

STATE OF NEW YORK  
DEPARTMENT OF SOCIAL SERVICES

CASE #  
CENTER # Suffolk  
FH # 1226914Y  
1269575R

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In the Matter of the Appeal of :

D J

from a determination by the Suffolk County  
Department of Social Services :

DECISION  
: AFTER  
FAIR  
HEARING

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JURISDICTION

This appeal is from a determination by the local Social Services Agency relating to the reduction of Appellant's Public Assistance and Food Stamp benefits.

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 September 16, 1988, at Hauppauge, New York, before Richard S. Levchuck, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

D J , Appellant  
Kathleen Whelen, Esq.,  
Appellant's Representative  
Marilyn Drewery, Esq.,  
Appellant's Representative

For the Local Social Services  
District (Agency)

Christine Milazzo, FH Representative

FACT FINDINGS

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 Aid to Dependent Children as payee for her two children, ages twenty and eighteen years old. The Appellant has also been in receipt of Food Stamp benefits for herself only. Previously, the Appellant had been in receipt of Food Stamp benefits for herself and her youngest child.

2. On August 19, 1988, the Agency advised the Appellant of its intention to reduce her Public Assistance grant to recover an

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overpayment of assistance in the amount of \$723.60, due to her having received aid to continue for the period from April, 1988 through August, 1988.

3. At the hearing, the Agency stipulated to amend its Notice of Intent to reflect a reduction of the Appellant's Public Assistance grant to recover an overpayment of assistance in the amount of \$726.30, with the recoupment of the Appellant's Public Assistance grant to recover this overpayment to last until July, 1990.

4. On November 13, 1987, effective November 23, 1987, the Agency determined to reduce the Appellant's Food Stamp benefits from \$136.00 to \$125.00 per month, due to her receipt of a \$50.00 child support incentive payment.

5. On December 9, 1987, effective December 19, 1987, the Agency determined to reduce the Appellant's Food Stamp benefits from \$125.00 to \$113.00 per month, due to the receipt of increased income from Supplemental Security Income.

6. On January 13, 1988, effective January 23, 1988, the Agency determined to reduce the Appellant's Food Stamp benefits from \$113.00 to \$69.00 per month, due to her receipt of a \$50.00 child support incentive payment, as well as increased income from Supplemental Security Income.

7. The Agency's notices dated November 13, 1987, December 9, 1987 and January 13, 1988, advised the Appellant that a fair hearing must be requested within ninety days of the Agency's action.

8. The Agency mailed these notices to the Appellant's address as contained in her case record.

9. On April 13, 1988, effective April 23, 1988, the Agency determined to reduce the Appellant's Food Stamp benefits from \$92.00 to \$87.00 per month due to her receipt of a \$50.00 child support incentive payment.

10. On April 19, 1988, effective April 29, 1988, the Agency determined to reduce the Appellant's Food Stamp benefits from \$92.00 to \$25.00 per month due to her receipt of a \$50.00 child support incentive payment and income from Supplemental Security Income.

11. The Agency's notices of reduction of Food Stamp benefits dated November 13, 1987, December 9, 1987, January 13, 1988, April 13, 1988, and April 19, 1988, were not accompanied by ABEL budgets or ABEL budget explanations.

12. On August 15, 1988, the Agency advised the Appellant of its determination to provide her with \$10.00 per month in Food Stamp benefits effective September, 1988, for herself only.

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13. The Appellant receives the sum of \$371.24 in Supplemental Security Income benefits for herself only.

14. The Appellant also receives Public Assistance in the amount of \$458.90, exclusive of energy grants for her daughters, who are away at college and whose needs have been excluded from the computation of the Appellant's Food stamp budget. The Agency included this income in determining the Appellant's Food Stamp entitlement.

15. The Appellant pays a monthly rent in the amount of \$375.00. She also pays separately for heating and utilities and also has a telephone.

16. On May 9, 1988 and August 24, 1988, the Appellant requested this hearing to review the Agency's determinations.

### ISSUES

Was the Appellant's request for a fair hearing to review the Agency's determination dated November 13, 1987, to reduce Appellant's Food Stamp benefits timely?

