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In the Matter of the Appeal of :  
J P :  
: DECISION  
: AFTER  
: FAIR  
from determinations by the New York City : HEARING  
Department of Social Services :  
:  
:

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JURISDICTION

This appeal is from determinations by the local Social Services Agency relating to the reduction of the Appellant's Food Stamp benefits without notice and the adequacy of the Appellant's grant of Public 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 April 10, 1989, in New York City, before Michael A. Vass, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

J P , Appellant

Gene Doyle, Appellant's Representative

For the Local Social Services Agency

no one

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 a grant of Public Assistance and Food Stamp benefits for a household of one person.
2. Effective October, 1988, the Agency reduced the Appellant's Food Stamp benefits from \$87.00 to \$72.00 monthly without notice.

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3. On December 19, 1988, and on February 23, 1989, the Appellant requested the Agency to provide a grant of Public Assistance in the amount of \$800.00 to pay for repairs to the roof over the boiler room of his house.

4. The Agency has not acted on the Appellant's request.

5. On November 18, 1988, and on March 10, 1989, the Appellant requested this hearing to review the Agency's determinations.

#### ISSUES

Was the Agency's determination, to reduce the Appellant's Food Stamp benefits from \$87.00 to \$72.00 monthly effective October, 1988, without notice, correct?

Was the Agency's determination, not to act on the Appellant's request that the Agency to provide a grant of Public Assistance in the amount of \$800.00 to pay for repairs to the roof over the boiler room of his house, correct?

#### APPLICABLE LAW

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 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.

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Section 351.8(b) of the Department Regulations provides that the decision to accept an application for Public Assistance and care shall be made as soon as the facts to support it have been established but not later than thirty days from the date of application except where the applicant requests additional time or where difficulties in verification lead to unusual delay, or for other reasons beyond the Agency's control. The applicant shall be notified in writing of the Agency's determination.

Section 352.4(d)(2) of the Regulations provides that the Agency shall provide an allowance to meet the cost of repair to client-owned property whenever the repairs are essential to the health or safety of the recipient.

#### DISCUSSION

In this case, the uncontroverted evidence establishes that effective October, 1988, the Agency reduced the Appellant's Food Stamp benefits from \$87.00 to \$72.00 monthly without timely or adequate notice.

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.

In this case the uncontroverted evidence also establishes that on December 19, 1988, and on February 23, 1989, the Appellant requested the Agency to provide a grant of Public Assistance in the amount of \$800.00 to pay for repairs to the roof over the boiler room of his house and that the Agency has not acted on the Appellant's request.

The Agency's failure to act on the Appellant's request within thirty days violates Department Regulations at 18 NYCRR 351.8(b).

It is noted that on March 8, 1989 the Agency's Central Resource Unit advised the Agency's Income Maintenance Center #51 to issue \$800.00 for the requested repairs and to treat the request as an emergency. The record fails to establish that the Agency's Income Maintenance Center #51 has acted in accordance with the March 8, 1989, memorandum.

#### DECISION AND ORDER

The Agency's determination, to reduce the Appellant's Food Stamp benefits from \$87.00 to \$72.00 monthly effective October, 1988, without notice, was not correct and is reversed.

1. The Agency is directed to restore the Appellant's Food Stamp benefits to \$87.00 retroactive to October, 1988, the effective date of the Agency's reduction of the Appellant's Food Stamp benefits.

Should the Agency in the future determine to implement its previous action, it is directed to issue a timely and adequate Notice of Intent.

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The Agency's determination, not to act on the Appellant's request that the Agency to provide a grant of Public Assistance in the amount of \$800.00 to pay for repairs to the roof over the boiler room of his house, within 30 days of the Appellant's request was not correct and is reversed.

2. The Agency is directed to process the Appellant's request for a grant of Public Assistance in the amount of \$800.00 to pay for repairs to the roof over the boiler room of his house forthwith.

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

APR 25 1989

CESAR A. PERALES  
COMMISSIONER

By



Commissioner's Designee