
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 January 8, 2009, in [REDACTED], before Irving J. Weitzman, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[REDACTED], Appellant

For the Social Services Agency

H. Singh, Fair Hearing Representative

ISSUE

Was the Agency's determination to reduce the Appellant's Public Assistance benefits to recoup \$381.50 based on its Notice of Intent dated November 21, 2008 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 November 21, 2008, the Agency advised the Appellant of its determination to reduce the Appellant's Public Assistance benefits to recoup \$381.50 on the grounds that she received an overpayment of assistance in that amount.

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3. The Agency's Notice of Intent dated November 21, 2008 did not include the previous and new amounts of assistance or benefits to be provided to the Appellant as a result of the Agency's determination.

4. On December 12, 2008, the Appellant requested this fair hearing.

APPLICABLE LAW

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.

In general, 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). An adequate, though not timely, action taken notice is required where the Agency has accepted or denied an application for Food Stamps; or has increased the Food Stamp benefits; or has determined to change the amount of one of the items used in the calculation of the Food Stamp benefits. 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.

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;

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- 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;
- 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;

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- 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

The Appellant requested this hearing to review the Agency's determination to reduce the Appellant's Public Assistance benefits based on its Notice of Intent dated November 21, 2008.

A review of the Agency's notice shows that it did not include the previous and new amounts of assistance or benefits to be provided as required by 18 NYCRR 358-2.2. Such a defect in the Agency's notice make it void and therefore, the Agency's determination to reduce 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 any Public Assistance benefits recouped from the Appellant in recovery of the said \$381.50 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.

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

FH# 5174447K

DATED: Albany, New York
02/04/2009

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink, appearing to read "J. Costello". The signature is written in a cursive style with a large initial "J" and a distinct "Costello" following.

Commissioner's Designee

130

RIVERVIEW ANNEX 18
132 W 125TH ST, 2ND
NEW YORK N.Y. 10027



The City of New York
HUMAN RESOURCES ADMINISTRATION
FAMILY INDEPENDENCE ADMINISTRATION

NOTICE OF INTENT TO REDUCE PUBLIC ASSISTANCE

CLIENT COPY

H

1

DATE: 11/21/2008

CASE NO: RTI

[REDACTED]

100

AGENCY ERROR	DATE	AMOUNT
	09/02/2008	\$381.50

Dear Sir or Madam:
This department intends to reduce your public assistance grant on 12/09/2008*
to recover an:

OVERPAYMENT OF ASSISTANCE IN THE AMOUNT OF \$381.50.
THIS IS BECAUSE YOUR PUBLIC ASSISTANCE CASE WAS CLOSED
ON 09/02/2008. 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 1 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 (212) 666-5308 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) 473-6735.

-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.

RIVERVIEW ANNEX 18
132 W 125TH ST, 2ND
NEW YORK N.Y. 10027



The City of New York

HUMAN RESOURCES ADMINISTRATION
FAMILY INDEPENDENCE ADMINISTRATION

AVISO DEL INTENTO PARA REDUCIR ASISTENCIA PÚBLICA

CLIENT COPY

H



FECHA: 11/21/2008

NÚMERO DE CASO: RTI

100

ERROR DE LA AGENCIA

FECHA
09/02/2008

CANTIDAD
\$381.50

Estimado(a) Sr(a):

Este Departamento tiene la intención de reducir su concesión de asistencia

pública en 12/09/2008* para recuperar:

SOBREPAGO DE ASISTENCIA EN LA CANTIDAD DE \$381.50.
ESTO ES PORQUE SU CASO DE ASISTENCIA PÚBLICA FUE CERRADA
EL 09/02/2008. USTED YA HABIA RECIBIDO BENEFICIOS POR EL
CICLO TERMINADO DESPUES DE LA FECHA DE CIERRE. LA
ASISTENCIA PÚBLICA QUE RECIBIO PARA EL PERIODO DESDE LA
FECHA DEL CIERRE HASTA EL FINAL DEL CICLO DEBERA SER
DEVUELTA A ESTA AGENCIA.

