

STATE OF NEW YORK  
DEPARTMENT OF SOCIAL SERVICES

REQUEST April 3, 1992  
June 3, 1992  
CASE#  
CENTER# 53  
FH# 1805776M

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In the Matter of the Appeal of :

J F

DECISION

: AFTER

FAIR

from a determination by the New York City  
Department of Social Services :

HEARING

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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 February 8, 1993 and March 9, 1993, in New York City, before Kenneth Luciano, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

J F , Appellant  
Gene Doyle, Appellant's Representative

For the Social Services Agency

Robert O'Keefe, Agency Representative (March, 9, 1993, only)  
Barbara Sirkin, Agency Representative (February 8, 1993, only)  
Robert Kraft, Agency Representative (February 8, 1993, only)

ISSUES

Was the Agency's determination to reduce the Appellant's Food Stamp benefits effective November 27, 1991, correct?

Was the Agency's March 27, 1992, determination to reduce the Appellant's Public Assistance and Food Stamp benefits correct?

Was the Agency's May 29, 1992, determination to reduce the Appellant's Public Assistance and Food Stamp benefits correct?

Was the Agency's determination to classify the Appellant as a Home Relief household rather than an Aid to Dependent Children household correct?

FH# 1805776M

Was the Agency's failure to determine the Medical Assistance disability status of the Appellant's husband for Medical Assistance and Food Stamp purposes 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. On October 24, 1991, the Appellant's household applied for Public Assistance, Medical Assistance, and Food Stamp benefits.
2. On the Appellant's October 24, 1991, application for assistance the Appellant's husband stated that he was sick or disabled.
3. The Agency has not determined whether the Appellant's husband is eligible for Medical Assistance based upon a disability.
4. The Agency accepted the Appellant's household's application for Public Assistance, and classified the Appellant's household as a Home Relief household.
5. The Appellant's husband has had medical difficulties (for a period in excess of 30 days) which have reduced his earning capacity and his ability to care for his children and his household.
6. The Agency also accepted the Appellant's household's application for Medical Assistance and Food Stamp benefits.
7. Effective November 27, 1991, the Agency, without notice, reduced the Appellant's monthly Food Stamp benefits from \$400.00 to \$320.00.
8. On March 27, 1992, 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 effective April 6, 1992, because rent income from a tenant was being budgeted.
9. By notice dated May 29, 1992, the Agency advised the Appellant of its determination to reduce the Appellant's Public Assistance and Food Stamp benefits effective June 8, 1992, on the grounds that the Appellant has income from a lodger.
10. On April 3, 1992, the Appellant requested a hearing to review: the earlier two above noted Agency actions to reduce the Appellant's Food Stamp benefits; the first above noted Agency action to reduce the Appellant's Public Assistance benefits; the Agency's determination to classify the Appellant as a Home Relief household rather than an Aid to Dependent Children household; and, the Agency's failure to determine the Medical Assistance disability status of the Appellant's husband for Medical Assistance and Food Stamp purposes.

FH# 1805776M

11. On June 3, 1992, the Appellant requested a hearing to review the Agency's May 29, 1992, determination to reduce the Appellant's Public Assistance and Food Stamp benefits.

APPLICABLE LAW

Department regulations at 18 NYCRR 358-3.3(b) (1) and Federal regulations at 7 CFR 273.13 provide that a recipient of Food Stamp benefits has a right to notice when the agency proposes to take any action to discontinue or reduce Food Stamp benefits.

Where Food Stamp benefits are lost due to an error by the Agency, the Agency is required to restore lost benefits. However, lost benefits shall be restored for not more than twelve months prior to whichever of the following occurred first:

1. The date the Agency received a request for restoration from a household ; or
2. The date the Agency is notified or otherwise becomes aware that a loss to a household has occurred.

7 CFR 273.17 ; 18 NYCRR 387.18 and Department of Social Services Food Stamp Source Book, Section X-H-1.

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:

FH# 1805776M

- 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;
- 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;

FH# 1805776M

- 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.

To be eligible for a grant of Aid to Dependent Children, an applicant must establish a deprivation factor. 18 NYCRR 369.2. There are several types of deprivation of parental support or care. 18 NYCRR 369.2(g)(1). One type of deprivation of parental support or care is based upon physical or mental incapacity. Physical or mental incapacity of a parent shall be deemed to exist when one parent has a physical or mental defect, illness, or disability, which must be expected to last at least 30 days and prevents the parent from engaging in normal functions relating to employment and/or ability to care for children and the household. 18 NYCRR 369.2(g)(5). The incapacity may be total or partial, temporary, permanent or of indeterminate duration. 18 NYCRR 369.2(g)(6).

