

STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: November 26, 2008  
CASE #: [REDACTED]  
CENTER #: 67  
FH #: 5163524K

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In the Matter of the Appeal of  
[REDACTED]

from a determination by the New York State  
Office of Temporary and Disability Assistance

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:  
:  
: **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 21, 2009, in [REDACTED], before Elizabeth Deutsch, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[REDACTED]

For the New York State Office of Temporary and Disability Assistance

Sylvia Bashford, Fair Hearing Representative

**ISSUE**

Was the Agency's determination to reduce the Appellant's Public Assistance benefits correct?

Was the Agency's determination to reduce the Appellant's Public Assistance benefits correct?

Was the Agency's determination to reduce the Appellant's Public Assistance benefits based on its Notice of Intent dated November 19, 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. On December 17, 2008, the Agency sent a Notice of Intent to the Appellant setting forth its intention to reduce the Appellant's Public Assistance benefits because Appellant was overpaid.
3. On January 30, 2009, the Agency sent a Notice of Intent to the Appellant setting forth its intention to reduce the Appellant's Public Assistance benefits because Appellant was overpaid.
4. By notice dated November 19, 2008, the Agency advised the Appellant of its determination to reduce the Appellant's Public Assistance benefits on the grounds that Appellant was overpaid.
5. On November 26, 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

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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;
- 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;

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- 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 evidence establishes that the Agency sent a Notice of Intent to the Appellant, dated December 17, 2008, advising the Appellant that it had determined to reduce the Appellant's Public Assistance benefits because Appellant was overpaid.

At the hearing the Agency agreed to withdraw its December 17, 2008 Notice of Intent to reduce the Appellant's Public Assistance benefits. The Agency also agreed to restore any assistance and benefits lost by the Appellant based on such action retroactive to the date of the Agency's action and to continue to provide assistance and benefits to the Appellant.

Based on the Agency's agreements made at the hearing, no issue remains to be decided with respect to the Agency's notice dated December 17, 2008.

The evidence establishes that the Agency sent a Notice of Intent to the Appellant, dated January 30, 2009, advising the Appellant that it had determined to reduce the Appellant's Public Assistance benefits because Appellant was overpaid.

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At the hearing the Agency agreed to withdraw its January 30, 2009 Notice of Intent to reduce the Appellant's Public Assistance benefits. The Agency also agreed to restore any assistance and benefits lost by the Appellant based on such action retroactive to the date of the Agency's action and to continue to provide assistance and benefits to the Appellant.

Based on the Agency's agreements made at the hearing, no issue remains to be decided with respect to the Agency's notice dated January 30, 2009.

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 19, 2008.

A review of the Agency's notice shows that the notice was defective in that it did not include law or regulations cited for its authority, nor did it include specific details as to the exact basis of the reduction. It is noted that the Notice of intent referred to an enclosure for the specifics as to the basis of its actions however no enclosure was included with the Notice of Intent. As required by 18 NYCRR 358-2.2. these defects 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**

With respect to the Agency's Notice of Intent dated December 17, 2008, in accordance with its agreement at the hearing, the Agency is directed to take the following actions if it has not already done so:

1. Withdraw its Notice of Intent dated December 17, 2008.
2. Take no further action on its Notice of Intent dated December 17, 2008.
3. Continue to provide Public Assistance benefits to the Appellant.
4. Restore the Appellant's Public Assistance benefits retroactive to the date of the Agency action.
5. If the Agency determines to implement its previously contemplated action, issue a new timely and adequate Notice of Intent.

Should the Agency in the future determine to implement its previous action, it is directed to procure and review the Appellant's complete relevant case record with respect to a determination relating to the Appellant's Public Assistance benefits, to issue a new Notice of Intent and to produce the required case record(s) at any subsequent fair hearing.

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With respect to the Agency's Notice of Intent dated January 30, 2009, in accordance with its agreement at the hearing, the Agency is directed to take the following actions if it has not already done so:

1. Withdraw its Notice of Intent dated January 30, 2009.
2. Take no further action on its Notice of Intent dated January 30, 2009.
3. Continue to provide Public Assistance benefits to the Appellant.
4. Restore the Appellant's Public Assistance benefits retroactive to the date of the Agency action.
5. If the Agency determines to implement its previously contemplated action, issue a new timely and adequate Notice of Intent.

