
In the Matter of the Appeal of

J P

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

DECISION
: WITHOUT
EVIDENTIARY
HEARING
:

By letter dated December 2, 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 November 23, 1987 notice issued to the Appellant by the Agency. Pursuant to 18 NYCRR 358.19, by letter dated December 9, 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 November 23, 1987 the Agency notified the Appellant that his Public Assistance grant would be reduced effective December 3, 1987 to recoup a \$69.15 utility advance issued on July 20, 1987.
3. On December 2, 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 November 23, 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. In addition, Appellant's representative alleged that the November 23, 1987 notice was identical to the notice found defective in Appellant's September 21, 1987 fair hearing decision and therefore, the Agency was barred from reissuing such notice.
4. Although requested to do so by letter dated December 9, 1987, the Agency has not submitted any evidence in opposition to the Appellant's allegations.

ISSUE

Was the Agency's notice dated November 23, 1987 to recoup a \$69.15 utility advance a proper notice?

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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.

Federal Regulations at 45 CFR 205.10(a)(4)(ii) and Department policy (81 ADM-55) require that a notice of intent to reduce Aid to Dependent Children benefits cite the regulation upon which the proposed action is based.

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 establishes that, by notice dated November 23, 1987, the Agency advised the Appellant that the Agency intended to reduce his Public Assistance grant on December 3, 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 of or to restore 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).

The notice was identical to the one found defective in the Appellant's fair hearing decision (FH # 1097523Q) issued on September 21, 1987.

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 November 23, 1987 was proper.

DECISION AND ORDER

The notice dated November 23, 1987 to recoup a \$69.15 utility advance was not a proper notice.

1. The Agency is directed to withdraw its notice dated November 23, 1987 and restore all lost benefits retroactive to December 3, 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.

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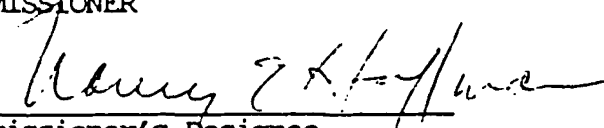
3. If the Agency in the future wishes to implement its previous action to recoup \$69.15 for a utility advance issued on July 20, 1987, the Agency is directed to issue a proper notice which cites the correct regulatory basis for its action and which advises the Appellant of the right to claim that the rate of recoupment will cause undue hardship.

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

JAN 19 1988

BY 
Commissioner's Designee