Under Section 366 of the Social Services Law a person who requires Medical Assistance is eligible for such assistance where such person:

- (a) is receiving or is eligible for Home Relief or Aid to Dependent Children or Supplemental Security Income;
- (b) although not receiving or in need of public assistance or care, has not sufficient income and resources to meet all the costs of medical care and services available under the Medical Assistance Program and such person is:
  - (i) under the age of 21; or
  - (ii) 65 years of age or older; or
  - (iii) the spouse of a cash Public Assistance recipient living with him/her and essential or necessary to his/her welfare and whose needs are taken into account in determining his/her cash payments; or
  - (iv) for reasons other than income or resources, is eligible for Aid to Dependent Children or Supplemental Security Income and/or additional state payments.

FH# 1805776M

- (c) is at least 21 years of age but under the age of 65 and is not receiving or eligible to receive Home Relief or aid to dependent children and:
- (i) who is the parent of a dependent child under the age of 21; and
  - (ii) who lives with such child; and
  - (iii) whose net income, without deducting the amount of any incurred medical expenses, does not exceed the net income exemption set forth in Section 365.2(a)(8) of the Social Services Law.

Department Regulations at 18 NYCRR 360-2.2(d) provide that for a person who does not meet the criteria set forth above, other than financial, eligibility for Medical Assistance must be determined on the basis of that person's eligibility for Home Relief in accordance with the requirements of 18 NYCRR Part 352 and Part 370.

The Agency must allow an individual who would be eligible for Medical Assistance under more than one category to have his eligibility determined for the category he selects. 42 CFR 435.404.

Applicants for Home Relief cash assistance who claim an impairment or unemployment status that has or is expected to last for at least 12 months must be referred to the local or State Disability Review Team and SSI at the time of application. If the applicant is certified disabled by the respective review team, medical expenditures on behalf of the Home Relief person can be retroactively claimed as Federal Participation. Disability determinations, where appropriate, should be performed for all children regardless of age, and one or both parents when they appear to meet disability criteria. This should be done routinely so if Aid to Dependent Children relatedness ceases, uninterrupted Federal Participation will continue. Also, the SSI-related budgeting methodology for which disabled individuals are entitled, may be more advantageous to the applicant/recipient. State Of New York Department of Social Services Medical Assistance Reference Guide, page 16.

The Agency has been advised of changes in federal law affecting Medical Assistance and Food Stamp households. The Food Stamp definition of disabled person has been expanded effective July 1, 1989 to include persons in receipt of Medical Assistance Authorizations who have been certified by the Medical Assistance Program to be disabled in accordance with Title XVI of the Social Security Act. In order to identify Public Assistance and non-Public Assistance individuals who meet these criteria, local districts must establish appropriate linkages between Food Stamp and Medical Assistance units. For household whose Medical Assistance disability status is uncertain, Public Assistance and non-Public Assistance/Food Stamp staff should contact Medical Assistance staff to resolve questions and obtain any available information which will assist in the Food Stamp eligibility and benefit level determination. Administrative Directive 91 ADM-15.

FH# 1805776M

When a fair hearing decision indicates that a social services agency has misapplied provisions of law, Department regulations, or such agency's own State-approved policy, the Commissioner's letter transmitting such decision to such agency may contain a direction to the agency to review other cases with similar facts for conformity with the principles and findings in the decision. 18 NYCRR 358-6.3.

Informational Letter, 93 INF-4, dated January 21, 1993, advises local agencies that all HR clients not covered under a federally financed medicaid category must be referred for a Medical Assistance Disability Review concurrent with a referral to SSI.

#### DISCUSSION

The uncontroverted evidence establishes that effective November 27, 1991, the Agency, without notice, reduced the Appellant's monthly Food Stamp benefits from \$400.00 to \$320.00. The Agency's failure to give notice of its action violates the above cited regulations. This Agency determination to reduce the Appellant's Food Stamp benefits cannot be sustained.

On March 27, 1992, 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 effective April 6, 1992, because rent income from a tenant was being budgeted. At the hearing the Agency agreed to withdraw its March 27, 1992, 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 regarding the Agency's March 27, 1992, determination.

