STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

CASE No. ADC
CENTER No. 54
FH No. 1174554Y

In the Matter of the Appeal of

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: DECISION WITHOUT EVIDENTIARY HEARING

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

By letter dated January 28, 1988 , the Appellant's representative, Eugene Doyle, requested that a decision without an evidentiary hearing be issued pursuant to 18 NYCRR 358.19 on a January 15, 1988 notice issued to the Appellant by the Agency. Pursuant to 18 NYCRR 358.19, by letter dated February 2, 1988, 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 and the time to submit such evidence has expired.

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 Aid to Dependent Children for herself and her step-son.

2. By notice dated January 15, 1988 the Agency notified the Appellant that her Public Assistance grant would be reduced effective January 29, 1988 to recoup a $73.23 utility advance issued on January 12, 1988.

3. On January 28, 1988, 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 January 15, 1988 to recoup $73.23 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 February 2, 1988, the Agency has not submitted any evidence in opposition to the Appellant's allegations.

ISSUE

Was the Agency's notice dated January 15, 1988 to recoup a $73.23 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.

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 January 15, 1988, the Agency advised the Appellant that the Agency intended to reduce her Public Assistance grant on January 29, 1988 to recover the amount of $73.23 issued on January 12, 1988 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).

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 January 15, 1988 was proper.

DECISION AND ORDER

The notice dated January 15, 1988 to recoup a $73.23 utility advance was not a proper notice.

1. The Agency is directed to withdraw its notice dated January 15, 1988 and restore all lost benefits retroactive to January 29, 1988, 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 $73.23 utility advance, it is directed to issue a proper notice.

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

MAR 03 1988

CESAR A. PERALES
COMMISSIONER

BY Nancy E. Hoffman
Commissioner's Designee