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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  
:

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By letter dated June 13, 1988, the Appellant's representative, Eugene Doyle, requested that a decision without an evidentiary hearing be issued pursuant to 18 NYCRR 358.19 concerning two notices, dated February 24, 1988 and March 11, 1988, issued to the Appellant by the Agency. Pursuant to 18 NYCRR 358.19, by letter dated June 20, 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. On or about January 29, 1988, the Appellant applied for Food Stamp benefits.
2. On or about March 16, 1988, the Appellant received two notices from the Agency denying his application for Food Stamp benefits.
3. The first notice, dated February 24, 1988, indicated that the Appellant's application for Food Stamp benefits had been denied because he "...applied for Public Assistance. You cannot have two cases going into the same household." This notice bore the notation at the top that the "letter was returned to office".
4. Enclosed with the first notice was a second notice, dated March 11, 1988, which stated that the Appellant's application for Food Stamp benefits had been denied, but which did not recite any reason for such determination. At the top of this letter was written the phrase "See enclosed letter."
5. Neither notice in issue sets forth the authority pursuant to which the Agency determined to deny the Appellant's application. In addition, neither notice advises the Appellant of the telephone number at which he can contact the Agency for the purpose of requesting an Agency conference.

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6. On February 25, 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 notices dated February 24, 1988 and March 11, 1988 to deny the Appellant's application for Food Stamp benefits were defective because the notices fail to: a) state, in easily understandable language, the reasons for the Agency's actions; b) cite the legal authority for the Agency's actions; c) explain the method for obtaining further information and an Agency conference; and d) inform the Appellant of the community legal services available to assist him with a conference and fair hearing.

7. Although requested to do so by letter dated June 20, 1988, the Agency has not submitted any evidence in opposition to the Appellant's allegations.

#### ISSUE

Were the Agency's notices of February 24, 1988 and March 11, 1988 to deny the Appellant's application for Food Stamp benefits proper notices?

#### APPLICABLE LAW

If a Food Stamp application is denied, the State agency shall provide the household with written notice explaining the basis for the denial, the household's right to request a fair hearing, the telephone number of a food stamp office, and, if possible, the name of the person to contact for additional information. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the service. 7 CFR 273.10(g)(1)(ii).

Each Food Stamp applicant household shall be notified in writing of the Agency's decision regarding the household's application. 18 NYCRR 387.20(a).

When an application for Food Stamps is denied because the household is found ineligible, a written notice of denial shall be sent on a timely basis. Such notice shall state, in easily understandable language, the reason for the denial, the section of the applicable regulation, the household's right to request a fair hearing, and the telephone number of a person to contact for more information. 18 NYCRR 387.20(a)(2).

#### DISCUSSION

The uncontroverted evidence in this case establishes that the Appellant applied for Food Stamp benefits on or about January 29, 1988. On or about March 16, 1988, the Appellant received two notices in the mail. The first notice, dated February 24, 1988, indicated that the Appellant's application for Food Stamp benefits had been denied because he "...applied for Public Assistance. You cannot have two cases going into the same household." This notice bore the notation at the top that the "letter was returned to

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office". Enclosed with the first notice was a second notice, dated March 11, 1988, which stated that the Appellant's application for Food Stamp benefits had been denied, but which did not recite any reason for such determination. At the top of this notice was written the phrase "See enclosed letter." Neither notice set forth the authority under which the Agency determined to deny the Appellant's application. In addition, neither notice advised the Appellant of the telephone number at which he could contact the Agency for the purpose of requesting an Agency conference.

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 February 24, 1988 and March 11, 1988 were proper.

Since the notices in question are in violation of the above-cited provisions of 7 CFR 273.10(g)(1)(ii) and 18 NYCRR 387.20(a)(2) due to the lack of an appropriate legal citation and telephone number for requesting an Agency conference, it is not necessary to reach the other points raised by the Appellant's representative concerning these notices.

DECISION AND ORDER

The notices dated February 24, 1988 and March 11, 1988 to deny the Appellant's application for Food Stamp benefits were not proper notices.

1. The Agency is directed to cancel its notices dated February 24, 1988 and March 11, 1988.
2. The Agency is directed to reevaluate the Appellant's eligibility for Food Stamp benefits in connection with the application therefor made on or about January 29, 1988.
3. If, after such reevaluation, it is determined that the Appellant is eligible for Food Stamp benefits, the Agency is directed to provide such benefits retroactive to the date of the Appellant's application therefor and to continue to provide such benefits, subject to verified degree of need.

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

CESAR A. PERALES  
COMMISSIONER

By

*Murray S. Hoffman*

JUL 29 1988

Commissioner's Designee