
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**

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 February 23, 2009, in [REDACTED], before Thomas M. Holmes, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[REDACTED], Appellant

For the Social Services Agency

Valery Dolvin Joseph, Fair Hearing Representative

ISSUE

Was the Agency's determination to discontinue the Appellant's Public Assistance benefits based on its Notice of Intent dated January 15, 2009, 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:

1. The Appellant has been in receipt of Public Assistance benefits.
2. By Notice dated January 15, 2009, the Agency advised the Appellant of its determination to discontinue the Appellant's Public Assistance benefits on the grounds that the Appellant failed to cooperate with a required substance abuse assessment appointment.

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3. The Agency's Notice of Intent dated January 15, 2009 did not include the date of the Appellant's infraction.

4. On January 23, 2009, the Appellant requested this fair hearing.

APPLICABLE LAW

A recipient of Public Assistance, Medical Assistance or 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. 18 NYCRR 358-3.3(a). In addition, in most circumstances, a Food Stamp recipient has a right to a timely and adequate adverse action notice when the Agency proposes to take any action to discontinue, suspend or reduce the recipient's Food Stamp benefits during the certification period. 18 NYCRR 358-2.3; 18 NYCRR 358-3.3(b). However, pursuant to 18 NYCRR 358-3.3(e), there is no right to an adverse action notice when, for example, the change is the result of a mass change, the Agency determines that all members of the household have died or the household has moved from the district or when the household has failed to reapply at the end of the certification period.

A timely notice means a notice which is mailed at least 10 days before the date upon which the proposed action is to become effective. 18 NYCRR 358-2.23. However, pursuant to 18 NYCRR 358-3.3(d), there is no right to timely notice 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 they no longer wish 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:

- o for reductions, the previous and new amounts of assistance or benefits provided;
- o the effective date of the action;
- o the specific reasons for the action;
- o the specific laws and/or regulations upon which the action is based;
- o the recipient's right to request an agency conference and fair hearing;

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- o 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;
- o 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;
- o a statement 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;
- o 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;
- o a statement that a fair hearing must be requested separately from a conference;
- o 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;
- o a statement that participation in an agency conference does not affect the right to request a fair hearing;
- o the right of the recipient to review the case record and to obtain copies of documents which the agency will present into evidence at the hearing and other documents necessary for the recipient to prepare for the fair hearing at no cost;
- o an address and telephone number where the recipient can obtain additional information about the recipient's case, how to request a fair hearing, access to the case file, and/or obtaining copies of documents;
- o 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;
- o the right to present written and oral evidence at the hearing;
- o the liability, if any, to repay continued or reinstated assistance and benefits, if the recipient loses the fair hearing;
- o information concerning the availability of community legal services to assist a recipient at the conference and fair hearing; and
- o 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.

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18 NYCRR 358-2.2

DISCUSSION

It is undisputed that the Appellant has been in receipt of Public Assistance benefits. The Appellant requested this hearing to review the Agency's determination to discontinue the Appellant's Public Assistance benefits on the grounds that the Appellant failed to cooperate with a required substance abuse assessment appointment.

A review of the Agency's Notice of Intent shows that it did not include the date of the Appellant's infraction, and therefore did not list the specific reasons for the Agency's action as required by 18 NYCRR 358-2.2. More particularly, while the Agency submitted evidence at the hearing that the Agency's action was taken because the Appellant failed to attend a substance abuse assessment appointment scheduled for January 9, 2009, the Agency's Notice failed to cite this infraction date, or any other date for that matter. This defect in the Agency's Notice renders it void and therefore the Agency's determination to discontinue the Appellant's Public Assistance benefits cannot be sustained.

DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Public Assistance benefits is not correct and is reversed

1. The Agency is directed to restore the Appellant's Public Assistance benefits retroactive to the date of the Agency's action.
2. In the event that the Agency determines to implement its previously contemplated action, the Agency is directed to provide the Appellant with a Notice that meets the requirements set forth in 18 NYCRR 358-2.2.

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
03/11/2009

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink, appearing to read 'DMM P. M.', written over a horizontal line.

Commissioner's Designee

Accepted

UNION SQUARE JOB CENTER 039
109 EAST 16TH STREET 11TH FLOOR
NEW YORK, NY 10003

NOTICE OF DECISION ON YOUR
PUBLIC ASSISTANCE, FOOD STAMPS AND
MEDICAL ASSISTANCE.

