

**STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES**

**CASE #
CENTER # 53
FH # 1005179R**

In the Matter of the Appeal of :
M and R M : **DECISION**
: **AFTER**
from a determination by the New York City : **FAIR**
Department of Social Services : **HEARING**

JURISDICTION

This appeal is from a determination by the local Social Services Agency relating to the reduction of Public Assistance and Food Stamp benefits without prior notice to the Appellant and the reduction of Appellant's Public Assistance benefits to recover an overpayment of assistance.

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 March 24, 1987, at 80 Centre Street, New York, New York, before Gayle Gavin, Administrative Law Judge. The following persons appeared at the hearing:

<u>For the Appellant</u>	<u>For the Local Social Services District (Agency)</u>
M and R M Appellants	M. Fass, Fair Hearing Representative

FACT FINDINGS

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 is in receipt of Public Assistance and Food Stamp benefits.
2. Effective December 24, 1986, the Agency reduced Appellant's monthly Public Assistance benefits to \$374.40 without notice or reason.
3. Effective January, 1987, the Agency reduced Appellant's monthly Food Stamp benefits to \$36.00 without notice or reason.
4. On November 21, 1986, the Agency sent a Notice of Intent to the Appellant setting forth its intention to reduce the Appellant's Public Assistance effective December 1, 1986, because Appellant received an overpayment of assistance in the amount of \$226.50.
5. The Agency did not have the Appellant's case record at the hearing and did not withdraw its Notice of Intent dated November 21, 1986.

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6. On January 20, 1987, the Appellant requested this hearing to review the Agency's determination.

ISSUE

Was the Agency's determination to discontinue the Appellant's Public Assistance grant without notice or reason correct?

Was the Agency's determination to reduce the Appellant's Food Stamp benefits without notice or reason correct?

Was the Agency's determination to reduce the Appellant's Public Assistance grant to recover an overpayment of assistance correct?

APPLICABLE LAW

Section 358.8(a) of the Regulations of the State Department of Social Services provides that timely and adequate notice of any proposed action to discontinue or reduce Public Assistance payments or to discontinue or reduce a Medical Assistance Authorization must be sent to the recipient. Timely and adequate notice means a written notice mailed at least ten days prior to the effective date of the proposed action and which contains details of the reasons for the proposed action as well as information regarding conference and hearing rights and the right to continued Public Assistance and Medical Assistance Authorization.

Department Regulations at 18 NYCRR 387.20(b) provide that each Food Stamp household must be notified in writing of any change, reduction or termination of the household's Food Stamp benefits and of the reason for the proposed action. Federal Regulations at 7 CFR 273.13 require that such notice of proposed action must be timely and adequate. To be timely, the notice must be mailed at least ten days before the date on which the proposed action would become effective. To be adequate, the notice must set forth the proposed action, the reasons for the proposed action, the right to request a hearing, the telephone number, and, if possible, a contact person for additional information, the availability of continued benefits and the potential liability of the household for overissuances received while awaiting a hearing. In addition, where an individual or organization is available to provide free legal representation, the household must be advised of the availability of such service.

Where 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 the Department of Social Services Food Stamp Source Book, section X-H-1.

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Pursuant to the settlement in the case of Rodriguez v. Blum, the New York City Agency is required to produce the Appellant's complete relevant case record at any fair hearing that involves the discontinuance, reduction, or restriction of Public Assistance benefits. If the Agency appears at the hearing without the complete relevant case record, the Agency is required to withdraw its Notice of Intent.

DISCUSSION

In this case the uncontroverted evidence establishes that on December, 1986, the Agency, without sending any notice, reduced Appellant's Public Assistance grant to \$374.00 a month.

The Agency's failure to give timely and adequate notice of its proposed actions violates Department Regulations. 18 NYCRR 358.8(a).

In this case, the uncontroverted evidence further establishes that effective January, 1987, the Agency, without timely or adequate notice, reduced the Appellant's monthly Food Stamp benefits to \$36.00.

The Agency's failure to give timely and adequate notice of its proposed action violates Department Regulations at 18 NYCRR 387.20(b) and Federal Regulations at 7 CFR 273.13.

The uncontroverted evidence establishes that the Agency sent a Notice of Intent to the Appellant advising the Appellant that it had determined to reduce the Appellant's Public Assistance grant effective December 1, 1986, because the Appellant received an overpayment of assistance in the amount of \$226.50.

Although duly notified of the time and place of the hearing, the Agency did not produce the Appellant's complete relevant case record nor withdraw its Notice of Intent, as required by Rodriguez v. Blum.

Accordingly, the question of the correctness of the Agency determination to reduce Appellant's Public Assistance grant cannot be reached in this case.

It is noted that the Agency documents indicate that the Agency is intending to restore all lost Public Assistance and Food Stamp benefits but the Appellant has not yet received any supplemental grants.

DECISION AND ORDER

The Agency's reduction of the Appellant's Public Assistance grant is not correct and is reversed.

1. The Agency is directed to withdraw its Notice of Intent dated November 21, 1986.

2. The Agency is directed to restore Appellant's semi-monthly grant to the amount of \$248.50 retroactive to December 1, 1986.

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The determination of the Agency to reduce the Appellant's Food Stamp benefits without notice or reason is not correct and is reversed.

1. The Agency is directed to restore the Appellant's Food Stamp benefits to the amount of \$131.00 retroactive to January, 1987, the date Appellant's Food Stamp benefits were reduced.

Should the Agency in the future determine to implement any of its previous actions, it is directed to issue a timely and adequate Notice of Intent and to comply with the provisions of Rodriguez v. Blum.

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

MAY 06 1987

CESAR A. PERALES,
COMMISSIONER

BY 

Commissioner's Designee