
In the Matter of the Appeal of :

H A

DECISION
: AFTER
FAIR
HEARING

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

JURISDICTION

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on April 3, 1995, in New York City, before Toni Katz, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

H A , Appellant; Eugene Doyle, People Organized for Our Rights Inc.; William Bankhead and Eulalee Morrison, Saint Anne's Advocacy Program

For the Social Services Agency

Conrad Pierce, Fair Hearing Representative

ISSUES

Was the determination of the Agency to discontinue the Appellant's Public Assistance benefits without notice in September 1986 correct?

Was the determination of the Agency to discontinue the Appellant's Food Stamp benefits effective September 1, 1986, without notice correct?

Was the determination of the Agency to discontinue the Appellant's Public Assistance benefits effective February 10, 1987, without notice correct?

Was the determination of the Agency to discontinue the Appellant's Food Stamp benefits effective February 1, 1987, without notice correct?

Was the Agency determination not to provide the Appellant with retroactive Food Stamp benefits for the period from April 1986 through July 1986 correct?

FACT FINDING

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. On May 2, 1994, the Appellant requested a fair hearing to review the adequacy of Public Assistance and Food Stamp benefits for the period commencing March 1, 1986.
2. On July 7, 1994, a hearing (FH# 2141024N/2141025Y) was held pursuant to such request. By Decision After Fair Hearing dated July 26, 1994, the Agency's determinations were upheld.
3. On November 8, 1994, the Appellant, by his representative Eugene Doyle, requested that Fair Hearing #2141024N/2141025Y, held on July 7, 1994, be re-opened for the purpose of submission of additional evidence and clarification of the issues sought to be reviewed.
4. On November 23, 1994, it was determined to reopen the prior Fair Hearing as requested by the Appellant.
5. The Appellant resided at the G Avenue Men's shelter from on or about April 25 to August, 1986, and again for various periods commencing June 23, 1987.
6. The Appellant's application for Public Assistance and Food Stamp benefits for himself only was accepted in August, 1986.
7. Effective the first half of September 1986, the Agency discontinued the Appellant's Public Assistance benefits, without notice.
8. Effective September 1, 1986, the Agency discontinued the Appellant's Food Stamp benefits, without notice.
9. The Appellant reapplied for Public Assistance and Food Stamp benefits on December 8, 1986. On January 5, 1987, the Agency determined that the Appellant was eligible to receive recurring Public Assistance benefits in the amount of \$156.00 semi-monthly and recurring Food Stamp benefits in the amount of \$63.00 monthly.
10. Effective the first half of February 1987, the Agency again discontinued the Appellant's Public Assistance benefits, without notice.
11. Effective February 1, 1987, the Agency again discontinued the Appellant's Food Stamp benefits, without notice.
12. The Appellant has received Public Assistance and Food Stamp benefits as of April 22, 1992 as a result of a re-application for assistance and benefits.

APPLICABLE LAW

Section 22 of the Social Services Law provides that a request by such an applicant/recipient for a fair hearing to review an Agency's determination concerning Public Assistance must be made within sixty days of the date of the Agency's action or failure to act.

Department regulations at 18 NYCRR 358-3.3(a) provide that a recipient of Public Assistance, Medical Assistance or services has a right to notice when the agency:

- (i) proposes to take any action to discontinue, suspend, or reduce a Public Assistance grant, Medical Assistance authorization or services.

Pursuant to the decision in Thrower v Perales, 138 Misc.2d 172, 523 N.Y.S.2d 933 (Sup. Ct., New York County, 1987) persons residing in public shelters for the homeless have needs that should be met through a Home Relief cash allowance. That decision applied retroactively only to the named plaintiff and intervenors and a Stipulation of Settlement entered on May 11, 1988, provided that the New York State Department of Social Services would promulgate regulations providing that residence in public shelters shall not be considered a ground for ineligibility for cash Home Relief benefits.

An Administrative Directive (89 ADM 2) issued by this Department on January 19, 1989 and effective February 1, 1989 advised local districts of the outcome of litigation in the case of Thrower v. Perales, providing that persons in public shelters for homeless adults may not be denied Home Relief and Medical Assistance, if any of their needs are not met by the shelter. However, the only cash amount that such persons are eligible to receive is a cash allowance of \$45.00 per month. Such persons have been eligible to receive Food Stamp benefits, in accordance with provisions of Section 387.10 of the Regulations, since April, 1987.

Department Regulations at 18 NYCRR 352.8(f) and 385.12 which became effective in May of 1988, provide for Home Relief benefits for persons residing in public shelters for adults.

