
In the Matter of the Appeal of

from a determination by the New York City
Department of Social Services

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**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 May 28, 2008, in ***** , before Ona Erike, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

***** , Appellant

For the Social Services Agency

Valerie Joseph, Fair Hearing Representative

ISSUES

Was the Agency's determination by Notice dated April 16, 2008, to reduce the Appellant's Food Stamp benefits correct?

Was the Agency's determination by Notice dated April 23, 2008, to reduce the Appellant's Food Stamp benefits 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, age 65 years old, is in receipt of Food Stamp benefits for a household of one person.

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2. By notice dated April 16, 2008, the Agency advised the Appellant of its determination to reduce the Appellant's monthly Food Stamp benefits from \$162.00 to \$18.00 due to a decrease in her rent costs.

3. By notice dated April 23, 2008, the Agency determined to reduce the Appellant's monthly Food Stamp benefits under the NYSNIP program, from \$162.00 to \$18.00 effective May 4, 2008, due to changes in income and shelter costs.

4. The Appellant receives social security benefits in the amount of \$611.00 and Supplemental Security Income (SSI) of \$133.00 monthly

5. The Appellant incurs a monthly expense for rent in the amount of \$209.00.

6. On April 24, 2008, the Appellant requested this fair hearing.

APPLICABLE LAW

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).

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 the effective date of the action; 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

The New York State Supplemental Security Income Nutrition Improvement Project (NYSNIP) is a demonstration program developed by the New York State Office of Temporary and Disability Assistance in accordance with waivers granted by the U.S. Department of Agriculture. Under this program, information about SSI applicants and recipients gathered by the Social Security Administration during the SSI interview is electronically transferred to OTDA, where it is used to automatically provide these recipients with Food Stamp benefits.

To be eligible to participate in NYSNIP, individuals must meet the following criteria:

- They must be eligible to receive SSI under the SSI Federal Code "A"/State Code "A"; and

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- They declare that they purchase food and prepare meals for themselves only.

The applicant is considered eligible for the project once he or she has been determined eligible for SSI. Benefits are issued through the State's normal Food Stamp issuance method. All SSI recipients who want to participate in the Food Stamp Program and are eligible for NYSNIP must receive Food Stamps through the project. However, a household that is eligible for NYSNIP may opt out of the project and participate in the regular Food Stamp Program if opting out would result in a higher Food Stamp benefit amount.

Households participating in the project must be allowed, but are not required, to report changes in circumstances affecting their benefit level. This includes changes in shelter expenses and allowable medical expenses. The household may opt out of NYSNIP when unreimbursed medical expenses exceed \$35 per month.

Benefit amounts are determined by a matrix which is based on geographical location, the amount of other income, and shelter expenses.

Once these factors are determined, the benefit matrix set forth below indicates the standard monthly benefit to which the individual is entitled. Note that the standard benefit allotments will be adjusted annually based on the appropriate cost-of-living increases in shelter costs at the same time as other shelter adjustments are made in the regular Food Stamp Program.

NYSNIP BENEFITS MATRIX BY SHELTER TYPES
Effective January 1, 2008

HOUSEHOLD		MONTHLY FOOD STAMP BENEFIT AMOUNT		
		New York City	Nassau/Suffolk	Upstate
Shelter Type 94 (High Shelter/SUA)	SSI Only	\$162	\$162	\$152
	Other Income	\$162	\$162	\$143
Shelter Type 95 (Low Shelter/SUA)	SSI Only	\$107	\$99	\$84
	Other Income	\$100	\$92	\$77
Shelter Type 96 (High Shelter/ No SUA)	SSI Only	\$32	\$32	\$32
	Other Income	\$24	\$24	\$24
Shelter Type 97 (Low Shelter/ No SUA)	SSI Only	\$22	\$22	\$22
	Other Income	\$18	\$18	\$18
Shelter Type 98 (No Shelter or SUA Data)	SSI Only	\$22	\$22	\$22
	Other Income	\$18	\$18	\$18

The "High Shelter" standard for the period beginning January 1, 2008 is \$217.

