.N.Y. 1983); whether the notice was defective because it relies on a regulation which has no relevance to the charge specified in the notice; whether the notice was defective because it failed to provide the details of the reason for the proposed recoupment; and whether such notice was defective because it failed to inform Appellant of the procedures for establishing that the proposed rate of recoupment would cause undue hardship.

6. By notice dated March 31, 1987 the Agency notified the Appellant that her Public Assistance grant would be reduced effective April 10, 1987 to recoup a \$437.45 utility advance issued on April 8, 1986.

7. On April 6, 1987, the Appellant's representative, Eugene Doyle, requested that a decision without an evidentiary hearing be issued pursuant to 18 NYCRR 358.19 to determine whether the Agency's notice dated March 31, 1987 to recoup \$437.45 violated the requirements of Rodriguez v. Blum, 79 Civ. 4518 (S.D.N.Y. 1983); whether the notice was defective because it relies on a regulation which has no relevance to the charge specified in the notice; whether the notice was defective because it failed to provide the details of the reason for the proposed recoupment; and whether such notice was defective because it failed to inform Appellant of the procedures for establishing that the proposed rate of recoupment would cause undue hardship.

8. By notice dated March 31, 1987 the Agency notified the Appellant that her Public Assistance grant would be reduced effective April 10, 1987 to recoup a \$209.70 utility advance issued on September 24, 1986.

9. On April 6, 1987, the Appellant's representative, Eugene Doyle, requested that a decision without an evidentiary hearing be issued pursuant to 18 NYCRR 358.19 to determine whether the Agency's notice dated March 31, 1987 to recoup \$209.70 was defective because it relies on a regulation which has no relevance to the charge specified in the notice; whether the notice was defective because it failed to provide the details of the reason for the proposed recoupment; and whether such notice was defective because it failed to inform Appellant of the procedures for establishing that the proposed rate of recoupment will cause undue hardship.

10. By notice dated March 31, 1987 the Agency notified the Appellant that her Public Assistance grant would be reduced to recoup an overpayment of \$111.30.

12. On April 6, 1987, the Appellant's representative, Eugene Doyle, requested that a decision without an evidentiary hearing be issued pursuant to 18 NYCRR 358.19 to determine whether the Agency's notice dated March 31, 1987 to recoup \$111.30 was defective due to the Agency's failure to include a copy of the budget computation; and whether such notice was defective because it failed to inform Appellant of the procedures for establishing that the proposed rate of recoupment would cause undue hardship.

13. Although requested to do so by letter dated May 13, 1987, the Agency has not submitted any evidence in opposition to the Appellant's

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allegations. At the request of the Agency, the Agency's time within which to present evidence in opposition to the Office of Administrative Hearings was extended to July 3, 1987. Despite the request, no evidence has been received from the Agency.

ISSUE

Were the Agency's notice dated April 3, 1987 to recoup a \$175.00 overpayment, and four notices dated March 31, 1987 to recoup a \$238.60 utility advance, a \$437.45 utility advance, a \$209.70 utility advance, and a \$111.30 overpayment proper notices?

APPLICABLE LAW

Pursuant to the settlement in the case of Rodriguez v. Blum, the New York City Agency is required to produce the Appellant's complete relevant case record at any fair hearing that involves the discontinuance, reduction, or restriction of Public Assistance benefits. If the Agency appears at the hearing without the complete relevant case record, the Agency is required to withdraw its Notice of Intent.

Where the Agency withdraws its notice because it failed to have Appellant's complete relevant case record at the hearing, it may reissue its notice, provided that it has first procured and reviewed the Appellant's complete relevant case record. The Agency's new notice shall clearly advise the Appellant that it is reissuing its earlier notice, and that it is doing so after procuring and reviewing the Appellant's complete relevant case record.

Department policy (81 ADM-55) requires that a hard copy of the budget or local equivalent must be attached to notices of termination or reduction.

Department policy (80 ADM-39, 81 ADM-22, 81 ADM-55) sets forth guidelines for establishing undue hardship. Whenever a Public Assistance grant is reduced to recover an overpayment of assistance, the Agency's notice must state that the recipient has the right to claim that the rate of recoupment would cause undue hardship.

