

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: October 11, 2008
CASE #:
CENTER #: 79
FH #: 5164410Q

In the Matter of the Appeal of
Brian P
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 December 23, 2008, and January 22, 2009, in New York City, before Edwin Pearson, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Eugene Doyle, Appellant's Representative

For the Social Services Agency

Alex Eronmwon, Fair Hearing Representative on December 23, 2008
Leslie Jacobs, Supervisory Fair Hearing Representative on December 23, 2008
Valerie Dolvin-Joseph, Fair Hearing Representative on January 22, 2009

ISSUES

Was the Agency's September 10, 2008 determination to reduce the Appellant's Public Assistance benefits to recoup a utility advance in the amount of \$101.04 correct?

Was the Agency's May 29, 2008 determination to reduce the Appellant's Public Assistance benefits to recoup a utility advance in the amount of \$276.62 correct?

Was the Agency's May 12, 2008 determination to reduce the Appellant's Public Assistance benefits to recoup a utility advance in the amount of \$163.36 correct?

Was the Agency's March 17, 2008 determination to reduce the Appellant's Public Assistance benefits to recoup a utility advance in the amount of \$107.46 correct?

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Was the Agency's February 12, 2008 determination to reduce the Appellant's Public Assistance benefits to recoup a utility advance in the amount of \$173.07 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 of Intent dated September 10, 2008, the Agency advised the Appellant of its determination to reduce the Appellant's Public Assistance benefits based on the Agency's determination that a utility advance in the amount of \$101.04 had been made on behalf of the Appellant on April 30, 2008.
3. By Notice of Change dated May 29, 2008, the Agency advised the Appellant of its determination that a utility advance in the amount of \$276.62 had been made on behalf of the Appellant on July 21, 2007.
4. By Notice of Intent dated May 12, 2008, the Agency advised the Appellant of its determination to reduce the Appellant's Public Assistance benefits based on the Agency's determination that a utility advance in the amount of \$163.36 had been made on behalf of the Appellant on March 3, 2008.
5. By Notice of Intent dated March 17, 2008, the Agency advised the Appellant of its determination to reduce the Appellant's Public Assistance benefits based on the Agency's determination that a utility advance in the amount of \$107.46 had been made on behalf of the Appellant on December 31, 2007.
6. By Notice of Intent dated February 12, 2008, the Agency advised the Appellant of its determination to reduce the Appellant's Public Assistance benefits on the grounds that a utility advance in the amount of \$173.07 had been made on behalf of the Appellant on October 29, 2007.
7. On October 11, 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.

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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:

- 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;
- 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;

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- 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.

18 NYCRR 358-2.2

Section 131-s of the Social Services Law and Section 352.5(f)(2) of 18 NYCRR provide that payment made on behalf of a Public Assistance recipient to prevent utility service shut-off or to restore utility service is not recoupable if the recipient has documented that he/she fully applied his/her Public Assistance grant to the purposes intended to be included in such grant. Section 352.5(f)(2) of 18 NYCRR provides that such documentation must include:

- o proof of payment of an amount equal to or greater than the recipient's combined monthly Home Energy Allowance and Supplemental Home Energy Allowance toward the monthly utility bill for domestic energy costs (lights, cooking, hot water);
- o proof of payment of an amount equal to or greater than the recipient's monthly fuel for heating allowance toward incurred heating costs;

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- proof of application of the recipient's monthly shelter allowance toward shelter costs; and
- no other evidence of mismanagement.

Section 352.5(f)(2) of 18 NYCRR further provides that, for recipients who are budgeted in accordance with the Section 8 certificate housing provisions set forth in Section 352.3(d)(2)(ii) of the Regulations, such documentation must include:

- proof of payment of an amount equal to or greater than the recipient's combined monthly Home Energy Allowance and Supplemental Home Energy Allowance toward the monthly utility bill for domestic energy costs (lights, cooking, hot water);
- proof of payment of an amount equal to or greater the shelter allowance budgeted in the Public Assistance grant towards shelter, heating, water and other shelter-related items covered by the federal Department of Housing and Urban Development utility allowance;
- no other evidence of mismanagement.

If the Appellant is ineligible for a non-recoupable grant or for other available non-recoupable grants including Home Energy Assistance Program benefits, payment must be provided as an advance allowance, subject to recoupment. 18 NYCRR 352.5(f)(3); 18 NYCRR 352.11; 18 NYCRR 352.31(d).