By notice dated May 29, 1992, the Agency advised the Appellant of its determination to reduce the Appellant's Public Assistance and Food Stamp benefits effective June 8, 1992, on the grounds that the Appellant has income from a lodger. Although the Agency's May 29, 1992 determination is based upon a budget computation of needs and income, the record fails to establish that the Agency's notice set forth or included a copy of the budget or the basis for its computation as required by 18 NYCRR 358-2.2, above. This defect in the Agency's May 29, 1992 notice renders the notice void. Therefore, the Agency's May 29, 1992 determination to reduce the Appellant's Public Assistance and Food Stamp benefits cannot be sustained.

On October 24, 1991, the Appellant's household applied for Public Assistance. The Agency accepted the Appellant's household's application for Public Assistance, and classified the Appellant's household as a Home Relief household. The record establishes that the Appellant's husband has had medical difficulties (for a period in excess of 30 days) which have reduced his earning capacity and his ability to care for his children and his household. Also, the record establishes that the Appellant's household

FH# 1805776M

should have been classified as eligible in the Aid to Dependent Children category based upon the Appellant's husband's incapacity. The Agency's determination to classify the Appellant's Public Assistance household as Home Relief cannot be sustained.

On the Appellant's October 24, 1991, application for assistance the Appellant's husband stated that he was sick or disabled. The Appellant's husband and the Appellant's Representative have requested that the Agency determine the Appellant's Medical Assistance disability status. The Agency has not determined whether the Appellant's husband is eligible for Medical Assistance based upon a disability.

The record establishes that the Appellant's household is in recipient of a full Medical Assistance authorization due to the receipt of Public Assistance. The Appellant's Representative argues that the Medical Assistance Reference Guide (MARG) supports his contention that the Agency erred in not evaluating Appellant's husband's eligibility for SSI-related Medical Assistance. Although the MARG requires that applicants for Home Relief cash assistance who claim an impairment or unemployability status that has or is expected to last for at least 12 months be referred to the local or State Disability Review Team and SSI at the time of application, it states only that disability determinations, where appropriate, should be performed for children and for one or both parents when they appear to meet disability criteria for the purpose of maintaining uninterrupted Federal Participation (FP) and to allow the often more advantageous budgeting methodology available when determining Medical Assistance coverage of disabled persons (SSI-related budgeting). There is no requirement that the Agency make a disability determination in the case of ADC recipients. It is noted that there is FP for ADC households and ADC recipients are authorized for maximum Medical Assistance coverage without the need to utilize SSI-related budgeting methodology. As the Appellant has successfully demonstrated that her household is an ADC household the Agency is not required to make the requested disability determination. The failure of the Agency to have made a disability determination at the time of application is now moot.

It should be noted that the Appellant's Representative argues that Administrative Directive 87 ADM-3 supports his contention that even though the Appellant's husband is in receipt of Medical Assistance an evaluation of the Appellant's husband's disability claim must be made. However, 87 ADM-3 deals with individuals who were not categorically eligible for Medical Assistance, but for their possible eligibility for SSI-related Medical Assistance. In the Appellant's husband's case, as a matter of law, because of the Appellant's husband's receipt of Public Assistance the Appellant's husband is categorically eligible for Medical Assistance, and is entitled to full Medical Assistance, with no monthly surplus income. The harm envisioned by 87 ADM-3- that individuals eligible for Medical Assistance would not receive Medical Assistance does not exist in the Appellant's husband's case as the Appellant's husband is categorically eligible for Medical Assistance, and he is in receipt of full Medical Assistance, with no monthly surplus income.

FH# 1805776M

The Appellant's Representative also states that 42 CFR 435.404 supports his contention that the Agency must evaluate the Appellant's husband's disability status for Medical Assistance. On the contrary 42 CFR 435.404 provides that the Agency must allow an individual who would be eligible for Medical Assistance under more than one category to have his eligibility determined for the category he selects. When the Appellant's husband applied for Public Assistance he was not in receipt of SSI, nor was he a person who otherwise met the Medical Assistance definition of disabled. Therefore, when the Appellant applied for Medical Assistance he could be eligible for Medical Assistance under more than one category but that does not mean that he would be eligible for Medical Assistance under more than one category. The purpose of the federal rule discussed here appears to be to give an individual the best budgeting methodology in determining Medical Assistance eligibility, but here the Appellant's husband receives full Medical Assistance, with no monthly surplus income, so that the purpose of the Medical Assistance rule has been met.

