STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

REQUEST April 22, 1993
CASE#
CENTER# F-15
FH# 1964657J

In the Matter of the Appeal of :

J K : 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 the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on June 2, 1993, in New York City, before Aaron Kopolowitz, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Joan K , Appellant;
John F. Castellano, Appellant's Representative

For the Social Services Agency

Eloise Norfleet, Fair Hearing Representative

ISSUE

Was the Agency's determination to reduce the Appellant's Food Stamp benefits based on its Notice of Intent dated February 9, 1993 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 has been in receipt of Food Stamp benefits.

2. By notice dated February 9, 1993, the Agency advised the Appellant of its determination to reduce the Appellant's Food Stamp benefits because of information contained in file.

3. A Fair Hearing was held on March 15, 1993 to review the Agency's determination.

4. By Decision After Fair Hearing 1934959L, the Agency was directed to restore the Appellant's Food Stamp benefits retroactive to the date of the reduction.

5. Subsequent to the previous Fair Hearing, the Agency sent a second notice to the Appellant, and back-dated the notice to the date of the first notice, February 9, 1993.

6. The Agency's Notice of Intent dated February 9, 1993 did not include either a copy of the budget or any reason for the Agency's intended action.

7. On April 22, 1993, the Appellant requested this fair hearing.

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:

- for reductions, the previous and new amounts of assistance or benefits provided;
- the effective date of the action;
- the specific reasons for the action;
- the specific laws and/or regulations upon which the action is based;
- the recipient's right to request an agency conference and fair hearing;

- 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;

- 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;

- 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;

- 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;

- a statement that a fair hearing must be requested separately from a conference;

- 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;

- a statement that participation in an agency conference does not affect the right to request a fair hearing;

- 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;

- 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;

- 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;

- the right to present written and oral evidence at the hearing;

- the liability, if any, to repay continued or reinstated assistance and benefits, if the recipient loses the fair hearing;

- information concerning the availability of community legal services to assist a recipient at the conference and fair hearing ; and

- 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.

DISCUSSION

By notice dated February 9, 1993, the Agency advised the Appellant of its determination to reduce the Appellant's Food Stamp benefits because of information contained in file. A Fair Hearing was held on March 15, 1993 to review the Agency's determination. By Decision After Fair Hearing 1934959L, the Agency was directed to restore the Appellant's Food Stamp benefits retroactive to the date of the reduction.

Subsequent to the previous Fair Hearing, the Agency sent a second notice to the Appellant, and back-dated the notice to the date of the first notice, February 9, 1993.

Not only was this issue already adjudicated with the Fair Hearing held on March 15, 1993, but even if we go beyond this, the second February 9, 1992, notice did not comply with 18 NYCRR 358-2.2, in that it did not set forth or include a copy of the budget or the basis for such computation. In addition, the Agency's notice did not contain any reason or explanation for the Agency's intended action as required by 18 NYCRR 358-2.2.

The above-noted defects in the Agency's notice render such notice void. Therefore, the Agency's determination to reduce the Appellant's Food Stamp benefits cannot be sustained.

DECISION AND ORDER

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

1. The Agency is directed to restore the Appellant's Food Stamp 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.

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

JUN 17 1993

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

By

Commissioner's Designee