
In the Matter of the Appeal of

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from a determination by the New York City
Department of Social Services

DECISION
: WITHOUT
EVIDENTIARY
HEARING
:

By letter dated March 2, 1988, the Appellant's representative, Eugene Doyle, requested that a decision without an evidentiary hearing be issued pursuant to 18 NYCRR 358.19 on a February 16, 1988 notice issued to the Appellant by the Agency. Pursuant to 18 NYCRR 358.19, by letter dated March 8, 1988, copies of the Appellant's request and supporting documents were sent to the Agency with a request for answering papers within ten working days. No evidence has been received from the Agency and the time to submit such evidence has expired.

FACT FINDINGS

An opportunity to be heard having been afforded to all interested parties and evidence having been submitted and due deliberation having been had, it is hereby found that:

1. The Appellant is in receipt of Public Assistance for a three person family and Food Stamp benefits for a three person household.
2. On February 16, 1988, the Agency sent the Appellant a notice entitled "Notice of Intent to Reduce Public Assistance, Medicaid and/or Food Stamp Benefits".
3. Such notice stated that Appellant's household's current Food Stamp grant was \$228.00 and that his household's new Food Stamp grant was \$210.00.
4. None of the boxes on such notice were checked to indicate the action to be taken on Appellant's Food Stamp benefits.
5. After the statement "Your Food Stamp benefit will be terminated at the same time your public assistance is reduced" the following language was inserted in handwritten form "case rebudgeted income amt \$505.36 removed".
6. On March 2, 1988, the Appellant's representative, Eugene Doyle, requested that a decision without an evidentiary hearing be issued pursuant to 18 NYCRR 358.19 to determine whether the Agency's notice dated February 16, 1988 violated federal and state requirements concerning notices of termination or reduction of Food Stamp benefits.

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7. Although requested to do so by letter dated March 8, 1988, the Agency has not submitted any evidence in opposition to the Appellant's allegations.

ISSUE

Was the Agency's notice dated February 16, 1988 relating to Appellant's Food Stamp benefits a proper notice?

APPLICABLE LAW

Department Regulations at 18 NYCRR 387.20(b) provide that each Food Stamp household must be notified in writing of any change, reduction or termination of the household's Food Stamp benefits and of the reason for the proposed action. Such section provides that the notice must explain in easily understandable language: the proposed action including the applicable regulatory citation; a copy of the new Food Stamp budget; the household's right to request a fair hearing; a telephone number to secure additional information; the availability of continued Food Stamp benefits; and the liability of the household for any Food Stamp benefits received while awaiting a fair hearing if the decision affirms the local agency's action.

Federal Regulations at 7 CFR 273.13 require that notice of adverse action must be timely and adequate. To be adequate, the notice must set forth in easily understandable language the proposed action, the reasons for the proposed action, the right to request a hearing, the telephone number, and, if possible, a contact person for additional information, the availability of continued benefits and the potential liability of the household for overissuances received while awaiting a hearing. In addition, where an individual or organization is available to provide free legal representation, the household must be advised of the availability of such service.

Where Food Stamp benefits are lost due to an error by the Agency, the Agency is required to restore lost benefits. However, lost benefits shall be restored for not more than twelve months prior to whichever of the following occurred first:

1. The date the Agency received a request for restoration from a household; or
2. The date the Agency is notified or otherwise becomes aware that a loss to a household has occurred.

7 CFR 273.17; 18 NYCRR 387.18 and Department of Social Services Food Stamp Source Book, Section X-H-1.

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DISCUSSION

The Agency's notice of intent dated February 16, 1988 states that Appellant's household's current Food Stamp grant was \$228.00 and that his household's new Food Stamp grant was \$210.00; it would thus appear that the Agency intended to reduce Appellant's Food Stamp benefits; however the notice was not checked on any box to indicate a reduction of Food Stamp benefits, nor was any other box checked to indicate the intended action. However, after the statement "Your Food Stamp benefit will be terminated at the same time your public assistance is reduced", which was not checked, the following language was inserted in handwritten form "case rebudgeted income amt \$505.36 removed". The notice does not state on what date the intended action will be effective.

Federal and State requirements require that the proposed action be set forth in easily understandable language. The notice of intent dated February 16, 1988, although entitled a "Notice of Intent to Reduce Public Assistance, Medicaid and/or Food Stamp Benefits" could be interpreted as either a notice of reduction or a notice of termination.

In addition, the notice does not indicate the period within which a fair hearing must be requested in order for Food Stamp benefits to be continued until a fair hearing decision is issued which information is required by State and Federal regulations; nor does the notice cite a regulation upon which the action is based which is required by 18 NYCRR 387.20(b).

Although requested to do so by letter dated March 8, 1988, the Agency has not submitted any evidence in opposition to the Appellant's allegations.

DECISION AND ORDER

The Agency's notice dated February 16, 1988 is not a proper notice.

1. The Agency is directed to withdraw its notice dated February 16, 1988.
2. The Agency is directed to restore Appellant's Food Stamp benefits to \$228.00 per month and restore all lost benefits retroactive to February 16, 1988.

Should the Agency in the future determine to implement its previous action it is directed to issue a proper notice.

As required by Department Regulations at 18 NYCRR 358.22, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York

APR 07 1988

CESAR A. PERALES
COMMISSIONER

BY *Walter E. Hylton*
Commissioner's Designee