
In the Matter of the Appeal of

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

DECISION
: WITHOUT
EVIDENTIARY
HEARING
:

By letter dated March 30, 1988, the Appellant's representative, Eugene Doyle, requested that a decision without an evidentiary hearing be issued pursuant to 18 NYCRR 358.19 on two notices, both dated March 24, 1988, issued to the Appellant by the Agency. Pursuant to 18 NYCRR 358.19, by letter dated April 7, 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. No evidence has been received from the Agency and the time to submit such evidence has expired.

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 24, 1988 the Agency notified the Appellant that her Public Assistance grant would be reduced from \$282.50 to \$245.00 semi-monthly because her husband is in receipt of Social Security Disability benefits in the amount of \$800.00 monthly. This notice also advised the Appellant that her Food Stamp benefits would be discontinued because her husband's income makes the household ineligible.

3. By this appeal, the Appellant does not challenge the Agency's determination to reduce her Public Assistance benefits for the reason set forth in the above notice of March 24, 1988.

4. By a second notice dated March 24, 1988, the Agency notified the Appellant that her Public Assistance grant would be reduced from \$282.50 to \$245.00 semi-monthly to reflect a) the removal of her husband's needs from the assistance unit due to his receipt of income from Social Security Disability benefits and b) a recoupment in the amount of ten percent of her needs to recover an overpayment of assistance in the amount of \$75.00 caused by her husband's receipt of income from Social Security Disability benefits. This notice also advised the Appellant of the Agency's determination to discontinue the household's Food Stamp benefits on the grounds that, considering her husband's income and her income from Public Assistance, the household had a budget surplus.

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5. By this appeal, the Appellant does not challenge the Agency's determination to remove the needs of her husband from the Public Assistance unit.

6. On March 30, 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, with respect to the Agency's determinations to recover an overpayment of Public Assistance in the amount of \$75.00 and to discontinue the household's Food Stamp benefits, whether the Agency's notices dated March 24, 1988 were defective because a) they failed to cite the legal authority for the proposed recoupment of Public Assistance and discontinuance of Food Stamp benefits; b) they were untimely in that such notices provided fewer than ten days from the date of postmark within which to request an aid-continuing fair hearing; c) they failed to advise the Appellant as to her right to an aid-continuing hearing regarding the discontinuance of her Food Stamps; and d) with regard to the discontinuance of Food Stamps, the notices were not State-mandated form notices.

7. Although requested to do so by letter dated April 7, 1988, the Agency has not submitted any evidence in opposition to the Appellant's allegations.

ISSUE

Was the Agency's notice dated March 24, 1988, insofar as it pertained to the discontinuance of Food Stamp benefits, a proper notice?

Was the Agency's second notice dated March 24, 1988, insofar as it pertained to the Agency's determinations to recoup an overpayment in the amount of \$75.00 and to discontinue Food Stamp benefits, a proper notice?

APPLICABLE LAW

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 24, 1988, the Agency notified the Appellant that her Public Assistance grant would be reduced from \$282.50 to \$245.00 semi-monthly because her husband is in receipt of Social Security Disability benefits in the amount of \$800.00 monthly. This notice also advised the Appellant that her Food Stamp benefits would be discontinued because her husband's income makes the household ineligible.

The uncontroverted evidence further establishes that, by a second notice dated March 24, 1988, the Agency notified the Appellant that her Public Assistance grant would be reduced from \$282.50 to \$245.00 semi-monthly to reflect the removal of her husband's needs from the assistance unit due to his receipt of income from Social Security Disability benefits and due to a recoupment in the amount of ten percent of her needs to recover an overpayment of assistance in the amount of \$75.00 caused by her husband's receipt of income from Social Security Disability benefits. This second notice also advised the Appellant of the Agency's determination to discontinue the household's Food Stamp benefits on the grounds that, considering her husband's income and her income from Public Assistance, the household had a budget surplus.

By this appeal, the Appellant seeks review of these two notices only insofar as they pertain to the discontinuance of Food Stamp benefits and the recoupment of a \$75.00 overpayment.

With regard to the determinations in issue, neither notice advises the Appellant of the authority for the Agency's proposed actions. Thus, with regard to these determinations, the notices of March 24, 1988 were in violation of the above-cited provisions of Administrative Directive 81 ADM-55 and 18 NYCRR 387.20(b).

Although duly notified of the request for a decision without an evidentiary hearing pursuant to 18 NYCRR 358.19, the Agency did not produce any evidence that the notices dated March 24, 1988 were proper.

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

DECISION AND ORDER

With regard to that portion of the Agency's notice of March 24, 1988 which discontinued the Appellant's Food Stamp benefits, the Agency's notice was not a proper one.

1. The Agency is directed to withdraw that portion of its notice dated March 24, 1988 which pertains to the discontinuance of Food Stamp benefits on the grounds that income of the Appellant's husband rendered the household ineligible for Food Stamp benefits, and to restore any lost Food Stamp benefits retroactive to date of the Agency action.

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2. The Agency is directed to continue benefits to the Appellant in the verified degree of need.

With regard to those portions of the second notice dated March 24, 1988 which pertained to the recoupment of an overpayment of assistance in the amount of \$75.00 and to the discontinuance of Food Stamp benefits, the Agency's notice was not a proper one.

1. The Agency is directed to withdraw those portions of its notice dated March 24, 1988 which pertain to the recoupment of an overpayment of assistance in the amount of \$75.00 and to the discontinuance of Food Stamp benefits, and to restore any Public Assistance and/or Food Stamp benefits lost as a result of such notice retroactive to the date of the Agency's 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 recoup an overpayment of assistance of \$75.00 or to discontinue Food Stamp benefits, it is directed to issue a proper notice.

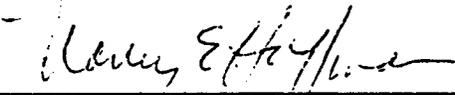
As required by Department Regulations at 18 NYCRR 358.22, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York

MAY 06 1988

CESAR A. PERALES
COMMISSIONER

BY


Commissioner's Designee