STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

CASE No.
CENTER No. 51
FH No. 1097523Q

In the Matter of the Appeal of

J P

DECISION WITHOUT EVIDENTIARY HEARING

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

By letter dated August 10, 1987 , the Appellant's representative, Eugene Doyle, requested that a decision without an evidentiary hearing be issued pursuant to 18 NYCRR 358.19 on an August 1, 1987 notice issued to the Appellant by the Agency. Pursuant to 18 NYCRR 358.19, by letter dated August 19, 1987, copies of the Appellant's request and supporting documents were sent to the Agency with a request for answering papers within ten working days. No evidence has been received from the Agency.

FACT FINDINGS

An opportunity to be heard having been afforded to all interested parties and evidence having been submitted and due deliberation having been had, it is hereby found that:

1. Appellant has been in receipt of Public Assistance.

2. By notice dated August 1, 1987 the Agency notified the Appellant that his Public Assistance grant would be reduced effective August 11, 1987 to recoup a $69.15 utility advance issued on July 20, 1987.

3. On August 10, 1987, the Appellant's representative, Eugene Doyle, requested that a decision without an evidentiary hearing be issued pursuant to 18 NYCRR 358.19 to determine whether the Agency's notice dated August 1, 1987 to recoup $69.15 was defective because it relies on a regulation which has no relevance to the charge specified in the notice; whether the notice was defective because it failed to provide the details of the reason for the proposed recoupment; and whether such notice was defective because it failed to inform Appellant of the procedures for establishing that the proposed rate of recoupment would cause undue hardship.

4. Although requested to do so by letter dated August 19, 1987, the Agency has not submitted any evidence in opposition to the Appellant's allegations.

ISSUE

Was the Agency's notice dated August 1, 1987 to recoup a $69.15 utility advance a proper notice?

APPLICABLE LAW

Department policy (80 ADM-39, 81 ADM-22, 81 ADM-55) sets forth guidelines for establishing undue hardship. Whenever a Public Assistance grant is reduced to recover an overpayment of assistance, the Agency's notice must state that the recipient has the right to claim that the rate of recoupment would cause undue hardship.

Department Regulations at 18 NYCRR 358.8(a)(2) state that the notice must include details of the reasons for the proposed action.

DISCUSSION

The uncontroverted evidence is that by notice dated August 1, 1987 the Agency advised the Appellant that the Agency intended to reduce his Public Assistance grant on August 11, 1987 to recover the amount of $69.15 issued on July 20, 1987 to prevent a utility shut-off or to restore services. The notice advised the Appellant to see "State Regulation 352.7(g)(5)." Department Regulation 18 NYCRR 352.7(g)(5) relates to evictions for non-payment of shelter expenses for which a grant has been previously issued. It does not relate to the advancement of amounts to prevent the shut-off or restoration of utilities.

In addition, the notice did not advise Appellant of the right to claim that the rate of recoupment would cause undue hardship. Notices of reduction of Public Assistance to recover overpayments are required to advise the recipient of the right to claim undue hardship. 80 ADM-39, 81 ADM-22, 81 ADM-55).

Although duly notified of the request for a decision without an evidentiary hearing pursuant to 18 NYCRR 358.19, the Agency did not produce any evidence that the notice dated August 1, 1987 was proper.

DECISION AND ORDER

The notice dated August 1, 1987 to recoup a $69.15 utility advance was not a proper notice.

1. The Agency is directed to withdraw its notice dated August 1, 1987 and restore all lost benefits retroactive to August 11, 1987, the effective date of the Agency action.

2. The Agency is directed to continue assistance to the Appellant in the verified degree of need.

Should the Agency in the future determine to implement its previous action to recoup a $69.15 utility advance, it is directed to issue a proper notice.

J P

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

SEP 21 1987

BY Henry S. Hoffman
Commissioner's Designee