

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

REQUEST August 8, 1995
CASE#
CENTER# 53
FH# 2319206R

In the Matter of the Appeal of :

R F

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 February 13, 1996, in New York City, before Robert Diggs, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Eugene Doyle, representative

For the Social Services Agency

No appearance

ISSUE

Was the determination of the Agency to reduce the Appellant's Food Stamp benefits effective July 26, 1995 without notice correct?

Has the Agency acted correctly with respect to its determination of July 27, 1995 to reduce the Appellant's Food Stamp benefits?

Has the Agency acted correctly with respect to its determination of July 27, 1995 to reduce the Appellant's Medical Assistance benefits?

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.
2. Effective on or about July 26, 1995, the Agency determined to reduce the Appellant's Food Stamp benefits from \$400.00 to \$323.00 monthly, without notice.
3. On July 27, 1995, the Agency sent a Notice of Intent to the Appellant setting forth its intention to reduce the Appellant's Food Stamp benefits from \$328.00 to \$228.00 monthly effective July 28, 1995 because the Appellant is in receipt of a change in Supplemental Security income.
4. The Appellant has been in receipt of Medical Assistance benefits.
5. On July 27, 1995, the Agency sent a Notice of Intent to the Appellant setting forth its intention to reduce the Appellant's household's Medical Assistance benefits, by discontinuing Medical Assistance for the Appellant.
6. On August 8, 1995, the Appellant requested this fair hearing.

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.

Department 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. 18 NYCRR 358-4.3(b).

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))

Pursuant to the settlement in the case of Annunziata v. Blum, the New York City Agency is required to produce the Appellant's case record at a fair hearing in any case involving the discontinuance, reduction, or restriction of Medical Assistance benefits. If the Agency appears at the hearing without the case record, the Agency is required to withdraw its Notice of Intent.

DISCUSSION

The Agency, without sending any notice, determined to reduce the Appellant's Food Stamp benefits from \$400.00 to \$323.00 monthly effective on or about July 26, 1995.

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

The evidence further establishes that on July 27, 1995 the Agency sent a Notice of Intent to the Appellant advising the Appellant that it had determined to further reduce the Appellant's Food Stamp benefits to \$228.00 monthly because the Appellant is in receipt of a change in Supplemental Security Income.

Although duly notified of the time and place of the hearing, the Agency failed to appear or to present any evidence to substantiate its determination to reduce the Appellant's Food Stamp benefits.

The evidence establishes that the Agency's July 27, 1995 Notice of Intent to the Appellant also advised the Appellant that it had determined to reduce the household's Medical Assistance benefits by discontinuing Medical Assistance for the Appellant.

Although duly notified of the time and place of the hearing, the Agency failed to produce the Appellant's case record on the issue of the Agency's determination to reduce the Appellant's Medical Assistance Authorization and failed to withdraw its Notice of Intent as required by Annunziata v. Blum

DECISION AND ORDER

The determinations of the Agency to reduce the Appellant's Food Stamp benefits are not correct and are reversed.

1. The Agency is directed to restore the Appellant's Food Stamp benefits to \$400.00 monthly retroactive to on or about July 26, 1995, the date such benefits were initially reduced.

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

The Agency's determination to reduce the Appellant's Medical Assistance benefits is not correct and is reversed.

1. The Agency is directed to restore the Appellant's Medical Assistance benefits retroactive to July 27, 1995, the date of the Agency action.

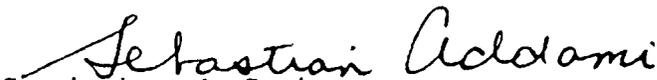
Should the Agency in the future determine to implement its previous action, it is directed to procure and review the Appellant's complete relevant case record with respect to a determination relating to the Appellant's Medical Assistance benefits, to issue a new Notice of Intent and to produce the required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

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
February 28, 1996

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

By


Commissioner's Designee