Assuming the request was timely, was the Agency's determination, dated November 13, 1987, to reduce Appellant's Food Stamp benefits, that was not accompanied by an ABEL budget or ABEL budget explanation correct?

Was the Appellant's request for a fair hearing to review the Agency's determination dated December 9, 1987, to reduce Appellant's Food Stamp benefits timely?

Assuming the request was timely, was the Agency's determination dated December 9, 1987, to reduce Appellant's Food Stamp benefits, which was not accompanied by an ABEL budget or ABEL budget explanation correct?

Was the Appellant's request for a fair hearing to review the Agency's determination dated January 13, 1988, to reduce Appellant's Food Stamp benefits timely?

Assuming the request was timely, was the Agency's determination dated January 13, 1988, to reduce Appellant's Food Stamp benefits, that was not accompanied by an ABEL budget or ABEL budget explanation correct?

Was the Agency's determination dated April 13, 1988, to reduce Appellant's Food Stamp benefits that was not accompanied by an ABEL budget or ABEL budget explanation correct?

Was the Agency's determination dated April 19, 1988, to reduce Appellant's Food Stamp benefits that was not accompanied by an ABEL budget or ABEL budget explanation correct?

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Was the Agency's determination to reduce the Appellant's Public Assistance grant to recover an overpayment of assistance in the amount of \$723.60 correct?

Was the Agency's determination to provide the Appellant's Food Stamp benefits in the amount of \$10.00 per month effective September, 1988, correct?

#### APPLICABLE LAW

The Food Stamp Program is a federal program regulated by the United States Department of Agriculture Food and Nutrition Service. Program regulations are set forth in the Code of Federal Regulations (7 CFR). Section 273.15 of 7 CFR requires that a state must provide a fair hearing to any household aggrieved by an action which affects the household's participation in the Food Stamp Program.

A person is allowed to request a fair hearing on any action of a local social services agency relating to food stamp benefits or loss of food stamp benefits which occurred in the ninety days preceding the request for a hearing. Such action includes a denial of a request for restoration of any benefits lost more than ninety days but less than a 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. Social Services Law Section 22.4(b).

Department Regulations at 18 NYCRR 387.20(b) provide that each Food Stamp household must be notified in writing of any change, reduction or termination of the household's Food Stamp benefits and of the reason for the proposed action. Federal Regulations at 7 CFR 273.13 require that such notice of proposed action must be timely and adequate. To be timely, the notice must be mailed at least ten days before the date on which the proposed action would become effective. To be adequate, the notice must set forth the proposed action, the reasons for the proposed action, the right to request a hearing, the telephone number, and, if possible, a contact person for additional information, the availability of continued benefits and the potential liability of the household for overissuances received while awaiting a hearing. In addition, where an individual or organization is available to provide free legal representation, the household must be advised of the availability of such service. In addition, a copy of the new Food stamp budget must accompany these notices. 18 NYCRR 387.20(b). Pursuant to 87 INF-21, dated April 16, 1987, narrative must accompany the ABEL budget where Food stamps are being reduced or discontinued.

The level of Food Stamp benefits to which a household is entitled is based on the household's net income. A household's net income is computed by subtracting from the gross household income certain exclusions and deductions which are allowable under the Federal Food Stamp Act (7 USC 2014), Code of Federal Regulations (7 CFR 273.9, 273.10 and 273.11), specific United States Department of Agriculture (USDA) instructions and the Regulations of the New York State Department of Social Services (18 NYCRR 387.11 and 387.12).

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Exclusions are allowed for certain items including in-kind benefits, vendor payments, loans, reimbursements for past or future expenses (to the extent they do not exceed actual expenses and do not represent a gain or benefit to the household), non-recurring lump sum payments, costs of producing self-employment income, and monies withheld to recover certain prior overpayments.

