

**STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE**

REQUEST: November 26, 2007
CASE #: *****
CENTER #: F-15
FH #: 4917735Q

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 December 28, 2007, in *****, before Karen Ann Luciano, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

*****, Appellant

For the Social Services Agency

V. George, Fair Hearing Representative

ISSUE

Was the Agency's determination to reduce the Appellant's Food Stamp benefits based on its Notice of Intent dated November 2, 2007 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, 53 years old, has been in receipt of Food Stamp benefits.
2. By notice dated November 2, 2007, the Agency advised the Appellant of its determination to reduce the Appellant's Food Stamp benefits from \$162 to \$104, monthly effective November 13, 2007, on the grounds that the Appellant has had a change in income and shelter costs.

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3. The Agency's Notice dated November 2, 2007 did not include a copy of the budget or the basis for its computation.

4. On November 26, 2007, the Appellant requested this fair hearing.

APPLICABLE LAW

A recipient of Public Assistance, Medical Assistance or Services has a right to a timely and 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 a timely and 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.

A timely notice means a notice which is mailed at least 10 days before the date upon which the proposed action is to become effective. 18 NYCRR 358-2.23. However, pursuant to 18 NYCRR 358-3.3(d), there is no right to timely notice for a Public Assistance or Medical Assistance recipient when, for example, the Agency has factual information confirming the death of the recipient; the Agency has received a clear written statement from the recipient that they no longer wish to receive Public Assistance or Medical Assistance; the Agency has reliable information that the recipient has been admitted to an institution or prison; the recipient's whereabouts are unknown and mail has been returned to the Agency; or the recipient has been accepted for Public Assistance or Medical Assistance in another district.

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;

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- 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;
- 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.

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18 NYCRR 358-2.2

DISCUSSION

Documentary evidence presented at the hearing established that by notice dated November 2, 2007, the Agency advised the Appellant of its determination to reduce the Appellant's Food Stamp benefits from \$162 to \$104, monthly effective November 13, 2007, on the grounds that the Appellant has had a change in income and shelter costs.

A review of the Agency's notice shows that it did not include a copy of the budget or the basis of its computation as required by 18 NYCRR 358-2.2. These defects in the Agency's notice make it void and 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 cancel its notice dated November 2, 2007, and restore the Appellant's Food Stamp benefits retroactive to November 13, 2007, the date of the Agency's action.

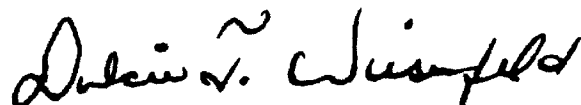
2. In the event that the Agency determines to implement its previously contemplated action, the Agency is directed to provide the Appellant with a notice that meets the requirements set forth in 18 NYCRR 358-2.2.

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

DATED: Albany, New York
01/14/2008

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By



Commissioner's Designee