Regulations at 18 NYCRR 358-3.7(a) provide that an appellant has the right to examine the contents of the case record at the fair hearing. At the fair hearing, the agency is required to provide complete copies of its documentary evidence to the hearing officer. In addition, such documents must be provided to the appellant and appellant's authorized representative where such documents were not provided otherwise to the appellant or appellant's authorized representative in accordance with 18 NYCRR 358-3.7. 18 NYCRR 358-4.3(a). In addition, a representative of the agency must appear at the hearing along with the case record and a written summary of the case and be prepared to present evidence in support of its determination. 18 NYCRR 358-4.3(b). Except as otherwise established in law or regulation, in fair hearings concerning the discontinuance, reduction or suspension of Public Assistance, Medical Assistance, Food Stamp benefits or Services, the Agency must establish that its actions were correct. 18 NYCRR 358-5.9(a).

DISCUSSION

The Appellant requested this hearing to review five Agency determinations to reduce the Appellant's Public Assistance benefits based on its alleged payments of utility advances to the Appellant's utility provider. Four of the notices advising Appellant of these determinations were Notices of Intent, dated September 10, 2008, May 12, 2008, March 17, 2008, and February 12, 2008, respectively and one was a Notice of Change dated May 29, 2008.

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Regarding the Notice of Intent dated September 10, 2008, the Agency provided a copy of the notice, as well as documentation that a payment of \$101.04 had been made to the Appellant's utility provider. However, the Agency failed to provide any evidence to demonstrate that the Agency completed an evaluation of mismanagement by the Appellant in the handling of his grants during the time period during which the utility arrearage occurred. Accordingly, the Agency determination by Notice of Intent dated September 10, 2008, cannot be sustained.

Regarding the four other determinations, as set forth in the Notice of Change dated May 29, 2008, the Notice of Intent dated May 12, 2008, the Notice of Intent dated March 17, 2008, and the Notice of Intent dated February 12, 2008, the Agency provided only a copy of three of said notices, excluding the Notice of Intent dated March 17, 2008. With respect to the determinations for which notices were submitted, the Agency took the position that the Appellant had requested this hearing after the 60 day time limitation for requesting a hearing, hence the Commissioner had no jurisdiction to review any of these determinations.

The Notice of Intent dated May 12, 2008, and dated February 12, 2008, involved determinations to reduce assistance. In order to be adequate they must state the previous and new amounts of assistance provided by the Agency. Absence of such information results in an inadequate notice and a sufficient basis to toll the Statute of Limitations. Such an inadequacy has also been determined to void said notices. Accordingly, the Agency's determination of May 12, 2008, and February 12, 2008, cannot be sustained.

The Notice of Change dated May 29, 2008, failed to state the laws and/or regulations upon which the action is based pursuant to the Regulations as cited above hence resulting in an inadequate notice and a sufficient basis to toll the Statute of Limitations. Moreover, the notice did not set forth the action, a reduction, the Agency proposed to take. Based on these inadequacies said notice has been determined to be void. Accordingly, the Agency's determination of May 29, 2008, cannot be sustained.

It is noted too with respect to the May 29, 2008, May 12, 2008 and February 12, 2008, determinations the Agency failed to provide any evidence at the hearing to support these determinations.

Finally, in the absence of evidence that the Notice of Intent dated March 17, 2008 provided adequate notice to the Appellant of the March 17, 2008 determination, the Appellant's request for a review of this determination should be deemed timely. Also, since the Agency failed to provide any evidence in support of this determination, the determination by Notice of Intent dated March 17, 2008, cannot be sustained.

DECISION AND ORDER

The Agency's determinations to reduce the Appellant's Public Assistance benefits are not correct and are reversed

1. The Agency is directed to withdraw its Notice of Intent dated September 10, 2008.

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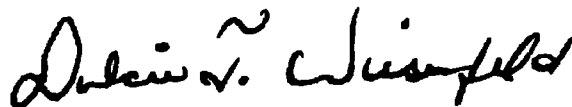
2. The Agency is directed to withdraw its Notice of Change dated May 29, 2008.
3. The Agency is directed to withdraw its Notice of Intent dated May 12, 2008.
4. The Agency is directed to withdraw its Notice of Intent dated March 17, 2008.
5. The Agency is directed to withdraw its Notice of Intent dated February 12, 2008.
6. The Agency is further directed to restore to the Appellant's any Public Assistance benefits that were withheld from the Appellant pursuant to these notices.
7. In the event that the Agency determines to implement any of its previously contemplated actions in the future, the Agency is directed to provide the Appellant with a notice that meets the requirements set forth in 18 NYCRR 358-2.2.

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

DATED: Albany, New York
02/03/2009

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By



Commissioner's Designee