
In the Matter of the Appeal of :
:
D B : AMENDED
: DECISION
: AFTER
: FAIR
from a determination by the New York City : HEARING
Department of Social Services :
:
:

JURISDICTION

This appeal is from a determination by the local Social Services Agency to reduce the Appellant's Food Stamp benefits.

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 October 27, 1987, in New York City, before Stanley Leyden, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

D B , Appellant
Eugene Doyle, Appellant's Representative

For the Local Social Services Agency

Steven Klips, Representative

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 for a household of three persons.
2. By notice dated September 16, 1987, the Agency advised the Appellant of its determination to reduce the Appellant's Food Stamp benefits from \$175.00 to \$74.00 monthly effective October 13, 1987 because of the receipt by her husband of Supplemental Security Income benefits.
3. The Agency's notice of September 16, 1987 did not include any citation to the authority under which the action was being taken.

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4. On September 28, 1987, the Appellant requested this hearing to review the Agency's determination to reduce her Food Stamp benefits from \$175.00 to \$74.00 monthly.

5. A decision was originally issued relating to this request on December 7, 1987. Subsequent to the issuance of such decision, the Appellant's representative requested reconsideration of the decision on the grounds, inter alia, that such decision failed to address his contention that the determination be reversed due to the fact that the notice did not cite the authority under which the action was taken.

6. The decision issued on December 7, 1987 is hereby vacated and the present one substituted therefor.

ISSUE

Was the Agency's determination to reduce the Appellant's Food Stamp benefits from \$175.00 to \$74.00 monthly, effective October 13, 1987, to reflect the inclusion of her husband's income from Supplemental Security Income benefits correct?

APPLICABLE LAW

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.

DISCUSSION

The evidence in this case establishes that the Agency advised the Appellant, by notice dated September 16, 1987, of its determination to reduce her Food Stamp benefits from \$175.00 to \$74.00 monthly to reflect the income of her husband from Supplemental Security Income benefits. This notice did not include a citation to the applicable regulatory authority under which the action was being taken. As such, the notice of September 16, 1987 violated the provisions of 18 NYCRR 387.20(b). Under such circumstances, the Agency's determination cannot be sustained.

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DECISION AND ORDER

The determination of the Agency is not correct and is reversed.

1. The Agency is directed to cancel its notice of September 16, 1987 and to take no further action thereon.

2. The Agency is directed to restore the Appellant's Food Stamp benefits to the amount of \$175.00 monthly retroactive to the date on which the Appellant's Food Stamps were reduced.

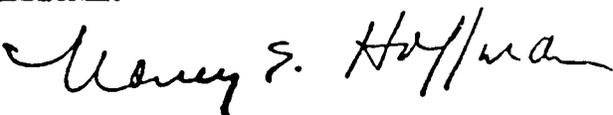
3. In the event that the Agency determines to implement its previous action, it is directed to issue a timely and adequate notice which complies with the provisions of 18 NYCRR 387.20(b).

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

DEC 23 1987


By _____
Commissioner's Designee