
In the Matter of the Appeal of

D B

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

DECISION
: WITHOUT
EVIDENTIARY
HEARING
:

By letter dated July 28, 1988, the Appellant's representative, Eugene Doyle, requested that a decision without an evidentiary hearing be issued pursuant to 18 NYCRR 358.19. Pursuant to 18 NYCRR 358.19, by letter dated August 5, 1988, a copy of the Appellant's request and supporting documents were sent to the Agency. The Agency has not timely responded to this request.

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. The Appellant has been in receipt of Food Stamp benefits for a household of three persons.

2. By notice dated June 24, 1988, the Agency advised the Appellant of its determination to reduce the Appellant's Food Stamp benefits from \$133.00 to \$110.00 monthly effective July 7, 1988 because of an increase in the household's income due to an increased Public Assistance shelter allowance and an increase in Supplemental Security Income (SSI) benefits.

3. The Agency's notice of June 24, 1988 did not include any citation to the authority under which the action was being taken.

4. By letter dated July 28, 1988, the Appellant requested review of the Agency's determination to reduce her Food Stamp benefits from \$133.00 to \$110.00 monthly on the grounds that a) the notice of intent did not cite the regulatory authority for the proposed action, and b) no budget calculation was included with the notice of intent.

5. Although requested to do so by letter dated August 5, 1988, the Agency has not submitted any evidence in opposition to the Appellant's allegations.

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ISSUE

Was the Agency's determination to reduce the Appellant's Food Stamp benefits from \$133.00 to \$110.00 monthly, effective July 7, 1988, to reflect an increase in the household's income caused by an increased Public Assistance shelter allowance and an increase in SSI 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 June 24, 1988, of its determination to reduce her Food Stamp benefits from \$133.00 to \$110.00 monthly to reflect an increase in the household's income caused by an increased Public Assistance shelter allowance and an increase in SSI 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 June 24, 1988 violated the provisions of 18 NYCRR 387.20(b). Under such circumstances, the Agency's determination cannot be sustained.

Inasmuch as it has been determined, pursuant to the above, not to sustain the Agency's determination, the Appellant's contention as to the the Agency's failure to provide a copy of its budget computation with the notice of intent need not be decided.

DECISION AND ORDER

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

1. The Agency is directed to cancel its notice of June 24, 1988 and to take no further action thereon.

2. The Agency is directed to restore the Appellant's Food Stamp benefits to the amount of \$133.00 monthly retroactive to the date on which the Appellant's Food Stamps were reduced.

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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

SEP 21 1988

CESAR A. PERALES
COMMISSIONER



By _____
Commissioner's Designee