SI USTED DESEA RECIBIR NOTIFICACIONES FUTURAS
EN ESPANOL, POR FAVOR PONGASE EN CONTACTO
CON SU TRABAJADOR(A).

PROGRAM CODE = 039

NOTICE NUMBER: [REDACTED]		DATE: January 15, 2009		CASE NUMBER: [REDACTED]	
OFFICE 039	UNIT	WORKER 00052	UNIT OR WORKER NAME		TELEPHONE NO. 212-835-7432
AGENCY TELEPHONE NUMBERS			CASE NAME / AND ADDRESS		
GENERAL TELEPHONE NO. FOR QUESTIONS OR HELP			[REDACTED]		
212-835-8300					
OR Agency Conference					
212-835-7073					
Fair Hearing information and assistance					
212-835-7073					
Record Access					
212-835-7361					
Child/Teen Health Plan					
888-692-8662					
<p>IF YOU DO NOT AGREE WITH ANY DECISION EXPLAINED IN THIS NOTICE, YOU HAVE A RIGHT TO ASK US FOR A CONFERENCE AND/OR ASK THE STATE FOR A FAIR HEARING. READ THE CONFERENCE AND/OR FAIR HEARING SECTION TO SEE HOW TO ASK FOR A CONFERENCE AND/OR A FAIR HEARING.</p>					
<p><u>PUBLIC ASSISTANCE</u></p> <p>This is to tell you that your public assistance will be DISCONTINUED. You will no longer get public assistance beginning January 26, 2009.</p> <p>This is because adults who apply for public assistance must agree to be screened for an alcohol or substance abuse problem. They must also agree to be assessed for an alcohol or substance abuse problem, which may include drug testing, by a counselor certified by the Office of Alcoholism and Substance Abuse Services. This assessment would be required if it is indicated through the screening process or if the adult exhibits signs of an alcohol/substance abuse problem, or he/she is already participating in an alcohol or substance abuse treatment program. In addition, an adult who is required to be in treatment for an alcohol or substance abuse problem must sign, and not revoke, a consent to disclose treatment information to the local social services district.</p> <p>You did not take part in or complete the alcohol/substance abuse assessment requirement.</p> <p>You cannot receive public assistance until you agree to do so.</p> <p>This decision is based on Regulation 18 NYCRR 351.2(i).</p> <p><u>YOUR TIME LIMIT COUNT</u></p> <p>This count is for your information only. At the time this notice is sent, you receive assistance through the Cash Safety Net Assistance program (Cash SNA).</p> <p>YOUR 24-MONTH TIME LIMIT COUNT IS 9 MONTHS.</p> <p>Unless you are exempted from the time limit, you may receive no more than <u>24 months</u> of cash SNA in your lifetime. If you still need assistance after your</p>					

24-Month Time Limit Count reaches 24 months, you must receive that assistance in non-cash form.

If you have an outstanding overpayment recoupment balance, you are required to repay this amount to the Human Resources Administration. We will contact you regarding the repayment of these outstanding debts.

FOOD STAMPS

You will continue to get the **SAME AMOUNT** of food stamps from your current center for one more month. After that, a food stamp case will be automatically opened for you. We will send you a separate notice to give you more information about your food stamp case.

This decision is based on Regulations 18 NYCRR 387.8, 387.14 and 387.15.

If you have an overpayment that is not paid back, it will be referred for collection in a number of ways, including automated collection by the federal government. Federal benefits (such as Social Security) and tax refunds that you are entitled to receive may be taken to pay back the overpayment. The debt will also be subject to processing charges. This decision is based on 31 CFR 285.

If you do not use your food stamp benefit account for a period of 365 consecutive days, any food stamp benefit remaining in the account that is at least 365 days old will be expunged (removed) from the account. Expunged food stamp benefits cannot be reissued. If you have a FSB overpayment, your expunged benefits will be put towards your overpayment. If you apply for FSB again, and have not repaid the amount you owe, your FSB will be reduced if you begin to get FSB again. You will be notified, at that time, of the amount of reduced benefits you will get

MEDICAL ASSISTANCE

While we determine if you are still eligible for Medical Assistance, we will continue Medical Assistance coverage unchanged for:

Name

Client I.D. #

[REDACTED]

[REDACTED]

We will soon write to you asking for information we need to determine your continuing eligibility for Medical Assistance. If you do not respond when we write, your Medical Assistance case may be closed at that time.

