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

:
:
: **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 reduce the Appellant's Public Assistance benefits based on its Notice of Intent dated January 13, 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 13, 2009, the Agency advised the Appellant of its determination to reduce 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 13, 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 reduce 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 5, 2009, the Agency's Notice failed to cite this infraction date, or any other infraction 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 reduce 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

[Handwritten signature]

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 13, 2009		CASE NUMBER: [REDACTED]	
OFFICE 039	UNIT	WORKER 00063	UNIT OR WORKER NAME		TELEPHONE NO. 212-835-7426
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					

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.

PUBLIC ASSISTANCE

Beginning January 24, 2009, your public assistance benefits will be **CHANGED**. Your old benefit amount was \$775.00; your new benefit amount is \$691.00. If the benefit amount is the same, you should compare the New Amount and Old Amount columns to see the change(s).

Your monthly public assistance benefit of \$691.00 will be distributed as follows:

	<u>New Amount</u>	<u>Old Amount</u>
o Monthly cash grant:	\$221.90	\$297.50
o Restricted shelter payment:	\$400.00	\$400.00
o Recoupment of overpayment:	\$69.10	\$77.50

If you have any changes in your household such as increased rent or someone else moving in, tell your worker right away. A change in your household could mean a change in your benefit amount.

Please see the budget calculation section of this notice for an explanation of how we figured your benefit amount.

This decision is based on Regulation 18 NYCRR 352.29.

Your public assistance will be **CHANGED** because:

- o Your household has had a change in the number of people.
This decision is based on Regulation 18 NYCRR 352.1.
- o Your household has had a change in number of members who are temporarily

absent.

This decision is based on Regulation 18 NYCRR 352.30.

- o There has been a change in how your public assistance benefits are distributed.

This decision is based on Regulation 18 NYCRR 381.3.

█'s share of your household's public assistance benefit cannot be included.

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.

█ did not take part in or complete the alcohol/substance abuse assessment requirement.

█ cannot receive public assistance until he/she agrees to do so.

This decision is based on Regulation 18 NYCRR 351.2(i).

How we figured your Public Assistance Benefits:

Check the information below and let us know if something is wrong. If there is a mistake, it could mean that this decision we made about your benefit is not correct.

- o There are 3 people in your Public Assistance case.
- o There are 3 people in your Public Assistance suffix.
- o Your household includes a pregnant woman, or child under age 18, or an 18-year-old child attending full time secondary school.
- o Your household pays \$400.00 for housing.
- o According to our records, your type of housing is known as Unfurnished Apartment Or Room.
- o We allow \$400.00 for housing.
- o Your heat is included in your rent.
- o No one in your suffix is at least four months pregnant.

FOOD STAMPS

Beginning January 24, 2009, your food stamp benefits will be **CHANGED** from \$533.00 to \$558.00. This is because:

- o Your household has had a change in Public Assistance benefits.

This decision is based on Regulations 18 NYCRR 387.10 and 387.12.

How we figured your Food Stamp Benefits:

Check the information below and let us know if something is wrong. If there is a mistake, it could mean that this decision we made about your benefit is not correct.

- o You will get \$558.00 for the month of February, 2009.
- o There are 4 people in your Food Stamp household.
- o You pay \$483.00 for housing.

- o According to our records, your type of housing is known as Unfurnished Apartment Or Room.
- o Your heat is included in your rent. Either you have incurred air conditioning costs or we anticipate that you will receive a HEAP payment during this heating season for your current living situation. (You may need to apply for HEAP separately.) We allow the standard of \$577.00.
- o There is no one 60 or older or disabled in your Food Stamp household.
- o You have no allowable medical expenses.
- o You have no individuals in your household that are enrolled in a Medicare approved Prescription Drug Discount Card program.
- o No one in your household pays legally-obligated child support.
- o We allow expenses for child care or dependent care while you are employed or seeking employment through job search, or are in training. You do not pay for child care or dependent care.
- o We count the following monthly income:

<u>Person with income</u>	<u>Type of Income</u>	<u>Monthly Amount</u>
	Public Assistance	\$691.00
	Total Income:	<u>\$0.00</u>
	Countable Income:	<u>\$98.00</u>

