

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

REQUEST February 17, 1993
CASE#
CENTER# F-15
FH# 1934959L

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 March 15, 1993, in New York City, before Arthur S. Rakus, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Beth Sutherland, Appellant's Representative

For the Social Services Agency

Roslyn Antoine, Fair Hearing Representative

ISSUE

Was the Agency's determination to reduce the Appellant's Food Stamp benefits based on its Notice of Action 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 monthly Food Stamp benefits from \$111.00 to \$51.00 because the "Agency is rendering a decision based on information on file. If there are any changes please submit information with documentation".

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3. The Agency's Notice of Action dated February 9, 1993 did not include a copy of the budget or the basis for its computation, or the specific laws and/or regulations upon which the action is based.

4. On February 17, 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:

- 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;

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- 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 Appellant requested this hearing to review the Agency's

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determination to reduce the Appellant's Food Stamp benefits based on its Notice of Action dated February 9, 1993.

The Notice of Action of February 9, 1993 was issued as the second notice to the Appellant showing compliance with fair hearing decision #1913225N, which reversed the Agency's December 3, 1992 determination to reduce the Appellant's monthly Food Stamp benefits from \$56.00 to \$51.00 effective January 1993. Fair hearing decision #1913225N reversed the Agency's determination, and found that the Appellant is entitled to receive \$111.00 monthly in Food Stamp benefits as of January 1993. The Agency issued the Appellant a total of \$180.00 as Food Stamp supplementation from January 1993 through March 1993, and the Action Taken Notice of February 9, 1993 notified that Appellant that she would receive \$60.00 as Food Stamp supplementation for April 1993 and, in addition the Agency would change the recurring Food Stamp benefits to \$51.00 per month as of May 1993 because "the Agency is rendering a decision based on information on file. If there are any changes please submit information with documentation". Although the Agency used the word change, it actually meant that it would reduce the Appellant's Food Stamp benefits from \$111.00 monthly to \$51.00 monthly as of May 1993. Therefore, the Action Taken Notice, insofar as it is utilized by the Agency for purposes other than notifying the Appellant of compliance with the prior fair hearing decision, is deemed to be a notice of reduction of Food Stamp benefits. It is noted that other notices exist for the purposes of informing a client of the reduction of Food Stamp benefits.

Although the Agency's determination (reduction of Food Stamp benefits) 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 (abbreviated budget) for such computation as required by 18 NYCRR 358-2.2, above.

In addition, the Agency's notice did not contain the specific laws and/or regulations upon which the action is based 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 (\$111.00 monthly) retroactive to the date of the Agency's action or, if it has not reduced the Appellant's Food Stamp benefits as of the date it receives this decision, to continue to issue \$111.00 per month in Food Stamp benefits to the Appellant.

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.

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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

MAR 19 1993

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

By


Commissioner's Designee