

STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: October 4, 2006  
CASE #  
CENTER #  
FH #: 4643640Z

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

**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 November 30, 2006, in New York City, before Edward Paulino, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

, Appellant; A. Tavis, Esq., Urban Justice Center

For the Social Services Agency

Mr. Henderson, Fair Hearing Representative

**ISSUE**

Was the Appellant's request for a fair hearing to review the Agency determination, by Notice of Intent dated February 28, 2006, to reduce the Appellant's Family Assistance benefits on the grounds that the Appellant failed to comply with the vocational rehabilitation or training requirement timely?

Assuming the request was timely, was the Agency's determination to reduce the Appellant's Family Assistance benefits on the grounds that the Appellant failed to comply with the vocational rehabilitation or training requirement correct?

Was the Agency's determination, by Notice of Intent dated October 19, 2006, to reduce the Appellant's Public Assistance and Food Stamp benefits based on the Appellant's failure to comply with the work requirement correct?

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### **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 Family Assistance and Food Stamp benefits.
2. By notice dated February 28, 2006, the Agency advised the Appellant of its determination to reduce the Appellant's Family Assistance benefits on the grounds that the Appellant failed to comply with the vocational rehabilitation or training requirement.
3. The notice advised the Appellant that a fair hearing must be requested within sixty days of the date of the Agency's action.
4. On October 19, 2006, the Agency sent a Notice of Intent to the Appellant setting forth its intention to reduce the Appellant's Public Assistance and Food Stamp benefits because the Appellant failed to comply with the work requirement.
5. On October 4, 2006, the Appellant requested this fair hearing. The Appellant further review of the Agency's determination to recover an overpayment of Public Assistance. At the hearing, the Appellant withdrew her request for review of such issue.

### **APPLICABLE LAW**

Section 22 of the Social Services Law provides that applicants for and recipients of Public Assistance, Emergency Assistance to Needy Families with Children, Emergency Assistance for Aged, Blind and Disabled Persons, Veteran Assistance, Medical Assistance and for any services authorized or required to be made available in the geographic area where the person resides must request a fair hearing within sixty days after the date of the action or failure to act complained of. In addition, any person aggrieved by the decision of a social services official to remove a child from an institution or family home may request a hearing within sixty days. Persons may request a fair hearing on any action of the social services district relating to food stamp benefits or the loss of food stamp benefits which occurred in the ninety days preceding the request for a hearing. Such action may include a denial of a request for restoration of any benefits lost more than ninety days but less than one year prior to the request. In addition, at any time within the period for which a person is certified to receive food stamp benefits, such person may request a fair hearing to dispute the current level of benefits.

A recipient of Public Assistance, Medical Assistance or Services has a right to an adequate notice when the Agency proposes to discontinue, suspend, reduce or change the manner of payment of such benefits. 18 NYCRR 358-3.3(a). In addition, in most circumstances, a Food Stamp recipient has a right to an 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). However, pursuant to 18 NYCRR 358-3.3(e), there is no right to an adverse action notice when, for example, the change

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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.

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;
- 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;

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- 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

Additionally, Memorandum DSS-524HL dated May 1, 1991, indicates that any defect in the notice of intent tolls the statute of limitations. When the statute of limitations is tolled, the underlying merits of the case must be addressed unless it is determined that the defects in the notice are so serious that the notice is void. This kind of determination must be made on a case by case basis.

Regulations at 18 NYCRR 358-3.7(a) provide that an appellant has the right to examine the contents of the case record at the fair hearing. At the fair hearing, the agency is required to provide complete copies of its documentary evidence to the hearing officer. In addition, such documents must be provided to the appellant and appellant's authorized representative where such documents were not provided otherwise to the appellant or appellant's authorized representative in accordance with 18 NYCRR 358-3.7. 18 NYCRR 358-4.3(a). In addition, a representative of the agency must appear at the hearing along with the case record and a written summary of the case and be prepared to present evidence in support of its determination. 18 NYCRR 358-4.3(b). Except as otherwise established in law or regulation, in fair hearings concerning the discontinuance, reduction or suspension of Public Assistance, Medical Assistance, Food Stamp benefits or Services, the Agency must establish that its actions were correct. 18 NYCRR 358-5.9(a).

#### DISCUSSION

On February 28, 2006, the Agency notified the Appellant that it had determined to reduce the Appellant's Family Assistance benefits on the grounds that the Appellant failed to comply with the vocational rehabilitation or training requirement.

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Although the Agency's notice advised the Appellant that a fair hearing must be requested within sixty days of its action, the Appellant failed to request this fair hearing until October 4, 2006, which was more than sixty days after the Agency's determination.

At the hearing, the Appellant's Representative contended that the sixty day statute of limitations should be tolled since the Notice of Intent was defective. In particular, she contended that the notice of intent was defective since it failed to cite specifically how the Appellant failed to comply with the vocational rehabilitation or training requirement and the date(s) of such noncompliance. The Notice of Intent only indicates, in part, that the Appellant failed to accept referral or take part in vocational rehabilitation or training at "468C Wecare FTC Well Plan." The Notice of Intent failed to indicate, specifically, which sponsor agency the Appellant was referred to for vocational rehabilitation and how, in fact, she did not comply with such agency's rules and regulations. The above cited defects render the Notice of Intent defective. The record establishes a sufficient basis for tolling the statute of limitations.

Additionally, the above-noted defects in the Agency's notice render such notice void. The Agency further did not proceed on the underlying merits and failed to establish a basis for its determination that the Appellant failed to comply with the vocational rehabilitation requirement. Therefore, the Agency's determination to reduce the Appellant's Public Assistance benefits cannot be sustained.

Finally, the evidence establishes that the Agency sent a Notice of Intent to the Appellant, dated October 19, 2006, advising the Appellant that it had determined to reduce the Appellant's Public Assistance and Food Stamp benefits because the Appellant failed to comply with the work requirement.

At the hearing the Agency agreed to withdraw its October 19, 2006 Notice of Intent to reduce the Appellant's Public Assistance and Food Stamp 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 October 19, 2006.

### **DECISION AND ORDER**

The determination of the Agency to reduce the Appellant's Public Assistance was not correct and is reversed.

1. The Agency is directed to withdraw its Notice of Intent dated February 28, 2006 and restore all lost benefits retroactive to the date of the Agency action.

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With respect to the Agency's Notice of Intent dated October 19, 2006, 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 October 19, 2006.
2. Take no further action on its Notice of Intent dated October 19, 2006.
3. Continue to provide Public Assistance and Food Stamp benefits to the Appellant.
4. Restore the Appellant's Public Assistance and Food Stamp 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 and Food Stamp benefits, to issue a new Notice of Intent and to produce the required case record(s) at any subsequent fair hearing.

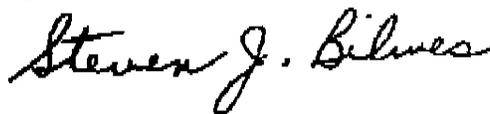
Should the Agency need additional information from the Appellant in order to comply with the above directives, it is directed to notify the Appellant promptly in writing as to what documentation is needed. If such information is requested, the Appellant must provide it to the Agency promptly to facilitate such compliance.

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

DATED: Albany, New York  
12/04/2006

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By



Commissioner's Designee