

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST November 22, 1993
CASE #
CENTER # 53
FH # 2055279N

In the Matter of the Appeal of

M T

:

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 August 13, 2002, in New York City, before Jerilyn Nicoll, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

M T , Appellant; Eugene Doyle, POOR

For the Social Services Agency

Valerie Dolvin-Joseph, Fair Hearing Representative

ISSUE

Was the Appellant's appeal of the Agency's determination to reduce the Appellant's Public Assistance benefits timely?

If timely, has the Agency acted correctly with respect to its determination to reduce the Appellant's Public Assistance benefits?

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 Public Assistance benefits.
2. On August 23, 1993, the Agency sent a Notice of Intent to the Appellant setting forth its intention to reduce the Appellant's Public Assistance benefits from \$192.00 to \$163.40 semi-monthly because of a recoupment of excess rent.

3. The notice did not contain a copy of the budget or the basis for the computation.

4 On November 22, 1993, the Appellant requested this fair hearing.

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 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 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;
- 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 August 23, 1993, advising the Appellant that it had determined to reduce the Appellant's Public Assistance benefits because of a recoupment of excess rent.

The evidence establishes that the Appellant failed to request this fair hearing until November 23, 1993, which was more than sixty days after the Agency's determination. Section 22 of the Social Services Law provides that the Appellant's request for a fair hearing to review the Agency's determination had to be made within sixty days of the date of the Agency's action for Public Assistance.

The Agency did not produce the original August 23, 1993, Notice of Intent at the fair hearing. The Appellant did produce a copy of the Notice, but this copy did not contain a budget or the basis of computation as required by 18 NYCRR 358-2.2. The above-noted defect, therefore, does establish a sufficient basis for tolling the statute of limitations and the Appellant's appeal is deemed timely. In addition, the above-noted defects in the Agency's notice render such notice void. Therefore, the Agency's determination to reduce the Appellant's Public Assistance benefits cannot be sustained.

DECISION AND ORDER

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

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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
August 27, 2002

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By



Commissioner's Designee