This decision is based on Regulation 18 NYCRR 360-2.6.

SERVICES AND OTHER INFORMATION

Your NYS Common Benefit Identification Card:

You should have a New York State Common Benefit Identification card. Even though you are no longer eligible for benefits, keep your card in a safe place. The same card will be used again if you become eligible for benefits in the future.

Social Services may provide information and education about family planning for up to 90 days from the effective date stated in this notice.

A loss of Public Assistance and Medical Assistance benefits will require a redetermination of your eligibility for social services within 30 days of such a decision. This does not necessarily mean that these services will be terminated. It means that your continuing eligibility for these services will have to be redetermined. For further information, please contact your services worker or call the general telephone number listed on page 1 of this notice.

CONFERENCE AND FAIR HEARING SECTION

DO YOU THINK WE ARE WRONG?

If you think our decision was wrong, you can request a review of our decision. If we made a mistake, we will correct it. You can do both of the following:

1. Ask for a meeting (conference) with one of our supervisors; and
2. Ask for a State fair hearing with a State hearing officer.

CONFERENCE (Informal meeting with us)

If you think our decision was wrong or if you do not understand our decision, or need additional information about the reason for our decision, please call us to arrange a meeting. To do this, call the conference telephone number listed at the top of page 1 of this notice or write to us at the address printed at the top of page 1 of this notice. Sometimes this is the fastest way to solve any problems you may have. We encourage you to do this even when you have asked for a fair hearing.

If you only ask for a meeting with us, we will not keep your benefits the same while you appeal. Your benefits will stay the same only if you ask for a State fair hearing. (See Keeping your Benefits the Same)

STATE FAIR HEARING

Deadline for Requesting a Fair Hearing

If you want the State to review our decision about your public assistance, you must ask for a fair hearing by March 18, 2009. This is the deadline even if you asked for a meeting (conference) with us.

If you want the State to review our decision about your food stamps, you must ask for a fair hearing by April 15, 2009. This is the deadline even if you asked for a meeting (conference) with us.

Keeping your Benefits the Same

We will not change your public assistance if you ask for a fair hearing about the action we are taking on your public assistance by January 25, 2009.

If you lose the hearing you will have to pay back any public assistance which you got, but should not have gotten, while you were waiting for the decision.

If you do not want your benefits to stay the same until the decision is issued, you must tell the State when you write or call for a fair hearing.

How to Request a Fair Hearing

You can ask for a fair hearing in writing, by telephone, by fax, electronically or in person.

WRITE: Complete the "tear-off" Request for a Fair Hearing at the bottom of this page and send it to the address on the bottom of the next page.

OR CALL: (800) 342-3334

When you call, please tell the worker the number of this notice which is [REDACTED]

OR FAX: Send a copy of this notice to fax no. (518) 473-8735.

OR ONLINE: Complete the online request form at:

(Read the next page for more of your Rights)

REQUEST FOR A FAIR HEARING

I want a fair hearing. I do not agree with the agency's action. (You may explain why you disagree below, but you do not have to include a written explanation.)

Name : [REDACTED]
Address : [REDACTED]

District/Office No: 66/039
Notice No. : [REDACTED]
Case Number: [REDACTED]
Telephone : [REDACTED]

/_/ I do not want to "keep my benefits the same" until the Fair Hearing decision is issued.
ONLY USE THIS TEAR-OFF TO REQUEST A HEARING ABOUT THIS NOTICE.



<http://www.otda.state.ny.us/oah/forms.asp>

OR WALK-IN: Bring a copy of this notice to the New York State Office of Temporary and Disability Assistance at 14 Boerum Place, Brooklyn, NY or 330 West 34th Street, New York City, NY.

If you cannot reach the State electronically, by phone or fax, please write to request a fair hearing before the deadline for requesting a fair hearing.

What to Expect at a Fair Hearing

The State will send you a notice which tells you when and where the fair hearing will be held.

At the hearing, you will have a chance to explain why you think our decision is wrong. You can bring a lawyer, a relative or a friend or someone else to help you do this. If you cannot come yourself, you can send someone to represent you. If you are sending someone who is not a lawyer to the hearing instead of you, you must give this person a letter to show the hearing officer that you want this person to represent you at the hearing.

At the hearing, you and your lawyer or other representative will have a chance to explain why we are wrong and a chance to give the hearing officer written papers which explain why we are wrong.