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),

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specific United States Department of Agriculture (USDA) instructions and State Regulations (18 NYCRR 387.11 and 387.12).

Allowable deductions include:

- (1) A 20% deduction from earned income.
- (2) A standard deduction in the amount of \$134 monthly for households of three or less persons, \$143 for households of four persons, \$167 for households of five persons, and \$191 for households of six or more persons. (For the period between October 1, 2006 and September 30, 2007, the standard deduction is \$134 monthly for households of three or less persons, \$139 for households of four persons, \$162 for households of five persons, and \$186 for households of six or more persons.) This deduction is equal to 8.31 percent of the applicable net income limit (poverty level) based on household size or \$134, whichever is greater, and up to a maximum deduction equivalent to the deduction for a household of six persons.
- (3) Actual dependent care costs which consist of costs for the care of a child or other dependents including an incapacitated adult when necessary for a household member to accept or continue employment, seek employment in compliance with the job search criteria (or an equivalent effort by those not subject to job search) or to attend training or to pursue education in preparation for employment. The deduction for dependent care is actual cost up to \$200 per month for each dependent under age two, and up to \$175 per month for each dependent age two and over.
- (4) Prior to October 1, 2002, a deduction for child support payments made by a household member to or for an individual who is not a member of the household if such household member is legally obligated to make such payments. Effective October 1, 2002, such payments are excluded from gross income.
- (5) Excess shelter costs computed by subtracting 50% of adjusted income from the sum of the following items:
 - a. actual rent or mortgage payments;
 - b. if the household is billed separately and on a recurring basis for heating/cooling costs, the heating/cooling standard (or, prior to October 1, 2002, the greater of the standard and the household's actual heating/cooling costs). If the household is eligible for the standard allowance for heating and/or cooling, or if the household is receiving a Home Energy Assistance Program (HEAP) payment or other Low Income Home Energy Assistance Act (LIHEAA) payment, the household is entitled to the combined standard allowance for heating and/or cooling, non-heat related utilities and telephone (or, prior to October 1, 2002, the

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greater of the combined standard allowance and the household's actual combined costs).

- c. if the household is billed separately and on a recurring basis for utility costs other than heat, the utility standard (or, prior to October 1, 2002, the greater of the standard and the household's actual utility costs, other than for heat). If the household is not eligible for the standard allowance for heating and/or cooling but is eligible for the standard allowance for utilities, the household is entitled to the combined standard allowance for non-heat related utilities and telephone (or, prior to October 1, 2002, the greater of the combined standard allowance and the household's actual combined costs).
- d. if the household is not eligible for the standard allowance for heating and/or cooling or for the standard allowance for utilities, the household is entitled to the standard allowance for telephone (or, prior to October 1, 2002, the greater of the standard allowance and the actual cost of basic service for one telephone);
- e. any other allowable shelter costs.

Effective October 1, 2007, the excess shelter deduction is limited to \$431 (\$417 for October 1, 2006 through September 30, 2007), 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 amount of the deduction.

- (6) 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 Food Stamp entitlement.

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).

DISCUSSION

The evidence establishes that by a Notice dated April 16, 2008, the Agency determined to reduce the Appellant's Food Stamp benefits \$162 to \$18 because of a change in the Appellant's shelter costs. This notice failed to set forth an effective date of the proposed action and did not include the budget or the basis for the computation upon which this action was based. These defects in the Agency's notice make it void and therefore, this Agency determination to reduce the Appellant's Food Stamp benefits cannot be sustained.

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The evidence also establishes that by a Notice dated April 23, 2008, the Agency determined to reduce the Appellant's Food Stamp benefits from \$162 to \$18 effective May 4, 2008 because of a change in the Appellant's income and shelter costs. The Agency based this determination in part on a finding that the Appellant does not incur heating and/or air conditioning costs.

The parties agree that the Appellant, age 65 years old, has been in receipt of Food Stamp benefits for her household of one person and that the Appellant receives monthly unearned income consisting of \$133 in SSI benefits and \$611 in social security benefits.