It is noted that the Appellant's Representative also argued that Administrative Directive 91 ADM-15 supports his contention that the Agency must evaluate the Appellant's husband's disability status for Medical Assistance. The purpose of the Administrative Directive is to ensure that individuals who receive SSI-related Medical Assistance be considered disabled for Food Stamp purposes as per a recent change in federal law. This Administrative Directive advises the Agency it must follow procedures for sharing information between the Medical Assistance and Food Stamp units about the disability status of recipients of Medical Assistance, but does not otherwise require a referral for a disability review.

Finally, the Appellant's Representative also referenced a prior hearing decision, Matter of Phyllis B., #1631455Z, for the proposition the the Agency must evaluate the Appellant's husband's disability status for Medical Assistance. The Appellant's husband as discussed above should be, and now is, an ADC recipient. The recipient involved in the hearing decision referenced was in fact an HR recipient. Also, as mentioned by the Appellant's Representative and the Administrative Law Judge on February 8, 1993, there has also been a prior hearing where an ADC recipient had as an issue whether the Agency should conduct a Medical Assistance disability review: Matter of Catherine C., #1556456H. The Commissioner found that a Medical Assistance disability review need not be performed for an ADC recipient. Here, the Appellant's husband is an ADC recipient, and the decision contained herein regarding the Appellant's husband's issue is consistent with prior issued hearing decisions.

The record fails to present any basis to support an order that the Agency evaluate the Appellant's husband's claim of disability for Medical Assistance. Further, the record fails to establish that the Appellant's husband is disabled within the meaning of the applicable regulations for Food Stamp purposes.

The Agency's failure to determine whether the Appellant's husband

FH# 1805776M

should be certified as disabled for Medical Assistance and Food Stamp purposes must be sustained.

It should also be noted that the Appellant's Representative stated that the Appellant's husband has initiated the application process for Supplemental Security Income (SSI). If the Appellant's husband is found eligible for SSI his Food Stamp entitlement may be subject to a recomputation to allow for an uncapped excess shelter deduction retroactively. 88 INF-50, and 88 INF-81, page four, question two.

Lastly, it is noted that the Appellant's Representative had wanted a "direction in similar cases" because of an alleged policy by the Agency not to refer any Public Assistance cases for a Medical Assistance disability review. The basis of this argument is contained in three correspondences occurring during 1990, 1991 and 1992 between the Appellant's Representative and Agency personnel. While the record fails to establish that the Agency has a current policy contrary to Department instructions, it should be noted that an Informational Letter, 93 INF-4, was issued to local agencies in early 1993, which reminds them of the requirement that all HR clients not covered under a federally financed medicaid category must be referred for a Medical Assistance Disability Review concurrent with their referral to SSI. Accordingly, there does not appear to be any present need for the requested directive.

#### DECISION AND ORDER

The Agency's determination to reduce the Appellant's Food Stamp benefits effective November 27, 1991, is not correct and is reversed.

1. The Agency is directed to restore the Appellant's Food Stamp benefits retroactive to the date such benefits were reduced.
2. Should the Agency in the future determine to implement its previous action with respect to the Appellant's Food Stamp benefits, it is directed to issue a timely and adequate Notice of Intent.

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 March 27, 1992.
2. Take no further action on its Notice of Intent dated March 27, 1992.
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's action relating to the March 27, 1992 determination.
5. If the Agency determines to implement its previously contemplated action, issue a new, timely, and adequate Notice of Intent.

FH# 1805776M

The Agency's May 29, 1992, determination to reduce the Appellant's Public Assistance and Food Stamp benefits is not correct and is reversed.

1. The Agency is directed that it is not to implement the action proposed in its May 29, 1992 notice.
2. The Agency is directed to restore to the Appellant any benefits lost by the Appellant lost as a result of the Agency's May 29, 1992, notice.
3. 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.

The Agency's determination to classify the Appellant as a Home Relief household rather than an Aid to Dependent Children household is not correct and is reversed.

1. The Agency is directed to classify the Appellant's Public Assistance category as Aid to Dependent Children, based upon the Appellant's husband's incapacity.

The Agency's failure to determine the Medical Assistance disability status of the Appellant's husband for Medical Assistance and Food Stamp purposes is correct.

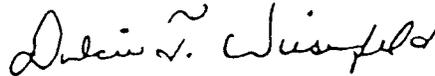
As required by Department Regulations at 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York

MAY 24 1993

NEW YORK STATE DEPARTMENT  
OF SOCIAL SERVICES

By



Commissioner's Designee