EL REGLAMENTOS QUE NOS PERMITE LLEVAR ESTO A CABO ES EL
18 NYCRR 352.31(D).
SU CHEQUE SERA REDUCIDO UN 10 POR CIENTO DE LAS NECESIDADES
DE SU HOGAR.
SI USTED TIENE UNA RECUPERACION EXISTENTE DEL PORCENTAJE
MAXIMO, NO SE EFECTUARA NINGUNA REDUCCION ADICIONAL DE SU
ASIGNACION HASTA QUE SE TERMINE LA RECUPERACION ACTUAL.
* SI NO ESTA RECIBIENDO BENEFICIOS, LA REDUCCION EMPEZARA
CUANDO REANUDE LA ASISTENCIA PÚBLICA.

Si una reducción se va a llevar a cabo comenzando con la primera concesión recibida a partir de la fecha de la reducción propuesta, se le informará la fecha en que comienza y la cantidad de la primera concesión reducida. De allí en adelante, la cantidad recuperada cada ciclo pueda variar de acuerdo a cambios en las necesidades de su hogar y el número de recuperaciones en registro, pero no será afectada por ingreso presupuestado.

Si sus necesidades actuales de su hogar (pre-sumada, alquiler y asignaciones misceláneas, si existe alguno) y el número de recuperaciones permanece igual, la recuperación durará aproximadamente 1 emisiones.

USTED TIENE EL DERECHO DE APELAR ESTA DECISIÓN

Si usted no entiende este aviso o está en desacuerdo con la acción, nosotros revisaremos la decisión con usted si nos llama al (212) 666-5308

y solicita una CONFERENCIA LOCAL. Usted también tiene derecho a solicitar una VISTA IMPARCIAL ESTATAL. Usted debe solicitar una VISTA IMPARCIAL ESTATAL. Usted debe solicitar la VISTA IMPARCIAL ESTATAL a no más de 60 días de la fecha que aparece en este aviso para Asistencia Pública y asuntos de Asistencia Médica. Usted debe cumplir con este límite de tiempo para solicitar una VISTA IMPARCIAL ESTATAL, aun si ha solicitado una CONFERENCIA LOCAL primero. La VISTA IMPARCIAL ESTATAL es conducida por el New York State Office of Temporary and Disability Assistance. Si usted solicita una VISTA IMPARCIAL ESTATAL antes de la fecha de vigencia de este aviso, usted continuará recibiendo sus beneficios hasta que la decisión de la VISTA IMPARCIAL ESTATAL sea tomada. Una solicitud para una CONFERENCIA LOCAL, por sí sola, no resultará en la continuación de sus beneficios.



INFORMACIÓN SOBRE CONFERENCIA Y AUDIENCIA IMPARCIAL

CONFERENCIA (Reunión informal con nosotros): Si usted considera que nuestra decisión fue errónea o si no entiende nuestra decisión, por favor llame al Fair Hearing and Conciliation (FH&C) Unit, al número de teléfono que aparece al frente, o escriba a su Income Support/Job Center para acordar una cita. A veces esta es la manera más rápida para resolver cualquier problema que usted pueda tener. Nosotros le recomendamos que haga esto aún cuando ha solicitado una audiencia imparcial. Si durante la conferencia nosotros descubrimos que tomamos una decisión errónea o si, debido a la información que usted provea, determinamos cambiar nuestra decisión tomaremos acción correctiva y le proporcionaremos una nueva notificación. (Vea debajo: Manteniendo Sus Beneficios Iguales.)

AUDIENCIA IMPARCIAL ESTATAL

Límite de Tiempo para Peticiones: Si usted desea que el estado revise nuestra decisión, usted debe solicitar una audiencia imparcial antes de los 60 días de la fecha del aviso de Asistencia Pública, Asistencia Médica y Asuntos de Servicios Sociales, y antes de los 90 días para asuntos de Cupones de Alimento.

