

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

REQUEST February 21, 1990
CASE No.
CENTER No. 70
FH No. 1501258H

In the Matter of the Appeal of :
R E :
: DECISION
: AFTER
: FAIR
from a determination by the New York City :
Department of Social Services : HEARING
: :
: :

JURISDICTION

This appeal is from a determination by the local Social Services Agency to discontinue the Appellant's Public Assistance and Food Stamp benefits based upon the household's retention of non-exempt resources where the equity value was greater than the amount allowed for a Public Assistance and Food Stamp household.

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on March 23, 1990, in New York City, before William Halpert, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

R E , Appellant

Beth Sutterlin, Attorney-at-Law, Appellant's representative

For the Local Social Services Agency

Gerald Hanratty, Fair Hearing Representative

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:

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1. The Appellant was been in receipt of Public Assistance and Food Stamp benefits.

2. On February 8, 1990, the Agency determined to discontinue the Appellant's Public Assistance on the grounds that, as of July 27, 1990, the Appellant was in possession of a bank account that had a balance of \$7,000.

3. On February 21, 1990 the Appellant requested this hearing to review the Agency's determination that the equity value of Appellant's household's non-exempt resources rendered the household ineligible for Public Assistance and Food Stamp benefits.

ISSUE

Was the Agency's determination that the Appellant's household was ineligible for Public Assistance and Food Stamp benefits correct?

APPLICABLE LAW

Section 358-3.3(a)(1) of Department Regulations provides that a recipient has the right to timely and adequate notice when a local social services agency proposes to discontinue a grant of Public Assistance. Section 358-3.3(b)(1) provides that a recipient has a right to timely and adequate notice when such proposed action concerns Food Stamp benefits.

Section 358-2.2(c) of Department Regulations provides that an adequate notice must include the specific reasons for the action.

DISCUSSION

The record in this case establishes that, on February 8, 1990, the Agency sent the Appellant a Notice of Intent to Discontinue Public Assistance and Food Stamp benefits. The notice advised the Appellant of the Agency's determination to discontinue the Appellant's Public Assistance and Food Stamp benefits on the grounds that, as of July 27, 1990, the Appellant was in possession of a bank account that had a balance of \$7,000.00. Department Regulations provide that a recipient of Public Assistance and Food Stamp benefits has the right to timely and adequate notice when the Agency proposes to discontinue such benefits. Department Regulations further provide that an adequate notice must contain the reasons for its proposed action. Since the Agency's notice advises that the Appellant has excess resources as of a date in the future, the Agency has not fully advised the Appellant of its reasons for the proposed action. Accordingly, the Agency's notice in this case is not adequate as defined by Department Regulations and no further action may be taken on this notice.

DECISION AND ORDER

The Agency's determination that the Appellant's household was ineligible for Public Assistance and Food Stamp benefits is not correct and is reversed.

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1. The Agency is directed to cancel its notice dated February 8, 1990 and to take no further action thereon.
2. The Agency is directed to restore any benefits lost as a result of the Agency's notice dated February 8, 1990.
3. If, in the future, the Agency determines to implement its previous action, it is directed to issue a new, timely and adequate Notice of Intent.

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

DATED: Albany, New York

CESAR A. PERALES
COMMISSIONER

By *Michael Zeffrentz*

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Commissioner's Designee