

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST February 25, 2005
CASE # Pxxxxxx
CENTER Schenectady
FH # 4288178L

In the Matter of the Appeal of :

JC
On Behalf of : **DECISION**
JC : **AFTER**
 : **FAIR**
 : **HEARING**

from a determination by the Schenectady County
Department of Social Services :

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 April 8, 2005, in Schenectady County, before Adedayo Osofisan, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

JC, Appellant; Dr. Lawrence Elliot, Appellant's Representative

For the Social Services Agency

M. McGeoch, Fair Hearing Representative

ISSUE

Was the Agency's determination to reduce the Appellant's Public Assistance benefits based on its Notice of Intent dated February 17, 2005 correct?

FACT FINDING

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 receives Public Assistance benefits on behalf of her son, JC.
2. The Appellant is in receipt of Supplemental Security Income.
3. On February 15, 2005, the Appellant was notified by the Agency that her Public Assistance case has been recertified for the period February 1, 2005 to January 31, 2006.
4. The notice informed the Appellant that she will continue to get the same amount of Public Assistance benefits \$450.00.
5. The notice also stated that even though the Agency figured the

Appellant's Public Assistance benefits again in February 1, 2005, it did not change the amount of Public Assistance benefits the Appellant will receive.

6. On February 17, 2005, the Agency notified the Appellant that she will continue to get the same amount of Public Assistance benefits: \$259.00.

7. The notice stated that even though the Agency figured the Appellant's Public Assistance benefits again for March 1 2005, it did not change the amount of Public Assistance benefits the Appellant gets.

8. The notice informed the Appellant that this Agency's decision is based on Regulation 18 NYCRR 351.22(d).

9. On February 25, 2005, the Appellant requested this fair hearing.

APPLICABLE LAW

A recipient of Public Assistance, Medical Assistance or Services has a right to an 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 an 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.

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

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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.

18 NYCRR 358-2.2

DISCUSSION

The record establishes that the Appellant receives Public Assistance benefits on behalf of her son, JC. The Appellant is in receipt of Supplemental Security Income.

The record further establishes that on February 15, 2005, the Appellant was notified by the Agency that her Public Assistance case has been recertified for the period February 1, 2005 to January 31, 2006. The notice informed the Appellant that she will continue to get the same amount of Public Assistance benefits: \$450.00. The notice stated that even though the Agency figured the Appellant's Public Assistance benefits again for February

1, 2005, it did not change the amount of Public Assistance benefits the Appellant gets.

On February 17, 2005, the Agency once again notified the Appellant that she will continue to get the same amount of Public Assistance benefits: \$259.00. The notice stated that even though the Agency figured the Appellant's Public Assistance benefits again for March 1 2005, it did not change the amount of Public Assistance benefits the Appellant gets. The notice informed the Appellant that this Agency's decision is based on Regulation 18 NYCRR 351.22(d). Appellant requested this hearing to contest the Agency's February 17, 2005, determination.

At the hearing, the Agency's representative contended that the Appellant's Public Assistance was reduced pursuant to 04-ADM-05 dated July 1, 2004, which provides that whenever an individual or family lives in the same dwelling unit with an SSI family member, the presence of the SSI adult or child must be considered when determining the household's standard of need. The SSI individual's SSI benefit counts only against the SSI individual's need, not against the needs of the Temporary Assistance family members.

The Appellant's representative's, Dr. Lawrence Elliot, position was that the Agency's notice must be withdrawn because it is defective on the following grounds;

1. The notice stated that the Appellant's Public Assistance benefits will remain the same. However as per the February 15, 2005 notice, this latter notice actually reduces the Appellant's Public Assistance grant. This Dr. Elliot stated, is in contradiction to the regulation cited above which provides that for reductions, an adequate notice must contain the previous and new amounts of assistance or benefits provided.

2. The cited regulations upon which the Agency based its determination does not support the Agency's action. The cited regulations- 18 NYCRR 351.22(d) provides for the consequences of a household's failure to cooperate without good cause in a quality control review and this has nothing to do with budgeting a household with an SSI member.

Dr. Elliot cited the case of Ector V Blum as authority to have the Agency's notice withdrawn. In this decision, the Supreme Court, Appellate Division, Third Department, New York (80 A.D.2d 931, 437 N.Y.S.2d 776). held that where notice of intent to discontinue Public Assistance benefits cited regulation as authority for such action and decision terminating assistance referred to different regulations, notice of intent did not adequately inform recipient of what action Agency intended to take, the reasons for the intended action and the specific regulations supporting such action. Agency's determination was therefore reversed.

The Appellant's contentions are correct. The Agency's notice did not contain the specific laws and/or regulations upon which the action is based as required by 18 NYCRR 358-2.2., above. Neither inform the Appellant that her benefits was being reduced. It actually misinformed the Appellant.

The above-noted defects in the Agency's notice render such notice void. Therefore, the Agency's determination to reduce the Appellant's Public Assistance benefits pursuant to the February 17, 2005 notice cannot be sustained.

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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 required, the Appellant must provide it to the Agency promptly to facilitate such compliance.

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

DATED: Albany, New York
June 21, 2005

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee