
In the Matter of the Appeal of

C P

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

DECISION
: WITHOUT
EVIDENTIARY
HEARING
:

By letter dated March 28, 1988, the Appellant's representative, Eugene Doyle, requested that a decision without an evidentiary hearing be issued pursuant to 18 NYCRR 358.19 on a March 18, 1988 notice issued to the Appellant by the Agency. Pursuant to 18 NYCRR 358.19, by letter dated March 31, 1988, copies of the Appellant's request and supporting documents were sent to the Agency with a request for answering papers within ten working days. The time before which the Agency was required to respond to the Appellant's request was extended at the Agency's request and such response was provided by letter dated April 28, 1988. By letter dated May 4, 1988, the Appellant's representative responded to the Agency's answer.

FACT FINDINGS

An opportunity to be heard having been afforded to all interested parties and evidence having been submitted and due deliberation having been had, it is hereby found that:

1. Appellant has been in receipt of Public Assistance and Food Stamp benefits.
2. By notice dated March 18, 1988 the Agency notified the Appellant that her Public Assistance grant and Food Stamp benefits would be discontinued effective March 28, 1988 on the grounds that she had failed to pick up four consecutive Public Assistance payments.
3. On March 28, 1988, the Appellant's representative, Eugene Doyle, requested that a decision without an evidentiary hearing be issued pursuant to 18 NYCRR 358.19 to determine whether the Agency's notice dated March 18, 1988 to discontinue the Appellant's Public Assistance and Food Stamp benefits was defective because a) it failed to cite the legal authority for the proposed discontinuances and b) it was not a State-mandated form notice for Food Stamp purposes.
4. By letter dated April 28, 1988, the Agency, through its Office of Legal Affairs, responded to the Appellant's request. This response states that:

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"As a fraud-control measure, the Agency issues a notice of intent to discontinue assistance when benefit checks have accumulated for two months or more. A recipient's failure to pick up four consecutive checks is also indicative of a cessation of need for public assistance.

"The client need only appear at the income maintenance center and indicate continuing need to have assistance continued. This notice serves to inform a recipient who is not picking up his assistance checks that he must contact his income maintenance center if in fact he is still in need of assistance."

5. The Appellant's representative responded to the Agency's answer. This response a) asks that the Agency's response of April 28, 1988 be excluded as untimely; b) states that the Agency's response does not address the questions of law presented for review; and c) states that such response misstates the contents of the notice of intent of March 18, 1988.

ISSUE

Was the Agency's notice dated March 18, 1988 to discontinue the Appellant's Public Assistance and Food Stamp benefits a proper notice?

APPLICABLE LAW

Department regulations at 18 NYCRR 351.22(e)(2) provide that a Public Assistance case must be closed when the recipient fails to pick up benefits from an electronic payment file transfer outlet for two consecutive months.

Department policy (81 ADM-55) requires that a notice of intent to discontinue Public Assistance benefits cite the regulation upon which the proposed action is based.

Department Regulations at 18 NYCRR 387.20(b) provide as follows:

Notification to recipients. Each Food Stamp household shall be notified in writing of any change, reduction or termination of the household's Food Stamp benefits. The notification letter shall explain, in easily understandable language: the proposed action, the reason for the proposed action including the applicable regulatory citation; a copy of the new food stamp budget; the household's right to request a fair hearing, a telephone number to secure additional information, the availability of continued food stamp benefits; and the liability of the household for any food stamp benefits received while awaiting a fair hearing decision if the decision affirms the local department's action.

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DISCUSSION

The uncontroverted evidence establishes that, by notice dated March 18, 1988, the Agency advised the Appellant that the Agency intended to discontinue her Public Assistance grant and Food Stamp benefits on that date on the grounds that she had failed to pick up four consecutive Public Assistance payments. The Appellant's representative subsequently requested that the Department issue a decision without evidentiary hearing regarding the Agency's March 18, 1988 determination on the grounds that the notice of intent was defective because a) it failed to cite the legal authority for the proposed discontinuances and b) it was not a State-mandated form notice for Food Stamp purposes.

The Agency's response to the Appellant's representative's request states that such action was being taken as a "fraud-control measure" and that the notice in question "...serves to inform a recipient who is not picking up his assistance checks that he must contact his income maintenance center if in fact he is still in need of assistance."

In his answer to the Agency's response, the Appellant's representative first contends that the Agency's response should be excluded as untimely pursuant to the provisions of 18 NYCRR 358.19(b). It must be noted, however, that a representative of the Agency contacted the Department on or about April 21, 1988 to request that the time within which to answer be extended based upon the late receipt of the Appellant's representative's documentation. This request was granted and the time to respond was extended to May 2, 1988. Accordingly, the request of the Appellant's representative that the Agency's answer be excluded cannot be granted.

The Appellant's representative further argues in his response to the Agency's answer that such answer does not address the questions of law of which review had been sought. Specifically, the Appellant's representative had contended that the Agency's action should be reversed based upon the inadequacy of the notice of intent of March 18, 1988 in that such notice, inter alia, failed to cite the specific authority on which the determinations had been based. This contention is correct. The Agency's response merely attempts to justify the merits of its intended action and does not, in any respect, deal with the legal adequacy of the notice of intent.

The Agency's notice of intent of March 18, 1988 does not advise the Appellant of the authority for the the Agency's proposed actions. Thus, the notice was in violation of the above-cited provisions of Administrative Directive 81 ADM-55 and 18 NYCRR 387.20(b).

Since the instant notice is in violation of Administrative Directive 81 ADM-55 and 18 NYCRR 387.20(b), it is not necessary to reach the other issue raised by the Appellant's representative concerning this notice.

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DECISION AND ORDER

The notice dated March 18, 1988 to discontinue the Appellant's Public Assistance and Food Stamp benefits was not a proper notice.

1. The Agency is directed to withdraw its notice dated March 18, 1988 and to restore any lost Public Assistance and/or Food Stamp benefits retroactive to date of the Agency action.
2. The Agency is directed to continue assistance and benefits to the Appellant in the verified degree of need.

Should the Agency in the future determine to implement its previous action to discontinue the Appellant's Public Assistance or Food Stamp benefits, it is directed to issue a proper notice.

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 12 1988

CESAR A. PERALES
COMMISSIONER

BY


Commissioner's Designee