Manteniendo Sus Beneficios Iguales: Nosotros mantendremos sus beneficios iguales a como estaban antes de este aviso, si solicita una audiencia imparcial antes de la fecha actual de este aviso. Si usted no desea que sus beneficios permanezcan iguales hasta que se emita una decisión, usted debe comunicárselo al estado cuando escriba o llame para solicitar una audiencia imparcial.

Derecho a una Conferencia Imparcial: Si usted cree que la(s) acción(es) que estamos tomando es(són) errónea(s), usted puede solicitar una Audiencia Imparcial Estatal por teléfono, por escrito, por fax, o en persona.

(1) **Llame:** (212) 417-6550 (favor de tener este aviso o mano cuando llame.)

—○—

(2) **Escriba:** Envíe una copia de este lado completado, a: Office of Administrative Hearings, New York State Office of Temporary and Disability Assistance, P.O. Box 1930, Albany, New York 12201.
Por favor mantenga una copia para usted.

—○—

(3) **Fax:** Envíe una copia de este aviso, con este lado completado, al número de Fax: (518) 473-6735.

—○—

(4) **Lleve:** Lleve una copia de este aviso, con este lado completado, a una de las oficinas de New York State Office of Temporary and Disability Assistance que aparece listada debajo:

14 Boerum Place, Brooklyn
109 East 16th Street, Manhattan, 3rd Floor
330 West 34th Street, Manhattan, 3rd Floor

Deseo una audiencia imparcial. La acción de la agencia es errónea porque:

Firma del Participante: _____ Fecha: _____

Nombre Impreso: _____ Número de Caso: _____

Dirección: _____ Número de Teléfono: _____

Si usted solicita una audiencia imparcial, el estado le enviará una notificación informándole la hora y el lugar de la audiencia. Usted tiene el derecho de ser representado(a) por un abogado, un familiar, un amigo u otra persona, o puede representarse a sí mismo. Durante la Audiencia Imparcial, el solicitante/participante o su representante tiene la oportunidad de presentar evidencias escritas u orales, establecer hechos y circunstancias y cuestionar o argumentar la evidencia presentada por la agencia local. Su abogado u otro representante tendrá la oportunidad de presentar evidencia escrita y oral para demostrar la razón por la cual la acción no debe ser llevada a cabo, así como también tendrá oportunidad de interrogar a cualquier persona que se presente a la audiencia.

ASISTENCIA LEGAL: Si usted necesita asistencia legal gratis, usted puede obtener tal ayuda contactando la sociedad de ayuda legal de su localidad (Legal Aid Society) u otro grupo legal de abogacía. Usted puede localizar la sociedad de ayuda legal o grupo de abogacía más cercano, buscando en sus páginas amarillas bajo "lawyers" (abogados).

ACCESO A SU REGISTRO Y COPIAS DE DOCUMENTOS: Para ayudarlo a prepararse para la audiencia, usted tiene derecho a revisar el registro de su caso. Si usted nos llama o escribe le enviaremos copias gratis de los documentos de sus registros, los cuales entregaremos al oficial de audiencia en la audiencia imparcial. También, si usted nos llama o escribe, le enviaremos copias gratis de otros documentos de su registro que considere que puede utilizar para su audiencia imparcial. Para solicitar documentos o para saber cómo revisar su registro, llame al Fair Hearing and Conciliation (FH&C) Unit al número de teléfono que aparece al frente, o escriba a su Income Support/Job Center a la dirección que aparece en la parte superior de este aviso. Si usted desea copias de documentos del registro de su caso, usted debe solicitarlas con anticipación.

Si su situación es extremadamente seria, el estado intentará procesar su petición una audiencia imparcial lo más pronto posible. Si usted llama para solicitar una audiencia imparcial, por favor este preparado para explicar su situación a la persona que conteste el teléfono. Si usted solicita una audiencia imparcial por escrito, por favor explique su situación y adjunte una copia de este aviso.