18 NYCRR 352.29 provides as follows:

- (d) Where investigation has been completed and need established on a continuing basis, the regularly recurring cash grant shall meet the full budget deficit, if there is one, and/or provision shall be made for the purchase of service when need is based on the need for such service, except that when the estimate of regularly recurring need and/or the amount of the assistance grant based on the regulations of the department do not equal a whole dollar amount, the amount(s) shall be rounded down to the next whole dollar amount.

18 NYCRR 350.7 of Department Regulations provides as follows:

At the time of the application interview the social services district shall inform the applicant of:

- (a) the eligibility requirements of the program under which he is applying for assistance or care;
- (b) his responsibility for reporting all facts material to a proper determination of eligibility;
- (c) the joint responsibility of the local department and the applicant for exploring all facts concerning eligibility, needs and resources, and the applicant's responsibility for securing, wherever possible, records or documents to support his statements;
- (d) the kinds of verification needed;
- (e) the fact that any investigation essential to the determination of eligibility will be undertaken;
- (f) his responsibility for notifying the local department immediately of all changes in circumstances; and
- (g) the availability of assistance and/or service under some other program, either public or private, if the applicant appears eligible therefor.

Department Regulations at 18 NYCRR 351.1(b)(1) provide that the Agency shall provide applicants and recipient of assistance with clear and detailed information concerning programs of public assistance, eligibility requirements therefor, methods of investigation and benefits available under such programs.

The Food Stamp Program is a federal program regulated by the United States Department of Agriculture Food and Nutrition Service. Program regulations are set forth in the Code of Federal Regulations (7 CFR). Section 273.15 of 7 CFR requires that a state must provide a fair hearing to any household aggrieved by an action which affects the household's participation in the Food Stamp Program. New York Department of Social Services Regulations at 18 NYCRR 358-3.1 set forth the situations in which an applicant or recipient has a right to a fair hearing.

A person is allowed to request a fair hearing on any action of a local social services agency relating to food stamp benefits or loss of food stamp benefits which occurred in the ninety days preceding the request for a hearing. Such action includes a denial of a request for restoration of any benefits lost more than ninety days but less than a year prior to the request. In addition, at any time within the period for which a person is certified to receive food stamp benefits, such person may request a fair hearing to dispute the current level of benefits. Social Services Law Section 22.4(b), 18 NYCRR 358-3.1, 18 NYCRR 358-3.5, 7 CFR 273.15.

Department regulations at 18 NYCRR 358-3.3(b)(1) and Federal regulations at 7 CFR 273.13 provide that a recipient of Food Stamp benefits has a right to notice when the agency proposes to take any action to discontinue or reduce Food Stamp benefits.

Where Food Stamp benefits are lost due to an error by the Agency, the Agency is required to restore lost benefits. However, lost benefits shall be restored for not more than twelve months prior to whichever of the following occurred first:

1. The date the Agency received a request for restoration from a household; or
2. The date the Agency is notified or otherwise becomes aware that a loss to a household has occurred.

7 CFR 273.17; 18 NYCRR 387.18 and Department of Social Services Food Stamp Source Book, Section X-H-1.

Each Social Services department shall continue ongoing efforts to inform low income individuals and family households, of the availability and benefits of the program; encourage the participation of all eligible households through services provided through federally funded organizations as well as other organizations. 18 NYCRR 387.2(b).

Pursuant to a General Information System (GIS) Message 87 IM/DC006 dated March 12, 1987, Public Assistance Income Maintenance Centers and Food Stamp Centers were advised that effective April 1, 1987, persons residing in public shelters for the homeless would be eligible for Food Stamp benefits.

Pursuant to the Stipulation of Settlement in Chavis v Lynq, 77 CV 1500 (S.D.N.Y., 1993) retroactive Food Stamp benefits are to be provided to all members of the certified class who are identified on the books and records of the City of New York as as having resided in a City Shelter for Homeless Adults during the period from March 5, 1986, to March 31, 1987 and were denied Food Stamp benefits because of such residence. The Court retained jurisdiction for purposes of issuing orders necessary for the construction, implementation or enforcement of its judgement for a period of thirty six months from the date of the Stipulation.

DISCUSSION

At the hearing the Agency pleaded the Statute of Limitations, contending that Appellant's request for a fair hearing was not timely as the request occurred more than ninety days after the Agency action complained of. Although the Appellant did not request a fair hearing to review the Agency's determination within sixty days of the date of its action regarding Public Assistance, and within ninety days of its action regarding Food Stamp benefits, the record fails to establish that the Agency advised the Appellant of the time limits for requesting a fair hearing. Therefore, the Statute of Limitations may not be applied to bar review of the Agency's determinations.