To help you explain at the hearing why you think our decision is wrong, you should bring any witnesses who can help you. You should also bring any papers you have such as: Pay stubs, Leases, Receipts, Bills, Doctor's Statements.

At the hearing, you and your lawyer or other representative can ask questions of witnesses which we bring or which you bring to help your case.

LEGAL ASSISTANCE

If you think you need a lawyer to help you with this problem, you may be able to obtain a lawyer at no cost to you by contacting:



For the names of other lawyers check your Yellow Pages under "LAWYERS".

ACCESS TO YOUR FILES AND COPIES OF DOCUMENTS

To help you get ready for the hearing, you have a right to look at your case files. If you call, write or fax us, we will send you free copies of the documents from your files, which we will give to the hearing officer at the Fair Hearing. Also, if you call, write or fax us, we will send you free copies of specific documents from your files which you think you may need to prepare for your Fair Hearing. To ask for documents or to find out how to look at your file, call (718) 722-5012, or FAX (718) 722-5018 or write to HRA Division of Fair Hearing, 14 Boerum Place, Brooklyn, New York 11201. If you want copies of your documents from your case file, you should ask for them ahead of time. They will be provided to you within a reasonable time before the date of the hearing. Documents will be mailed to you only if you specifically ask that they be mailed.

Send this "Request for a Fair Hearing" to:

The Office of Administrative Hearings
New York State Office of Temporary and Disability Assistance
P.O. Box 1930
Albany, New York 12201



NOTICE OF POTENTIAL ELIGIBILITY FOR TRANSITIONAL CHILD CARE

**IF YOU ARE WORKING, YOU MAY BE ABLE TO GET HELP PAYING FOR YOUR CHILD CARE.
READ THE REST OF THIS NOTICE TO LEARN HOW TO APPLY.**

What Is Transitional Child Care?

The Transitional Child Care (TCC) program provides money to help working parents pay for child care. People who were on public assistance (PA) may be able to receive TCC for up to 12 months after they become ineligible for PA.

You can apply for TCC anytime during those 12 months. If you were eligible for TCC before the date of your application, you may receive payments for any child care during those earlier months.

Who Can Get TCC?

If you need child care in order to work and cannot get public assistance any longer because of the amount of money you make, you may be able to get TCC. You must have a child or foster child who is younger than 13 years, or a child up to age 19 who has special needs or is under court supervision.

In order for you to be eligible, your family's income may not exceed certain limits. You also must have been on public assistance in three of the last six months before your PA case closed.

How much will you have to pay?

You will pay a portion of the child care costs each month. How much you pay will depend on your income and the size of your family.

What types of child care can TCC pay for?

You have the right to choose any child care that is legal. This includes licensed day care centers; registered family day care homes; licensed group family day care homes; registered school-age child care programs; caregivers of legally-exempt group child care such as summer day camps; and friends, neighbors and relatives. Your Begin Site, Job Center, or a child care resource and referral agency (telephone 1-888-469-5999) can help you find child care.

How Can You Get TCC?

CALL (212)835-7681 AND ASK FOR TCC - TRANSITIONAL CHILD CARE. You will need to fill out an application and be approved. You can ask that the application be mailed to you. You also have the right to apply by mail if you wish.

You must provide the following information when you apply:

- o your most recent pay stubs or other proof of the amount of your family's income;
- o your work schedule; and
- o information about your child care provider(s).

What Are Your Responsibilities Under Transitional Child Care?

In order to continue to receive child care benefits you must:

- o Notify your caseworker immediately of any change in family income, household composition or circumstances (i.e., birth of a child, etc.), child care arrangements or termination of employment.
- o Pay the family fee determined by the Transitional Child Care (TCC) Unit.
- o Cooperate in establishing paternity and enforcement of child support obligations.

When Will You Stop Receiving TCC?

Your Transitional Child Care will be stopped:

- o at the end of the twelve month eligibility period;
- o if you quit your job without good cause;
- o if you fail to pay your child care fee;
- o if you stop using a legal child care provider;
- o when child care is no longer needed to allow a family member to accept a job or continue to work;
- o if your income exceeds the maximum allowed for your family size; or
- o if you fail to cooperate with child support enforcement.

IF YOU HAVE ANY QUESTIONS ABOUT TRANSITIONAL CHILD CARE PLEASE CALL (212) 835-7681.