

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: December 3, 2008
CASE # [REDACTED]
CENTER #: 67
FH #: 5167207Z

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 December 31, 2008, in [REDACTED], before Madeline R. Fears, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[REDACTED] Appellant

For the Social Services Agency

Vani Stirrup, Fair Hearing Representative

ISSUES

Was the Appellant's request for a fair hearing to review the Agency's determination, dated October 6, 2008, to recover an overpayment of Public Assistance in the amount of \$137.00 due to agency error timely?

Assuming the request was timely, was the Agency's determination to recover the Public Assistance overpayment made to the Appellant in the amount of \$137.00 correct?

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 has been in receipt of Public Assistance benefits for a household of one person.
2. By notice dated October 6, 2008, the Agency advised the Appellant of its determination to reduce the Appellant's Public Assistance benefits in order to recover an overpayment of Public Assistance in the amount of \$137.00 due to agency error.
3. The Agency's Notice of Intent dated October 6, 2008 did not include the dollar amount of assistance prior to the reduction and the reduced amount subsequent to the reduction.
4. On December 3, 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. Persons may request a fair hearing on any action of the social services district relating to food stamp benefits or the loss of food stamp benefits which occurred in the ninety days preceding the request for a hearing. Such action may include a denial of a request for restoration of any benefits lost more than ninety days but less than one year prior to the request. In addition, at any time within the period for which a person is certified to receive food stamp benefits, such person may request a fair hearing to dispute the current level of benefits.

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

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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.

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.

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;
- 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;

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- 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

DISCUSSION

By notice dated October 6, 2008, the Agency advised the Appellant of its determination to reduce the Appellant's Public Assistance benefits in order to recover an overpayment of Public Assistance in the amount of \$137.00 due to agency error.

The Agency's Notice of Intent dated October 6, 2006 did not include the dollar amount of assistance prior to the reduction and the reduced amount subsequent to the reduction as required by 18 NYCRR 358-2.2. This defect in the Agency's notice renders it void and, therefore, the Agency's determination to reduce the Appellant's Public Assistance benefits cannot be sustained.

It is noted that this defect serves to both toll the statute of limitations contained in the October 6, 2006 Notice **and** to void the Notice. Consequently, there is no statute of limitations issue to be reviewed.

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DECISION AND ORDER

The Agency determination to recover an overpayment of Public Assistance in the amount of \$137.00 due to agency error is not correct and is reversed.

1. The Agency is directed not to take any further action to recover the overpayment of Public Assistance in the amount of \$137.00 and to delete the recoupment from its records.

2. The Agency is directed to restore any lost Public Assistance benefits to the Appellant as a result of the Agency's action.

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

DATED: Albany, New York
01/06/2009

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink, appearing to read "J. Coit". The signature is written in a cursive, somewhat stylized font.

Commissioner's Designee

CROTONA JOB CENT 67
1910 MONTEREY AVENUE
BRONX, NY N.Y. 10457



The City of New York

HUMAN RESOURCES ADMINISTRATION
FAMILY INDEPENDENCE ADMINISTRATION

NOTICE OF INTENT TO REDUCE PUBLIC ASSISTANCE

CLIENT COPY

H



DATE: 10/06/2006

CASE NO: RTI

444

AGENCY ERROR

DATE
07/21/2006

AMOUNT
\$137.00

Dear Sir or Madam:

This department intends to reduce your public assistance grant on
to recover an:

10/25/2006*

OVERPAYMENT OF ASSISTANCE IN THE AMOUNT OF \$137.00.
THIS IS BECAUSE YOUR PUBLIC ASSISTANCE CASE WAS CLOSED
ON 07/17/2006. YOU HAD ALREADY RECEIVED BENEFITS FOR THE
CYCLE THAT ENDED AFTER THE CLOSING DATE. THE (PA) YOU
RECEIVED FOR THE PERIOD FROM THE CLOSING DATE UNTIL THE
END OF THE CYCLE MUST BE PAID BACK TO THIS AGENCY.

THE REGULATION WHICH ALLOWS US TO DO THIS IS
18 NYCRR 352.31(D).
YOUR GRANT WILL BE REDUCED BY 10 PERCENT OF YOUR
HOUSEHOLD NEEDS.
IF YOU HAVE AN EXISTING RECOUPMENT AT THE MAXIMUM RATE, NO
FURTHER REDUCTION IN YOUR GRANT WILL BE MADE UNTIL THE
CURRENT RECOUPMENT IS COMPLETED.

* IF YOU ARE NOT RECEIVING A GRANT, THE REDUCTION WILL
START IF YOU RESUME PUBLIC ASSISTANCE.

