

REQUEST September 6, 1994  
October 17, 1994

STATE OF NEW YORK  
DEPARTMENT OF SOCIAL SERVICES

CASE#  
CENTER# F-15/51  
FH# 2174128H  
2190630J

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In the Matter of the Appeal of :

J F

DECISION  
: AFTER  
FAIR  
HEARING

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

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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 May 25, 1995, in New York City, before Kenneth Luciano, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Gene Doyle, Appellant's Representative

For the Social Services Agency

David Reese, Representative

ISSUES

Was the Agency's determination to discontinue the Appellant's Food Stamp benefits in September 1994 correct?

Was the Agency's October 7, 1994, determination to discontinue the Appellant's Food Stamp benefits 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 Food Stamp benefits.

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2. On or about September 1, 1994, the Agency, without notice, discontinued the Appellant's Food Stamp benefits.

3. On October 7, 1994, the Agency sent the Appellant a notice that it had denied the Appellant's application for Food Stamp benefits.

4. On September 6, 1994 and October 17, 1994, this hearing was requested. At the hearing an issue regarding an alleged Agency determination to discontinue, without notice, the Appellant's Food Stamp benefits in October 1994 was withdrawn by the Appellant's Representative.

#### APPLICABLE LAW

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.

#### DISCUSSION

The record establishes that on or about September 1, 1994, the Agency, without sending any notice, discontinued the Appellant's Food Stamp benefits. The Agency's failure to give notice of its proposed actions violates the above cited regulations, and its discontinuance of the Appellant's Food Stamp benefits cannot be sustained.

On October 7, 1994, the Agency sent the Appellant a notice that it had denied the Appellant's application for Food Stamp benefits. The record establishes that the notice had the effect of discontinuing the Appellant's Food Stamp benefits. The record also establishes that the Agency's October 7, 1994, notice was not a timely or adequate notice, and its discontinuance of the Appellant's Food Stamp benefits cannot be sustained.

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DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Food Stamp benefits in September 1994 is not correct and is reversed.

The Agency's October 7, 1994, determination to discontinue the Appellant's Food Stamp benefits is not correct and is reversed.

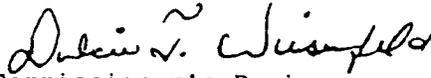
1. The Agency is directed to restore the Appellant's Food Stamp benefits retroactive to the dates such benefits were discontinued, and to continue to provide Food Stamp benefits to the Appellant.

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  
June 5, 1995

NEW YORK STATE DEPARTMENT  
OF SOCIAL SERVICES

By

  
Commissioner's Designee