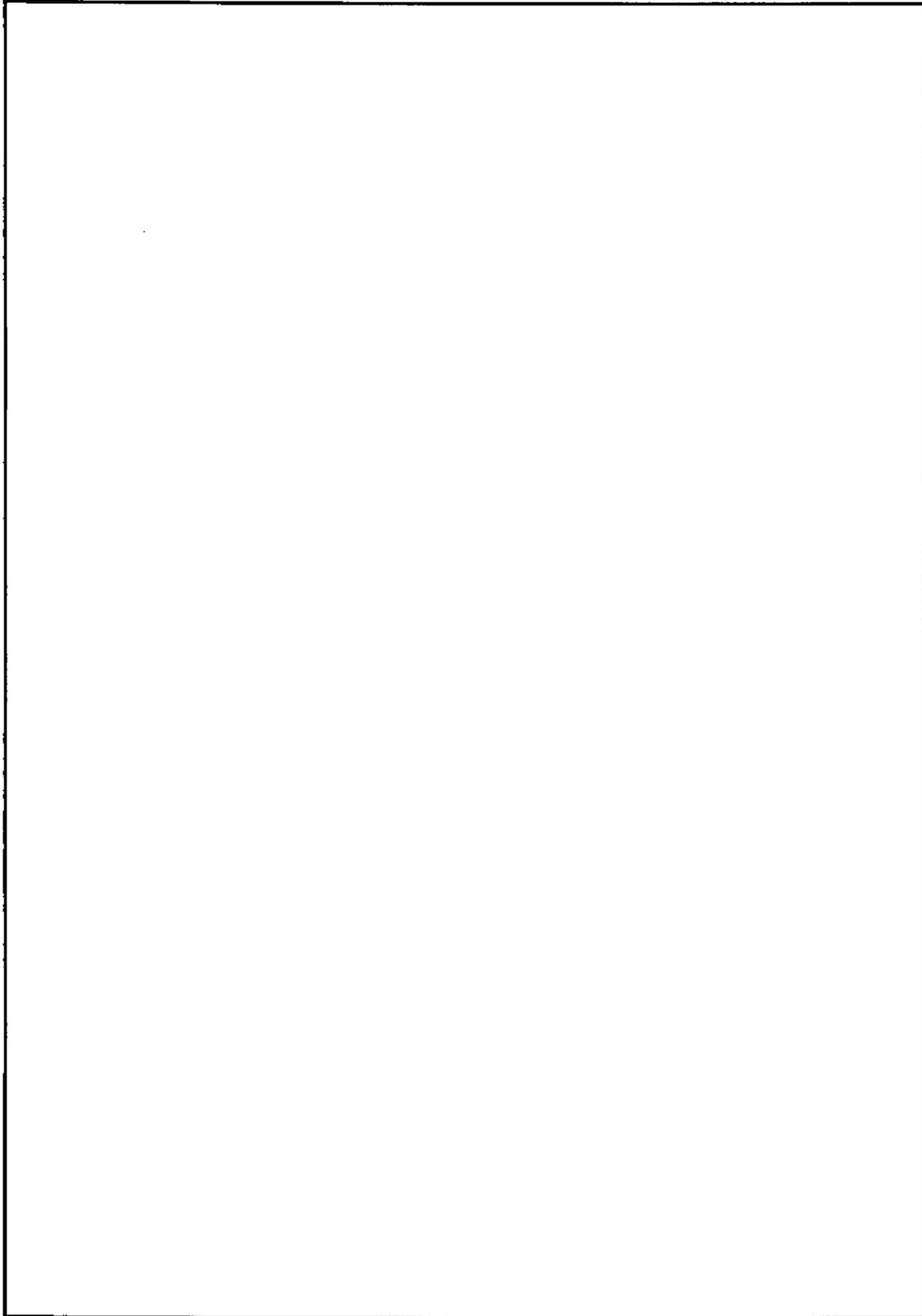
MEDICAL ASSISTANCE

We will continue Medical Assistance coverage unchanged for:

<u>Name</u>	<u>Client I.D. #</u>
[REDACTED]	[REDACTED]

These persons will continue to be entitled to full services under the Medical Assistance Program.

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



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 14, 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 medical assistance, you must ask for a fair hearing by March 14, 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 13, 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 23, 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]

(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.



- OR FAX:** Send a copy of this notice to fax no. (518) 473-6735.
- OR ONLINE:** Complete the online request form at:
<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