The record establishes that the Appellant was in receipt of Public Assistance and Food Stamp benefits in August of 1986. Effective the first half of September 1986, the Agency discontinued the Appellant's Public Assistance benefits, without notice. The Appellant reapplied for Public Assistance on December 8, 1986. On January 5, 1987, the Agency determined that the Appellant was eligible to receive recurring Public Assistance benefits in the amount of \$156.00 semi-monthly. Effective the first half of February 1987, the Agency again discontinued the Appellant's Public Assistance benefits, without notice.

The Agency discontinuance of the Appellant's Public Assistance without notice was in violation of the above cited Department Regulations and may not be sustained.

At the hearing Appellant's representative contended that due process requires that Public Assistance benefits should be restored to the Appellant at the pre-termination level of benefits for the period from the date in September of 1986 when the Appellant's case was closed through the date in January of 1987 when the Appellant's case was reopened, and that the same should apply with respect to the restoration of Public Assistance benefits for the period from the first half of February 1987, through April 22, 1992, when the Appellant's case was again re-opened. However, pursuant to Department Regulations at 18 NYCRR 352.29(d), the amount of assistance to be provided is equal to the "budget deficit". The budget deficit is the amount of the recipient's regularly recurring need based on the Regulations of the Department less any available income and/or resources. The Appellant would therefore, be entitled to receive for the periods in issue only the amount of such budget deficit as determined by the relevant law and regulations in effect during the periods in issue. Due process does not require that the Appellant receive a windfall as would be the case if the Appellant were to be provided with retroactive Public Assistance benefits in an amount greater than his actual need. With regard to Appellant's claim that the decision in Thrower v. Perales and the provisions of Administrative Directive 89 ADM 2 entitle the Appellant to receive cash assistance for any period of time in which he resided in a public shelter for the homeless, retroactive benefits under that decision was specifically limited to the named Plaintiffs and Intervenors. All other persons residing in public shelters for the homeless became entitled to receive cash assistance while residing in a Public Shelter no earlier than May of 1988. For the periods that the Appellant resided in a shelter prior thereto, the decision in Thrower and the provisions of 89 ADM-2 do not apply.

The uncontroverted evidence further establishes that on September 1, 1986 and again on February 1, 1987, the Agency discontinued the Appellant's Food Stamp benefits without notice. However, inasmuch as lost Food Stamp benefits may be restored for a period of only twelve months prior to the Appellant's initial request for this fair hearing on May 2, 1994, there is no issue to be decided concerning such discontinuance of benefits.

The Appellant's representative argued that the Appellant is eligible to receive restoration of lost Food Stamp benefits for the period from September 1986 to April, 1992 on the grounds that the Agency's actions were done without notice and the Statute of Limitations is therefore tolled. The tolling of the Statute of Limitations in these two instances, however, does not benefit the Appellant, as restoration of Food Stamp benefits lost due to Agency error is limited to a 12 month period from the time of discovery by, or request to, the Agency regarding a specific household's loss. Therefore, although the Statute of Limitations which relates to the limitation of time to request a fair hearing is tolled, the Appellant is still barred by federal and state regulations from having lost Food Stamp benefits restored for the September 1, 1986, to April, 1992 period.

With respect to the Appellant's claim that he should be entitled to receive Food Stamp benefits pursuant to the Stipulation in Chavis v Lyng, 77 CV 1500 (S.D.N.Y. 1993) in the amount of \$44.00 monthly for April of 1986 through July of 1986, there is nothing in the record to indicate that the Appellant is an "Identified Class Member" pursuant to that Stipulation. Such stipulation refers to individuals who prior to April, 1987 were denied Food Stamp benefits because of their residence in a shelter. It is uncontroverted that the Appellant did not apply for assistance and benefits until August, 1986, when his application was accepted. It is noted that in his memorandum, the Appellant's representative argues that the Agency has the obligation to inform applicants/recipients of available programs pursuant to regulations at 18 NYCRR 350.7(g), 351.1(b)(1) and 387.2(b). However, any argument that the Agency had an obligation to advise the Appellant of his right to apply for Food Stamp benefits upon his admission into a shelter in April, 1986 when the law then in effect did not allow eligibility for such benefits under the Appellant's circumstances is not persuasive.

DECISION AND ORDER

The determinations of the Agency, in August of 1986 and February of 1987, to discontinue the Appellant's Public Assistance benefits without notice are not correct and are reversed.

1. The Agency is directed to provide Public Assistance benefits in the amount of the Appellant's verified degree of need for the period from August 1986, through April 22, 1992, to the extent that it has not already done so.

There is no issue to be decided concerning the determinations of the Agency in September of 1986 and February of 1987, to discontinue the Appellant's Food Stamp benefits without notice.

The Agency's failure to provide the Appellant with Food Stamp benefits for the period from April of 1986 through July of 1986 is correct.

FH# 2207466P

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

DATED: Albany, New York
April 18, 1995

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

By


Commissioner's Designee