Should the Agency in the future determine to implement its previous action, it is directed to procure and review the Appellant's complete relevant case record with respect to a determination relating to the Appellant's Public Assistance benefits, to issue a new Notice of Intent and to produce the required case record(s) at any subsequent fair hearing.

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 requested, 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.

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DATED: Albany, New York  
01/27/2009

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink that reads "Steven J. Bilmes". The signature is written in a cursive style with a large, prominent 'S' and 'B'.

Commissioner's Designee

LINDEN MODEL CENT67

45 HOYT ST.  
BKLYN N.Y. 11201



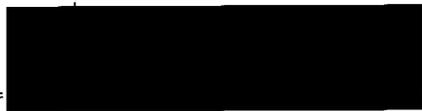
# The City of New York

HUMAN RESOURCES ADMINISTRATION  
DEPARTMENT OF INCOME MAINTENANCE

## NOTICE OF CHANGE IN GRANT AVISO DE CAMBIO DE BENEFICIO

DATE/FECHA:  
11/19/08  
CLIENT COPY

H



CASE NO./NUMERO DEL CASO:  
[REDACTED]

CURRENT GRANT/BENEFICIO ACTUAL:  
\$176.00

NEXT GRANT/PROXIMO BENEFICIO:  
\$158.40

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	DATE	AMOUNT								
CONTESTED REDUCTION	08/05/08	\$561.60								
**	SEE ENCLOSURE FOR UPDATED FAIR HEARING/CONFERENCE INFORMATION.	**								
**	ON 11/26/08, YOUR SEMI-MONTHLY GRANT WILL BE CHANGED TO THE AMOUNT SHOWN ABOVE BECAUSE OF THE ABOVE LISTED OVERPAYMENT. (NOTE: IF YOUR CURRENT GRANT IS BELOW \$2.50, THE RECOUPMENT WILL NOT START NOW, BUT WILL START WHENEVER YOUR GRANT IS INCREASED.)	**								
<p>THIS ACTION IS IN ACCORDANCE WITH A 'NOTICE(S) OF INTENT TO REDUCE PUBLIC ASSISTANCE' SENT TO YOU PREVIOUSLY OR IN ACCORDANCE WITH AN 'ACKNOWLEDGEMENT OF REDUCTION' SIGNED BY YOU PREVIOUSLY.</p> <p>THE AMOUNT OF THE RECOUPMENT REPRESENTS 10 PERCENT OF YOUR HOUSEHOLD NEEDS, AS A HARDSHIP LIMITATION WAS APPROVED.</p> <p>WHEN THERE ARE NO LONGER ANY RECOUPMENTS ON RECORD, YOU WILL RECEIVE A 'NOTICE OF COMPLETED RECOUPMENT'.</p>										
FOLD	<table border="0"> <tr> <td></td> <td style="text-align: center;">FECHA</td> <td style="text-align: center;">CANTIDAD</td> <td></td> </tr> <tr> <td style="text-align: center;">REDUCCION PROTESTADA</td> <td style="text-align: center;">08/05/08</td> <td style="text-align: center;">\$561.60</td> <td></td> </tr> </table>		FECHA	CANTIDAD		REDUCCION PROTESTADA	08/05/08	\$561.60		FOLD
	FECHA	CANTIDAD								
REDUCCION PROTESTADA	08/05/08	\$561.60								
**	VEA LA HOJA INCLUIDA PARA LA INFORMACION MAS RECIENTE SOBRE UNA CONFERENCIA/VISTA IMPARCIAL.	**								
**	EN 11/26/08 SU BENEFICIO SEMI-MENSUAL SERA CAMBIADO A LA CANTIDAD PROPORCIONADA ARRIBA DEBIDO AL SOBREPAGO INDICADO ARRIBA. (NOTA: SI SU BENEFICIO ACTUAL ES MENOS DE \$2.50, EL REEMBOLSO NO COMENZARA AHORA, SINO EN EL MOMENTO EN QUE SU BENEFICIO SEA AUMENTADO.)	**								
<p>ESTA ACCION ES DE ACUERDO CON EL 'AVISO DE INTENTO DE REDUCIR SU ASISTENCIA PUBLICA' QUE LE FUE ENVIADO PREVIAMENTE O DE ACUERDO CON EL 'RECONOCIMIENTO DE REDUCCION' QUE USTED FIRMO PREVIAMENTE.</p> <p>LA CANTIDAD DE RECUPERACION REPRESENTA UN 10 POR CIEN DE LAS NECESIDADES DE SU HOGAR, YA QUE UNA LIMITACION DE PENALIDAD FUE APROBADA...</p> <p>CUANDO YA NO QUEDEN RECUPERACIONES EN SU CASO, UD. RECIBIRA UN 'AVISO DE TERMINACION DE RECUPERACION'.</p>										
M-328B-1		446								

