

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST April 20, 1999
CASE #
CENTER # DAS
FH # 3107374N

In the Matter of the Appeal of

N M

:
CORRECTED
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 Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on October 1, 2002, in New York City, before Richard T. Mathieu, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Eugene Doyle, Appellant's Representative

For the Social Services Agency

M. Oatman, Fair Hearing Representative

ISSUE

Has the Agency acted correctly with respect to its determination to reduce the Appellant's Public Assistance and to discontinue Appellant's Food Stamp benefits?

Was the determination of the Agency to change the category of the Appellant's Public Assistance benefits from Family Assistance to Safety Net Assistance, without notice, 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. The Appellant has been in receipt of Public Assistance and Food Stamp benefits.

2. On April 12, 1999, the Agency sent a Notice of Intent to the Appellant setting forth its intention to reduce the Appellant's Public Assistance and discontinue Food Stamp benefits because the Appellant's household had a change in size (J removed from the Public Assistance budget and her SSI income added for Food Stamp purposes).

3. As of some unspecified date, the Agency changed the Appellant's category and form of assistance from Family Assistance to Safety Net Assistance, without notice.

4. On April 20, 1999, the Appellant requested this fair hearing.

5. On October 28, 2002, a prior Decision After Fair Hearing was issued which, in part, reversed the Agency's determination to change the category and form of the Appellant's Public Assistance benefits from Family Assistance to Safety Net Assistance, without notice. Subsequently, the Appellant's representative requested reconsideration of the Decision on the grounds that Fact Finding "3" improperly stated that said change was made "effective April 20, 1999", rather than "as of some unspecified date". Based on our review of the record, it was determined that the date was, in fact, "unspecified". Accordingly, the October 28, 2002 Decision has been vacated and this Corrected Decision is being substituted therefor.

APPLICABLE LAW

Regulations at 18 NYCRR 358-3.7(a) provide that an appellant has the right to examine the contents of the case record at the fair hearing. At the fair hearing, the agency is required to provide complete copies of its documentary evidence to the hearing officer. In addition, such documents must be provided to the appellant and appellant's authorized representative where such documents were not provided otherwise to the appellant or appellant's authorized representative in accordance with 18 NYCRR 358-3.7. 18 NYCRR 358-4.3(a). In addition, a representative of the agency must appear at the hearing along with the case record and a written summary of the case and be prepared to present evidence in support of its determination. 18 NYCRR 358-4.3(b). 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).

When a Food Stamp household requests a hearing to review the Agency's determination to discontinue, suspend or reduce its Food Stamp benefits, Federal regulations require that the local Agency must appear at the hearing with the household's case record. Federal Regulations also require that the contents of the case file be made available to the Food Stamp household during the hearing. Such information is essential in order to provide for the proper review of the Agency's determination. (7 CFR 273.15(p))

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:

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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 Food Stamp Source Book, Section X-H-1

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; or
- (ii) proposes to change the manner or method or form of payment of a Public Assistance grant; or
- (iii) determines that the recipient of Public Assistance or Medical Assistance is not eligible for an exemption requested from work requirements as described in 12 NYCRR Part 1300; or
- (iv) determines to restrict a Medical Assistance authorization.
- (v) accepts or denies an application for Public Assistance, Medical Assistance or services; or
- (vi) increases a Public Assistance grant; or
- (vii) determines to change the amount of one of the items used in the calculation of a Public Assistance grant or Medical Assistance spenddown although there is no change in the amount of the Public Assistance grant or Medical Assistance spenddown; or
- (viii) denies an application for an exemption from or an increase in a Medical Assistance utilization threshold and the recipient has reached such utilization threshold.
- (ix) makes changes in the manner of payment of supportive services provided to enable an individual to participate in work activities.

DISCUSSION

The evidence establishes that the Agency sent a Notice of Intent to the Appellant, dated April 12, 1999, advising the Appellant that it had determined to reduce the Appellant's Public Assistance and discontinue Food Stamp benefits because the Appellant's household had a change in size (J removed from the Public Assistance budget and her SSI income added for Food Stamp purposes).

The Agency was duly notified of the time and place of the hearing. The Agency appeared at the hearing, but failed to present any documentation concerning the determination in issue.

With respect to the Agency's determination to reduce the Appellant's Public Assistance, the Agency failed to meet its obligations under 18 NYCRR 358-4.3(b) and failed to establish that its determination was correct pursuant to 18 NYCRR 358-5.9(a).

With respect to the Agency's determination to discontinue the Appellant's Food Stamp benefits, the Agency failed to meet its obligations under 18 NYCRR 358-4.3(b) and federal regulations, and failed to establish that its determination was correct pursuant to 18 NYCRR 358-5.9(a).

The Agency, without sending any notice, changed the category and form of Appellant's Public Assistance benefits from Family Assistance to Safety Net Assistance.

The Agency's failure to give notice of its proposed actions violates the above cited regulations.

DECISION AND ORDER

The determination of the Agency to reduce the Appellant's Public Assistance and discontinue Food Stamp benefits is not correct and is reversed.

1. The Agency is directed to withdraw its Notice of Intent dated April 12, 1999 with respect to Appellant's Public Assistance and Food Stamp benefits.
2. The Agency is directed to continue to provide Public Assistance and Food Stamp benefits to the Appellant.
3. The Agency is directed to restore Appellant's Public Assistance and Food Stamp benefits retroactive to the date of the Agency action.

Should the Agency in the future determine to implement its previous action, it is directed to procure and review the Appellant's case record with respect to a determination relating to the Appellant's Public Assistance and Food Stamp benefits, and to issue a new Notice of Intent and to produce the required case record(s) at any subsequent fair hearing.

The determination of the Agency to change the category and form of the Appellant's Public Assistance benefits from Family Assistance to Safety Net Assistance, without notice, is not correct and is reversed.

1. The Agency is directed to restore the Appellant's form of assistance from Safety Net Assistance to Family Assistance benefits.
2. Should the Agency in the future determine to implement its previous action with respect to the Appellant's Public Assistance benefits, it is directed to issue a timely and adequate Notice of Intent.

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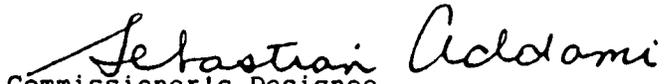
Should the Agency need additional information from the Appellant in order to comply with the above directives, it is directed to notify the Appellant promptly in writing as to what documentation is needed. If such information is required, the Appellant must provide it to the Agency promptly to facilitate such compliance.

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

DATED: Albany, New York
November 14, 2002

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By


Commissioner's Designee