

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

REQUEST: November 22, 1991
CASE No.
CENTER No. Oneida
FH No. 1751303L

In the Matter of the Appeal of	:	
	:	
S H	:	
	:	DECISION
	:	AFTER
	:	FAIR
from a determination by the Oneida County	:	HEARING
Department of Social Services	:	
	:	
	:	

JURISDICTION

This appeal is from a determination by the local Social Services Agency relating to the reduction of the Appellant's Public Assistance benefits.

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 January 2, 1992, in Oneida County, before Orrie Eihacker, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

S H , Appellant
Nancy Stormer, Legal Aid Society of Mid-New York
M H , Appellant's husband

For the Local Social Services Agency

Thomas Serviss and Phyllis Fenton, Agency Representatives

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 is in receipt of Public Assistance and Food Stamp benefits.

2. By notice dated October 25, 1991, effective November 1, 1991 the Agency advised the Appellant of its determination to reduce her Public Assistance benefits. The reason stated was "income lowered PA" and "recoupment of \$474.00 from income in August and September". The notice also advised the Appellant of the Agency's determination to reduce the Appellant's Food Stamp benefits from \$229.00 to \$185.00 due to "income

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increased lowered FS".

3. On November 22, 1991 the Appellant requested this fair hearing to review the Agency's determination to reduce her Public Assistance and Food Stamp benefits.

ISSUE

Was the Agency's determination to reduce the Appellant's Public Assistance benefits due to increased income and a recoupment correct?

Was the Agency's determination to reduce the Appellant's Food Stamp benefits correct?

APPLICABLE LAW

Section 358-3.3 of the Regulations sets forth notice requirements as follows:

- (a) Public assistance, medical assistance and services: notice of action.
 - (1) Action to discontinue, suspend, reduce, restrict; employability determinations.

Except as set forth in subdivision (d) of this section, you have a right to timely and adequate notice when a social services agency proposes to:

 - (i) take any action to discontinue, suspend, or reduce your public assistance grant, medical assistance authorization or services; or
- (d) Public assistance and medical assistance programs: Exceptions to timely notice requirements.
 - (2) As a recipient of public assistance, you have the right to adequate notice sent no later than the date of the proposed action when the following actions affect your public assistance grant:
 - (v) the social services agency action results from information you furnished in a monthly report required by section 351.24 of this Title;
- (b) Food stamps.
 - (1) Action to discontinue, reduce or recoup: adverse action notice.

Except as set forth in subdivision (e) of this section, when a social services agency proposes to take any action to discontinue or reduce your food stamp benefits you have the

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right to timely and adequate notice.

(e) Food Stamp Program: Exemption from notice requirements or timely notice requirements.

(3) As a recipient of food stamp benefits you have the right to an adequate notice sent no later than the date of the proposed action when a social services agency intends to suspend your food stamp benefits for one month if your household becomes ineligible due to a periodic increase in recurring income if such suspension results from information reported by your household on a monthly report.

Section 358-2.23 of the Regulations defines timely notice as follows:

Timely notice means a notice which is mailed at least 10 days before the date upon which the proposed action is to become effective.

Section 358-2.2 of the Regulations defines an adequate notice as follows

An adequate notice means a notice of action, or an adverse action notice or an action taken notice which sets forth all of the following:

- (a) the action the social services 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. Otherwise the notice shall state that there will be a separate notice for other affected assistance, benefits or services.
- (c) except in the case of an acceptance of an application for a covered program or service, the specific reasons for the action;
- (d) the specific laws and/or regulations upon which the action is based;
- (e) the applicant's or recipient's right to request an agency conference and fair hearing;
- (f) 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;
- (g) 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. Furthermore, 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.
- (h) when the agency action or proposed action is a reduction, discontinuance, restriction or suspension of public assistance,

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medical assistance, food stamp benefits or services, 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; that a fair hearing must be requested separately from a conference; and 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; and that participation in an agency conference does not affect the right to request a fair hearing and;

- (i) the right of the applicant or recipient to review the applicant's or recipient's case record and to obtain copies of documents which the agency will present into evidence at the hearing and other documents necessary for the applicant or recipient to prepare for the fair hearing at no cost. The notice must contain an address and telephone number where the applicant or recipient can obtain additional information about: the applicant's or recipient's case; how to request a fair hearing; access to the case file; and/or obtaining copies of documents;
- (j) 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;
- (k) the right to present written and oral evidence at the hearing;
- (l) the liability, if any, to repay continued or reinstated assistance and benefits, if the recipient loses the fair hearing;
- (m) information concerning the availability of community legal services to assist an applicant or recipient at the conference and fair hearing; and
- (n) 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. This subdivision does not apply to actions taken involving HEAP benefits.

DISCUSSION

The record establishes that by notice dated October 25, 1991 effective November 1, 1991, the Agency advised the Appellant of its determination to reduce her Public Assistance benefits for two reasons: a recoupment and application of income. The Agency's determination to reduce the Appellant's Public Assistance benefits due to the recoupment cannot be upheld because that portion of the notice was not timely. The Regulations require that notice of a reduction that is not based on information received in a monthly mailer must be done by way of a timely notice. Timely means a notice sent at least ten days before the day the action is to become effective. In this case, the notice was sent only five days before the effective date, and thus is not a timely notice. Accordingly, the Agency's determination to reduce

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the Appellant's Public Assistance benefits to recover an overpayment cannot be upheld.

The record further establishes that the Appellant had been submitting monthly reports to the Agency. That portion of the notice referring to the reduction based on income was due to retrospective budgeting, and thus the Appellant was not entitled to ten days notice. However, the Appellant is still entitled to adequate notice. The notice merely said "income lowered PA". The notice did not state what month's income was being applied. The Appellant is also entitled to adequate notice of the reasons for the reduction in Food Stamp benefits. The Food Stamp portion of the notice only said "income increased lowered FS". There was no evidence that a Public Assistance or Food Stamp budget had been sent to the Appellant, which would have explained what income was being budgeted. Accordingly, the Agency's determination to reduce the Appellant's Public Assistance and Food Stamp benefits due to the retrospective budgeting of income cannot be upheld.

DECISION AND ORDER

The Agency's determination to reduce the Appellant's Public Assistance benefits due to increased income and a recoupment is not correct and is reversed.

The Agency's determination to reduce the Appellant's Food Stamp benefits is not correct and is reversed.

1. The Agency is directed to take no action on its notice of October 25, 1991.

2. Should the Agency determine to take the same action in the future, it is directed to provide the Appellant with an adequate notice, and a timely notice if so required in accordance with the Regulations.

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

JAN 29 1992

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

By



Commissioner's Designee