The Appellant's testimonial and documentary evidence establishes that she moved to her current residence in March 2008 and that she incurs a monthly shelter cost of \$209. She added that she provided verification of said shelter costs to the Agency in March 2008. Finally, the Appellant testified that she incurs cooling costs but not unreimbursed medical costs in excess of \$35 monthly.

In this case, while the Agency contended that computer records demonstrated that Appellant only pays rent costs, the Agency's actions are consistent with Appellant's testimony that she reported her change in housing to the Agency prior to the date of its determination. The Agency did not refute her credible testimony that verification was provided to the Agency at this time or to demonstrate that it took appropriate action to determine Appellant's relevant shelter costs, including cooling expenses, when Appellant reported the change in circumstances. The Agency's records fail to establish that the Agency correctly determined that the Appellant was not entitled to a deduction for cooling expenses.

A proper computation of the Appellant's Food Stamp budget taking into account the uncontroverted evidence, and if cooling costs are considered, results in a NYSNIP benefit of \$100 monthly. Moreover, a household that is eligible for NYSNIP may opt out of the project and participate in the regular Food Stamp Program if opting out would result in a higher Food Stamp benefit amount. In this case the record fails to establish the Agency took appropriate action to allow Appellant this opportunity when she contacted the Agency to report changed circumstances in March 2008. Under the regular program her benefit entitlement would be calculated as follows taking into account a cooling cost:

Income

Gross Earned Income		\$0.00
Unearned Income:		
SSI	\$611.00	
social security benefits	\$133.00	
Gross Unearned Income		\$744.00
Total Income (Gross Earned Income plus Gross Unearned Income)		\$744.00

Deductions

Earned Income Deduction	\$0.00
Standard Deduction	\$134.00

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Allowable Medical Costs	\$0.00	
Dependent Care	\$0.00	
Total Deductions		\$134.00
Adjusted Income (Total Income minus Total Deductions)		\$610.00
<u>Shelter Costs</u>		
Rent or Mortgage	\$209.00	
Combined Heating/Cooling, Utilities and Telephone	\$577.00	
Other Shelter Costs	\$0.00	
Total Shelter Costs		\$786.00
50% of Adjusted Income		\$305.00
Excess Shelter Costs (Total Shelter Cost minus 50% of Adjusted Income)		\$481.00
Shelter Deduction (maximum allowable)		\$481.00
<u>Net Income</u> (Adjusted Income minus Shelter Deduction)		\$129.00
<u>Monthly Food Stamp Entitlement</u> (from USDA Table)		\$123

For these reasons the record fails to establish that the Agency's determination to reduce Appellant's Food Stamp benefit entitlement as of May 4, 2008 to \$18 monthly, was correct. While the record supports a reduction, it does not support a reduction to an amount less than \$123 monthly.

DECISION AND ORDER

The Agency's determination by Notice dated April 16, 2008 is not correct and is reversed.

1. The Agency is directed to withdraw its Notice dated April 16, 2008 and to take no further action on it.
2. The Agency is directed to restore any benefits lost as a result of this determination.

The Agency's April 23, 2008 to reduce the Appellant's Food Stamp benefits effective May 4, 2008 is correct.

The Agency's April 23, 2008 to reduce the Appellant's Food Stamp benefits to \$18 monthly is not correct and is reversed.

1. The Agency is directed to provide the Appellant with monthly Food Stamp benefits of \$123.
2. The Agency is directed to restore lost benefits retroactive to the effective date of this Agency determination, if any.

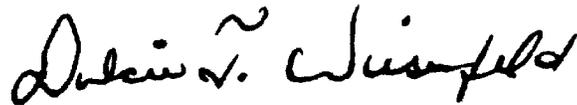
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As required by 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York
06/13/2008

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink, appearing to read "Dulcie V. Wisniewski". The signature is written in a cursive style with a prominent flourish at the end.

Commissioner's Designee