In the Aid to Dependent Children Program, Federal regulations at 45 C.F.R. 205.10(a)(4)(1)(B) require that a notice of intended action to reduce assistance must include a statement of the reasons for the intended agency action and the specific regulation supporting such action. Department Regulations at 18 NYCRR 358.8(a)(2) state that the notice must include details of the reasons for the proposed action.

DISCUSSION

In this case, the uncontroverted evidence establishes that by three notices dated March 31, 1987 the Agency advised the Appellant that her Public Assistance would be reduced to recoup utility advances in the amounts of \$238.60, \$437.45 and \$209.70, and that by two additional notices dated March 31, 1987 and April 3, 1987 respectively, the Agency advised the Appellant that her Public Assistance would be reduced to recoup overpayments of Public Assistance in the amounts of \$111.30 and \$175.00.

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By four letters dated April 6, 1987 and one dated April 7, 1987, Eugene Doyle, Appellant's representative, requested a decision without an evidentiary hearing on the grounds that:

- the Agency's notice of April 3, 1987 to recoup a \$175.00 overpayment and the two notices dated March 31, 1987 to recoup \$238.60 and \$437.45 for utility advances violated the terms of Rodriguez v. Blum. Mr. Doyle alleged that such notices were reissuances of previous notices which the Agency was directed to withdraw pursuant to Rodriguez v. Blum in previous fair hearings. Mr. Doyle alleged that said notices violated the terms of Rodriguez v. Blum by failing to state that the Agency was reissuing its earlier notice and that it was doing so after procuring and reviewing the Appellant's complete relevant case record;
- the Agency's notices dated April 3, 1987 to recoup a \$175.00 overpayment and dated March 31, 1987 to recoup a \$11.30 overpayment were defective because they did not contain a copy of the budget computation;
- the Agency's three notices dated March 31, 1987 to recoup \$238.60, \$437.45 and \$209.70 for utility advances, and notices dated March 31, 1987 and April 3, 1987 to recoup \$111.30 and \$175.00 overpayments were defective because they did not advise the Appellant of the procedures for claiming undue hardship;
- the Agency's three notices dated March 31, 1987 to recoup \$238.60, \$437.45 and \$209.70 utility advances were defective because they relied on regulations which were not relevant to the contents of the notice;
- the Agency's three notices dated March 31, 1987 to recoup \$238.60, \$437.45 and \$209.70 for utility advances were defective because they failed to provide the details of the reason for the proposed recoupment.

Although duly notified of the request for a decision without an evidentiary hearing pursuant to 18 NYCRR 358.19, the Agency did not produce any evidence that any of said five notices were proper.

DECISION AND ORDER

The notice dated April 3, 1987 to recoup a \$175.00 overpayment and four notices dated March 31, 1987 to recoup \$238.60, \$437.45 and \$209.70 utility advances and a \$111.30 overpayment were not proper.

1. The Agency is directed to withdraw its four Notices of Intent dated March 31, 1987 and restore all lost benefits retroactive to April 10, 1987, the effective date of the Agency actions on such notices.

2. The Agency is directed to withdraw its Notice of Intent dated April 3, 1987 and restore all lost benefits retroactive to April 13, 1987 the effective date of the Agency action on such notice.

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3. The Agency is directed to continue assistance to the Appellant in the verified degree of need.

Should the Agency in the future determine to implement its previous actions with respect to the Agency's notice of intent dated April 3, 1987 to recoup a \$175.00 overpayment and the two notices dated March 31, 1987 to recoup \$238.60 and \$437.45 for utility advances it is directed to:

1. procure and review the Appellant's complete relevant case record;
2. reissue the Notice of Intent provided that the new notice shall clearly advise the Appellant that it has done so after procuring and reviewing the Appellant's complete relevant case record; and
3. produce the complete relevant case record at any subsequent fair hearing.

Should the Agency in the future determine to implement its previous action with respect to the Agency's two notices of intent dated March 31, 1987 to recoup a \$111.30 overpayment and a \$209.70 utility advance it is directed to issue a proper notice.

As required by Department Regulations at 18 NYCRR 358.22, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York

CESAR A. PERALES
COMMISSIONER

JUL 15 1987

BY 
Commissioner's Designee