Allowable deductions include:

- (1) A 20% deduction from earned income (18% before May 1, 1986).
- (2) A standard deduction of \$106 monthly for all households on or after October 1, 1988 (\$102 before October 1, 1988) (\$99 before October 1, 1987).
- (3) Actual dependent care costs which consist of child care or other dependent care payments made to allow a household member to accept or continue employment, attend training, or pursue education in preparation for employment. Effective May 1, 1986, through November 30, 1986, the deduction for dependent care is the actual cost up to \$160 per month per household for households not containing elderly or disabled members. Effective December 1, 1986, the deduction for all households for dependent care is the actual cost up to \$160 per month per household. Prior to December 1, 1986, the dependent care deduction was limited to \$149 for households containing elderly or disabled members. Prior to October 1, 1986, it was limited to \$147 for such households. (Before May 1, 1986, there was a maximum deduction of \$139 for dependent care and excess shelter costs.)
- (4) Excess shelter costs computed by subtracting 50% of adjusted income from the sum of the following items:
  - a. actual rent or mortgage payments;
  - b. actual heating costs or the heating standard, whichever is greater;
  - c. actual utility costs (other than for heat), or the utility standard, whichever is greater;
  - d. \$30 standard for a telephone or the actual cost for basic service for one telephone, whichever is greater;
  - e. any other allowable shelter costs.

Effective October 1, 1988, the excess shelter deduction is limited to \$170 (\$164 for October 1, 1987 - September 30, 1988) (\$149 for October 1, 1987 - September 30, 1987) (\$147 for May 1 - September 30, 1986), unless the household contains a member sixty years of age or older or disabled. Where the household contains such a member, there is no limitation on the

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amount of the deduction. (Before May 1, 1986, there was a maximum deduction of \$139 for dependent care and excess shelter costs, but separate deductions are now allowed.)

- (5) Allowable unreimbursed medical costs in excess of \$35 monthly for those household members who are elderly or disabled.

Once the household's net income is determined, reference to the USDA Basis of Coupon Issuance Tables provides the household's level of entitlement.

Where 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.

Department Regulations at 18 NYCRR 387.11(h) provide for an exclusion from income for Food Stamp purposes of monies received and used for the care and maintenance of a third party beneficiary who is not a household member.

### DISCUSSION

On November 13, 1987, December 9, 1987 and January 13, 1988, the Agency notified that Appellant that it had determined to reduce Appellant's Food Stamp benefits.

Although the Agency's notices advised the Appellant that a fair hearing must be requested within ninety days of its action, a hearing was not requested on behalf of the Appellant until May 9, 1988, which was more than ninety days after the Agency's determination. At the hearing, the Appellant's representative contended that these notices were defective in that they were not accompanied by ABEL budgets or ABEL budget narratives. The evidence establishes that the Appellant was advised of her right to request a fair hearing, a telephone number to secure additional information and the availability of continued benefits, as well as her liability for Food stamp benefits received as a result of aid to continue pending a fair hearing decision which affirms the Agency's actions. In addition, the Appellant was also advised of the availability of free legal services.

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At the hearing, the Appellant acknowledged having received the Agency's notices of reduction, but stated that she did not request a fair hearing because she did not understand the notices. However, there was no showing by the Appellant's representatives at the hearing that the inclusion of an ABEL budget and narrative with the notices would have resulted in the Appellant having requested a fair hearing within ninety days. Furthermore, there appeared to have been frequent contact between the Appellant and the Agency during this period including, but not limited to personal conferences, recertifications and appearances at fair hearings. The Appellant was provided with various opportunities to have the Agency's actions explained to her.

The record does not establish a sufficient basis for tolling the ninety day Statute of Limitations. The failure to attach a budget and narrative does not deprive a client of the due process right to request a fair hearing. The Appellant was clearly and adequately advised of her right to a fair hearing, the method of requesting a fair hearing, the right to representation, the availability of community legal services, and the time period in which a hearing must be requested.

However, regarding the Agency's notices of reduction dated April 13, 1988 and April 19, 1988, the record in this case establishes that the Agency did not provide the Appellant with ABEL budgets or ABEL budget narratives. The Agency's position that such a requirement is merely advisory is without merit, as Department Regulations at 18 NYCRR 387.20 mandate the inclusion of a copy of a Food Stamp budget with any proposed change, reduction or termination of Food Stamp benefits. In addition, the Agency's contention that Informational Letters (INF's) are merely directory or advisory and do not mandate State and Federal policy was not supported by any legal authority. The Agency's failure to provide ABEL budgets and budget narratives with its notices cannot be deemed proper. The agency therefore incorrectly determined to reduce Appellant's Food Stamp benefits by notices dated April 13, 1988 and April 19, 1988.

