

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST July 25, 2001
CASE # P
CENTER # Erie
PH # 3567666K

In the Matter of the Appeal of :

S H

DECISION
: AFTER
FAIR
HEARING

from a determination by the Erie County
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, 2001, in Erie County, before John G. Herriman, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

S H Appellant; Marilyn Bradley Neighborhood Legal Services

For the Social Services Agency

Lawrence Ramunno, Special Examiner Erie County Department Social Services; Lorraine Kuntz Senior Examiner

ISSUE

Was the Agency's determination to discontinue the Appellant's Public Assistance, Food Stamp and Medical Assistance benefits based on the Appellant's failure to appear for a scheduled appointment in the SID office on January 31, 2001 correct?

Was the Agency's determination to discontinue the Appellant's Public Assistance, Food Stamp and Medical Assistance benefits based on its Notice of Intent dated July 16, 2001 correct?

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, age 33, has been in receipt of Public Assistance, Food Stamp and Medical Assistance benefits for a household of two, including her one year old son.

2. By notice dated July 16, 2001, the Agency advised the Appellant of its determination to discontinue the Appellant's Public Assistance, Food Stamp and Medical Assistance benefits on the grounds that failure to give complete and accurate information regarding household composition.

3. On July 25, 2001, the Appellant requested this fair hearing.

4. On September 18, 2001 the hearing scheduled for September 24, 2001 was adjourned at Appellant's request on account of her scheduled surgery

5. On November 7, 2001 Appellant's default of the October 30, 2001 hearing was reopened on the grounds that she did not receive the Scheduling Notice.

6. The Agency's summary submitted by Lorraine Kuntz, Senior Examiner, dated September 20, 2001 provided that the action to discontinue Appellant's benefits was based upon information from "SID".

7. The Agency's summary submitted by Lawrence Ramunno, Senior Investigator, dated November 30, 2001 and his testimony provided that the action to discontinue Appellant's benefits was based on Appellant's failure to appear for a scheduled appointment on January 31, 2001.

8. The Agency failed to submit any documentary evidence other than a summary and the notice at issue.

APPLICABLE LAW

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 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;

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- 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;
- 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;

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- 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 Appellant requested this hearing to review the Agency's determination to discontinue the Appellant's Public Assistance, Food Stamp and Medical Assistance benefits based on its Notice of Intent dated July 16, 2001.

The Agency's notice did not contain the specific reason for discontinuance. The notice did not reference an appointment date or failure to contact the Agency SIU office in January 2001. Yet, this was the only reason advanced at the hearing for the Agency action.

The above-noted defects in the Agency's notice render such notice void. The above referenced law required the Agency to specify the specific reason for the Agency action. The Appellant was not aware of the reason for the agency action until the hearing. Therefore, the Agency's determination to discontinue the Appellant's Public Assistance, Food Stamp and Medical Assistance benefits cannot be sustained.

On account of the defective notice there is no need to reach the merits of the Agency action. However, it is noted that the Agency failed to submit any documentary evidence to support its claims and the Appellant consistently testified that she contacted the SIU office and was awaiting a call from them regarding a scheduled visit. The Agency had no records to support the testimony of the agency investigator concerning a January 2001 appointment and they admitted that the Appellant had been forthright and cooperative in making contact and providing a landlord form. There was no evidence presented at the hearing to support a finding that the Appellant failed to provide complete and accurate information concerning her household.

DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Public Assistance, Food Stamp and Medical Assistance benefits is not correct and is reversed.

1. The Agency is directed to restore the Appellant's Public Assistance, Food Stamp and Medical Assistance benefits retroactive to the date of the Agency's action.

2. In the event that the Agency determines to implement its previously

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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 required, 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
December 11, 2001

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By


Commissioner's Designee