**THIS REDUCTION IN YOUR PUBLIC ASSISTANCE GRANT MAY RESULT IN AN INCREASE IN YOUR FOOD STAMP BENEFIT. THIS INCREASE IN FOOT STAMP BENEFITS WILL CONTINUE UNTIL THE RECOUPMENT IS COMPLETED. UPON COMPLETION OF THE RECOUPMENT, YOUR FOOD STAMP BENEFITS WILL BE DECREASED AS YOUR PUBLIC ASSISTANCE GRANT IS INCREASED.**

**YOU HAVE A RIGHT TO A FAIR HEARING IF YOU DON'T AGREE WITH OUR ACTIONS**

If you believe we should not take the above action, you should request a State fair hearing:

- (1) By telephoning 488-6550, or
- (2) By sending a copy of this notice to Fair Hearing Section, New York State Department of Social Services, P.O. Box 1930, Albany, New York 12201.

You must request a hearing within 60 days of the date we intend to reduce your public assistance.

If you request a fair hearing a notice will be sent to you telling you the time and place of the hearing. You can be represented by an attorney or other representative. You or your representative can present written and oral evidence to show why we should not reduce your public assistance grant, as well as the chance to question any persons who appear at the hearing and present evidence against you. You can bring witnesses to speak in your favor. You should bring to the hearing any documents such as paystubs, rent receipts, medical bills, heating bills, childcare expenses, etc., that may be helpful in supporting your case. You have the right to see the entire contents of your file before the hearing.

If you think you need legal assistance for your conference or fair hearing, you may be able to obtain it free if you cannot afford a lawyer by contacting a local legal aid or legal services office.

**ESTA REDUCCION EN SU BENEFICIO DE ASISTENCIA PUBLICA PUEDE RESULTAR EN UN AUMENTO EN SUS BENEFICIOS POR CUPONES DE ALIMENTOS. ESTE AUMENTO EN SUS BENEFICIOS POR CUPONES DE ALIMENTOS CONTINUARA HASTA QUE EL RECUPERAMIENTO SEA COMPLETADO. DESPUES QUE SE TERMINE LA RECUPERACION, SUS BENEFICIOS POR CUPONES DE ALIMENTOS SERAN REBAJADOS Y SU BENEFICIO DE ASISTENCIA PUBLICA AUMENTADA.**

**USTED TIENE DERECHO A UNA AUDIENCIA IMPARCIAL SI NO ESTA DE ACUERDO CON NUESTRAS DECISIONES**

Si considera que no debemos tomar la acción arriba mencionada debe solicitar una Audiencia imparcial Estatal llamando a:

- (1) Teléfono 488-6550, o
- (2) Enviando una copia de este aviso a Fair Hearing Section, New York State Department of Social Services, P.O. Box 1930, Albany, New York 12201.

Usted debe solicitar una audiencia dentro de los 60 días de la fecha en que intentamos reducir su asistencia pública.

Si solicita una audiencia imparcial, se le enviará notificación de la fecha y el lugar de la audiencia. Usted puede ser representado por un abogado u otra persona. Usted y su representante pueden presentar evidencia oral y escrita para demostrar porque no deben reducir su beneficio de asistencia pública. En la audiencia tendrá la oportunidad de interrogar cualquier persona que comparezca a la audiencia presentando evidencia en su contra. También puede traer personas que testifiquen a su favor. Debe traer a la audiencia documentos que le ayuden a presentar su caso tales como, talonarios de pagos, recibos de renta, facturas médicas, facturas de calefacción, gastos por cuidado infantil, etc. Usted tiene derecho a revisar los archivos de su caso antes de la audiencia.

Si cree que necesita asistencia legal para su conferencia o audiencia, y no puede costear un abogado, puede recibir este servicio gratis a través de ayuda legal local o en oficina de servicios legales.