Regarding the adequacy of the Appellant's Food Stamp entitlement for the period effective September 1, 1988, the record establishes that the Agency included the income that the Appellant receives in Public Assistance as payee for her two children who are away at college. Yet, the Agency also excluded their needs in computing the Appellant's Food Stamp entitlement. Inasmuch as the Appellant receives Public Assistance as payee for her children who are third party beneficiaries and who are not household members, this income should have been excluded.

A proper computation of the Appellant's Food Stamp budget for September, 1988, is as follows:

Income

Gross Earned Income			\$0.00
Unearned Income	SSI	\$371.24	
Gross Unearned Income			\$371.24
Total Income (Gross Earned Income plus Gross Unearned Income)			\$371.24

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Deductions

Earned Income Deduction	\$0.00	
Standard Deduction	\$102.00	
Allowable Medical Costs	\$0.00	
Dependent Care	\$0.00	
Total Deductions		\$102.00
Adjusted Income (Total Income minus Total Deductions)		\$269.24

Shelter Costs

Rent or Mortgage	\$375.00	
Heating Fuel	\$177.00	
Utilities (other than Heating Fuel)	\$141.00	
Telephone	\$30.00	
Other Shelter Costs	\$0.00	
Total Shelter Cost		\$723.00
50% of Adjusted Income		\$134.62
Excess Shelter Costs (Total Shelter Cost minus 50% of Adjusted Income)		\$588.38
<u>Shelter Deduction</u> (maximum allowable)		\$588.38
<u>Net Income</u> (Adjusted Income minus Shelter Deduction)		\$0.00
<u>Monthly Food Stamp Entitlement</u> (from USDA Table)		\$87.00

The Agency's computation was improper because the Agency included the income of the Appellant's two children, for whom she receives Public Assistance as their payee, and who are not a part of her household.

Regarding the reduction of the Appellant's Public Assistance grant, inasmuch as the Agency stipulated at the hearing to amend its notice of reduction to reflect its recovery of an overpayment of assistance in the amount of \$726.20 with the recoupment of the Appellant's Public Assistance grant to recover this overpayment to last until July, 1990, and with the Appellant's representative having approved this stipulation as a full resolution of this issue, there remain no issues to be decided.

DECISION AND ORDER

The determination of the Agency dated April 13, 1988, to reduce Appellant's Food stamp benefits is not correct and is reversed.

The determination of the Agency dated April 19, 1988, to reduce Appellant's Food Stamp benefits is not correct and is reversed.

1. The Agency is directed to restore Appellant's Food Stamp benefits to the amount of \$92.00 for the period April, 1988 through August, 1988.

2. Should the Agency determine to implement its previously contemplated actions, it is directed to issue new, timely and adequate Notices of Intent accompanied by ABEL budgets and budget narratives.



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The determination of the Agency to provide the Appellant with Food Stamp benefits in the amount of \$10.00 effective September, 1988, is not correct and is reversed.

1. The Agency is directed to provide the Appellant with a Food Stamp Authorization in the amount of \$87.00 for the month of September, 1988.

2. The Agency is directed to recompute the Appellant's Food Stamp entitlement for the period effective October, 1988, and to cease the budgeting of income the Appellant receives for her daughters while they are not in the household.

Regarding the determination of the Agency to reduce the Appellant's Public Assistance grant, the Agency, if it has not already done so, is directed to take the following action.

1. The Agency is directed to adjust its recoupment of the Appellant's Public Assistance grant to reflect a reduction of her Public Assistance grant to recover the sum of \$726.30 with recoupment of this Public Assistance grant to last until July, 1990.


Regarding the determinations of the Agency to reduce Food stamp benefits dated November 13, 1987, December 9, 1987 and January 13, 1988, as this hearing was requested more than ninety days after the Agency's determinations sought to be reviewed, the Commissioner is without jurisdiction to review those local Agency's determinations.

As required by Department Regulations at 18 NYCRR 358.22, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York

CESAR A. PERALES,  
COMMISSIONER

NOV 3 1988

BY   
Commissioner's Designee