If a reduction is to take effect beginning with the first regular grant received after the date of the proposed reduction, you will be informed of the starting date and the amount of the first reduced grant. Thereafter, the amount recouped each cycle may vary as changes occur in your household needs and the number of recoupments on record, but will not be affected by budgeted income.

If your current household needs (pre-added, rent and miscellaneous allowance if any) and the number of recoupments remain the same, recoupment will last for approximately
10 issues.

YOU MAY HAVE A CONFERENCE TO DISCUSS THIS NOTICE.

If you do not understand this notice or are in disagreement with the action, we will review this decision with you if you call us at
(718) 237-6916

and ask for a LOCAL CONFERENCE. You also have the right to ask for a STATE FAIR HEARING. You must request a STATE FAIR HEARING within 60 days of the date on the top of this Notice. You must meet this deadline to request a STATE FAIR HEARING even if you ask for a LOCAL CONFERENCE first. The STATE FAIR HEARING is held by the New York State Office of Temporary and Disability Assistance. If you request a STATE FAIR HEARING before the effective date of this Notice, you will continue to receive your benefits unchanged until the STATE FAIR HEARING decision is issued. A request for a LOCAL CONFERENCE alone will not result in a continuation of benefits.

BE SURE TO READ THE REVERSE ON HOW TO APPEAL THIS DECISION.

CONFERENCE AND FAIR HEARING INFORMATION

CONFERENCE (Informal meeting with us): If you think our decision was wrong or if you do not understand our decision, please call the Fair Hearing and Conciliation (FH&C) Unit at the number found on the front, or write to your Income Support/Job Center to arrange a meeting. Sometimes this is the fastest way to solve any problems you may have. We encourage you to do this even when you ask for a fair hearing. At the conference, if we discover that we made a wrong decision or if, because of information you provide, we change our decision, we will take corrective action and give you a new notice. (See Keeping Your Benefits the Same, below.)

STATE FAIR HEARING

Deadline for Request: If you want the State to review our decision, you must ask for a fair hearing within 60 days from the date of the notice for Public Assistance, Medical Assistance and Social Service issues, and 90 days for Food Stamp issues.

Keeping Your Benefits the Same: We will keep your benefits the same as they were before this notice if you ask for a fair hearing before the effective date of the notice. 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.

Right to a Fair Hearing: If you believe the action(s) we are taking is (are) wrong, you may request a State fair hearing by telephone, in writing, by fax, or in-person.

(1) **Telephone:** (212) 417-6550 (Please have this notice with you when you call.)

-OR-

(2) **Write:** Send a copy of this notice, with this side completed, to the Office of Administrative Hearings, New York State Office of Temporary and Disability Assistance, P.O. Box 1930, Albany, New York 12201. Please keep a copy for yourself.

-OR-

(3) **Fax:** Send a copy of the notice, with this side completed, to FAX Number: (518) 473-8735.

-OR-

(4) **Walk-in:** Bring a copy of the notice, with this side completed, to a New York State Office of Temporary and Disability Assistance office listed below:
14 Boerum Place, Brooklyn
109 East 16th Street, Manhattan, 3rd Floor
330 West 34th Street, Manhattan, 3rd Floor

I want a fair hearing. The Agency's action is wrong because:

Signature of Participant: _____ Date: _____

Print Name: _____ Case Number: _____

Address: _____ Telephone Number: _____

If you request a fair hearing, the State will send you a notice informing you of the time and place of the hearing. You have the right to be represented by legal counsel, a relative, a friend or other person, or to represent yourself. At the Fair Hearing, you or your representative have the opportunity to present written and oral evidence, establish facts and circumstances and to question or refute the evidence presented by the local agency. Your attorney or other representative will have the opportunity to present written and oral evidence to demonstrate why the action should not be taken, as well as an opportunity to question any persons who appear at the hearing.

LEGAL ASSISTANCE: If you need free legal assistance, you may be able to obtain such assistance by contacting your local Legal Aid Society or other legal advocate group. You may locate the nearest Legal Aid Society or advocate group by checking your Yellow Pages under "Lawyers".

ACCESS TO YOUR FILE AND COPIES OF DOCUMENTS: To help you get ready for the hearing, you have a right to look at your case file. If you call or write to 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 or write us, we will send you free copies of other 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 the Fair Hearing and Conciliation (FH&C) Unit at the telephone number found on the front, or write to your Income Support/Job Center at the address listed at the top of this notice. If you want copies of documents from your case file, you should ask for them ahead of time.

If your situation is extremely serious, the State will attempt to process your request for a Fair Hearing as quickly as possible. If you call to request a Fair Hearing, please be prepared to explain your situation to the person who answers the phone. If you write for a fair hearing, please explain your situation and enclose a copy of this notice.