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In the Matter of the Appeal of

J P

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

DECISION  
: WITHOUT  
EVIDENTIARY  
HEARING  
:

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By letter dated January 7, 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 December 30, 1987 notice issued to the Appellant by the Agency. Pursuant to 18 NYCRR 358.19, by letter dated January 25, 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.

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. Appellant has been in receipt of Public Assistance.

2. By notice dated December 30, 1987 the Agency notified the Appellant that his Public Assistance grant would be discontinued effective January 9, 1988 on the grounds that he was in possession of assets which exceeded the allowable amount for Public Assistance.

3. On January 7, 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 December 30, 1987 to discontinue the Appellant's Public Assistance was defective because it relies on a regulation which has no relevance to the charge specified in the notice; whether the notice was defective because it failed to specify the nature or amount of the asset in question; and whether such notice was defective because it failed to specify the amount of assets allowable to maintain eligibility for Public Assistance.

4. Although requested to do so by letter dated January 25, 1988, the Agency has not submitted any evidence in opposition to the Appellant's allegations.

ISSUE

Was the Agency's notice dated December 30, 1987 to discontinue the Appellant's Public Assistance a proper notice?

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APPLICABLE LAW

Department policy (81 ADM-55) requires that a notice of intent to discontinue Public Assistance benefits cite the regulation upon which the proposed action is based.

Department Regulations at 18 NYCRR 358.8(a)(2) state that the notice must include details of the reasons for the proposed action.

DISCUSSION

The uncontroverted evidence establishes that, by notice dated December 30, 1987, the Agency advised the Appellant that the Agency intended to discontinue his Public Assistance grant on January 9, 1988 on the grounds that he was in possession of assets that exceeded the allowable amount for Public Assistance. The notice advised the Appellant to "see 18 NYCRR 352.11." Department Regulation 18 NYCRR 352.11 relates to the recovery of advance allowances. It does not relate, in any way, to the amount of assets allowable to maintain eligibility for Public Assistance.

Although duly notified of the request for a decision without an evidentiary hearing pursuant to 18 NYCRR 358.19, the Agency did not produce any evidence that the notice dated December 30, 1987 was proper.

DECISION AND ORDER

The notice dated December 30, 1987 to discontinue the Appellant's Public Assistance was not a proper notice.

1. The Agency is directed to withdraw its notice dated December 30, 1987 and to restore any lost benefits retroactive to January 9, 1988, the effective date of the Agency action.

2. The Agency is directed to continue assistance to the Appellant in the verified degree of need.

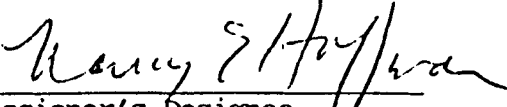
Should the Agency in the future determine to implement its previous action to discontinue the Appellant's Public Assistance, it is directed to issue a proper notice.

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

FEB 25 1988

CESAR A. PERALES  
COMMISSIONER

BY   
Commissioner's Designee