

---

In the Matter of the Appeal of  
\*\*\*\*\*  
from a determination by the New York City  
Department of Social Services

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**DECISION  
AFTER  
FAIR  
HEARING**

---

**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 September 5, 2006, in \*\*\*\*\*, before Lori Romeo, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

\*\*\*\*\*, Appellant

For the Social Services Agency

R. Styles, Fair Hearing Representative

**ISSUE**

Was the Agency's determination to reduce the Appellant's Food Stamps benefits based on its Notice of Intent dated June 13, 2006 correct?

**FINDINGS OF FACT**

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 Stamps benefits.
2. By notice dated June 13, 2006, the Agency advised the Appellant of its determination to reduce the Appellant's Food Stamps benefits.

FH# 4585731Y

3. The Agency's Notice of Intent dated June 13, 2006 did not include a copy of the budget or the basis for its computation.

4. On July 5, 2006, 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;
- 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;

FH# 4585731Y

- 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 determination to reduce the Appellant's Food Stamps benefits based on its Notice of Intent dated June 13, 2006.

Although the Agency's determination is based upon a computation of the Appellant's budget, the Agency's notice was missing a page and did not set forth or include a copy of the budget or the basis for its computations.

FH# 4585731Y

The above-noted defects in the Agency's notice render such notice void. Therefore, the Agency's determination to reduce the Appellant's Food Stamps benefits cannot be sustained.

**DECISION AND ORDER**

The Agency's determination to reduce the Appellant's Food Stamps benefits is not correct and is reversed

1. The Agency is directed to restore the Appellant's Food Stamps 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 Appellant promptly in writing as to what documentation is needed. If such information is requested, 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  
09/06/2006

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By



Commissioner's Designee



**CONFERENCE AND FAIR HEARING SECTION**

**DO YOU THINK WE ARE WRONG?**

If you think our decision was wrong, you can request a review of our decision. If we made a mistake, we will correct it. You can do both of the following:

- 1. Ask for a meeting (conference) with one of our supervisors; and
- 2. Ask for a State fair hearing with a State hearing officer.

**CONFERENCE (Informal meeting with us)**

If you think our decision was wrong or if you do not understand our decision, or need additional information about the reason for our decision, please call us to arrange a meeting. To do this, call the conference telephone number listed at the top of page 1 of this notice or write to us at the address printed at the top of page 1 of this notice. Sometimes this is the fastest way to solve any problems you may have. We encourage you to do this even when you have asked for a fair hearing.

If you only ask for a meeting with us, we will not keep your benefits the same while you appeal. Your benefits will stay the same only if you ask for a State fair hearing. (See Keeping your Benefits the Same)

**STATE FAIR HEARING**

**Deadline for Requesting a Fair Hearing**

If you want the State to review our decision about your food stamps, you must ask for a fair hearing by **September 11, 2006**. This is the deadline even if you asked for a meeting (conference) with us.

**Keeping your Benefits the Same**

We will not change your food stamps if you ask for a fair hearing about the action we are taking on your food stamps by **June 23, 2006**.

If you lose the hearing you will have to pay back any food stamps which you got, but should not have gotten, while you were waiting for the decision.

If you do not want your benefits to stay the same until the decision is issued, you must tell the State when you write or call for a fair hearing.

**How to Request a Fair Hearing**

You can ask for a fair hearing in writing, by telephone, by fax, electronically or in person.

**WRITE:** Complete the "tear-off" Request for a Fair Hearing at the bottom of this page and send it to the address on the bottom of the next page.

**OR CALL:** **(800) 342-3334**

When you call, please tell the worker the number of this notice which is [REDACTED]

**OR FAX:** Send a copy of this notice to fax no. (518) 473-6735.

**OR ONLINE:** Complete the online request form at:  
<http://www.otda.state.ny.us/oah/forms.asp>

**OR WALK-IN:** Bring a copy of this notice to the New York State Office of Temporary and Disability Assistance at 14 Boerum Place, Brooklyn, NY or 330 West 34th

(Read the next page for more of your Rights)

**REQUEST FOR A FAIR HEARING**

I want a fair hearing. I do not agree with the agency's action. (You may explain why you disagree below, but you do not have to include a written explanation.)

---



---



---

Name : [REDACTED]  
 Address : [REDACTED]

District/Office No: **66/F15**  
 Notice No. : [REDACTED]  
 Case Number: [REDACTED]  
 Telephone : [REDACTED]

**/\_/ I do not want to "keep my benefits the same" until the Fair Hearing decision is issued. ONLY USE THIS TEAR-OFF TO REQUEST A HEARING ABOUT THIS NOTICE.**

Street, New York City, NY.

If you cannot reach the State electronically, by phone or fax, please write to request a fair hearing before the deadline for requesting a fair hearing.

**What to Expect at a Fair Hearing**

The State will send you a notice which tells you when and where the fair hearing will be held.

At the hearing, you will have a chance to explain why you think our decision is wrong. You can bring a lawyer, a relative or a friend or someone else to help you do this. If you cannot come yourself, you can send someone to represent you. If you are sending someone who is not a lawyer to the hearing instead of you, you must give this person a letter to show the hearing officer that you want this person to represent you at the hearing.

At the hearing, you and your lawyer or other representative will have a chance to explain why we are wrong and a chance to give the hearing officer written papers which explain why we are wrong.

To help you explain at the hearing why you think our decision is wrong, you should bring any witnesses who can help you. You should also bring any papers you have such as: Pay stubs, Leases, Receipts, Bills, Doctor's Statements.

At the hearing, you and your lawyer or other representative can ask questions of witnesses which we bring or which you bring to help your case.

**LEGAL ASSISTANCE**

If you think you need a lawyer to help you with this problem, you may be able to obtain a lawyer at no cost to you by contacting:



For the names of other lawyers check your Yellow Pages under "LAWYERS".

**ACCESS TO YOUR FILES AND COPIES OF DOCUMENTS**

To help you get ready for the hearing, you have a right to look at your case files. If you call, write or fax us, we will send you free copies of the documents from your files, which we will give to the hearing officer at the Fair Hearing. Also, if you call, write or fax us, we will send you free copies of specific documents from your files which you think you may need to prepare for your Fair Hearing. To ask for documents or to find out how to look at your file, call (718) 722-5012, or FAX (718) 722-5018 or write to HRA Division of Fair Hearing, 14 Boerum Place, Brooklyn, New York 11201. If you want copies of your documents from your case file, you should ask for them ahead of time. They will be provided to you within a reasonable time before the date of the hearing. Documents will be mailed to you only if you specifically ask that they be mailed.

Send this "Request for a Fair Hearing" to:

The Office of Administrative Hearings  
New York State Office of Temporary and Disability Assistance  
P.O. Box 1930  
Albany, New York 12201