

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST July 12, 1999
CASE #
CENTER # 51
FH # 3159788M

In the Matter of the Appeal of :

N M

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 17, 1999, in New York City, before Lori Ann Romeo, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Eugene Doyle, Representative

For the Social Services Agency

Peter McKnight, Fair Hearing Representative

ISSUES

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

Was the Agency's failure to change its records to reflect the Appellant's mailing address 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. By notice dated June 16, 1999, the Agency accepted the Appellant's application for Public Assistance, Medical Assistance and Food Stamp benefits. The Agency approved a Public Assistance grant to cover the period from June 7, 1999 through June 21, 1999 of \$709.50, and indicated the Appellant would receive a recurring grant of Public Assistance in the amount

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of \$709.50 semi-monthly thereafter. The Agency approved Food Stamp benefits of \$419 to cover the period June 1, 1999 through June 30, 1999 and recurring benefits of \$419 thereafter.

2. By notice dated June 22, 1999, the Agency advised the Appellant of its determination to reduce the Appellant's Public Assistance to \$0 and further indicated that it would provide \$0 Food Stamp benefits on the grounds that the Appellant's rent had decreased.

3. The Agency's Notice of Intent dated June 22, 1999 did not include a copy of the budget or the basis for its computation.

4. On July 12, 1999, the Appellant requested this fair hearing.

APPLICABLE LAW

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).

When a Food Stamp household requests a hearing to review the Agency's determination to discontinue, suspend or reduce its Food Stamp benefits, Federal regulations require that the local Agency must appear at the hearing with the household's case record. Federal Regulations also require that the contents of the case file be made available to the Food Stamp household during the hearing. Such information is essential in order to provide for the proper review of the Agency's determination. (7 CFR 273.15(p))

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 Food Stamp Source Book, Section X-H-1.

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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 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;

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- 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 Appellant requested this hearing in part to review the Agency's determination to reduce the Appellant's Public Assistance and Food Stamp benefits based on its Notice of Intent dated June 22, 1999.

Although the Agency's determination is based upon a computation of the Appellant's budget, the Agency's notice did not set forth or include a copy of the budget or the basis for such computation as required by 18 NYCRR 358-2.2, above. It is further noted that the Agency also failed to submit any evidence regarding the Appellant's shelter costs. Accordingly, the Agency determination cannot be sustained.

The Appellant also requested this hearing to contest the Agency's failure to change its records to reflect the Appellant's correct mailing address.

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At the hearing the Agency agreed to correct its records and send all notices to the Appellant addressed as follows:

N M
C/O P.O.O.R.
102-12 164th Avenue
Hamilton Beach, New York 11414

The Appellant's Representative accepted the Agency's stipulation and no issue remains to be decided.

DECISION AND ORDER

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

1. The Agency is directed to restore the Appellant's Public Assistance and 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.

In accordance with the Agency's agreement made at the hearing, the Agency is directed to take the following actions, if it has not already done so:

1. Correct its records and send all notices to the Appellant addressed as follows:

N M
C/O P.O.O.R.
102-12 164th Avenue
Hamilton Beach, New York

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

DATED: Albany, New York
August 20, 1999

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By


Commissioner's Designee