

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

CASE No.
CENTER No. 54
FH Nos. 1316729Y
1320934R
1321642M

In the Matter of the Appeal of

G B

from determinations by the New York City
Department of Social Services

:
:
: CORRECTED
: DECISION
: AFTER
: FAIR
: HEARING
:
:
:

JURISDICTION

This appeal is from determinations by the local Social Services Agency relating to the adequacy and reduction of the Appellant's grant of Public Assistance and the reduction of 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 March 23, 1989, in New York City, before Michael A. Vass, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

G B , Appellant

Gene Doyle, Appellant's Representative

For the Local Social Services Agency

O. Afolabi, W. Brown, Caseworkers, Special Tasks Service Section,
Representatives

FACT FINDINGS

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:

1316729Y

1. The Appellant is in receipt of a grant of Public Assistance for herself only. She resides with her husband who receives S.S.I.. Their son also resided with them until March 16, 1989. They were in receipt of Food Stamp benefits for a household of three persons.

2. On August 23, 1988, and September 29, 1988, the Appellant's Representative requested on the Appellant's behalf that the Agency provide a grant of Public Assistance to the Appellant in the amount of \$808.52 to cover the costs of real property taxes for the Appellant's home for the period from January 1, 1988, through December 31, 1988.

3. The Agency did not comply with the request.

4. On August 23, 1988, and September 29, 1988, the Appellant's Representative requested on the Appellant's behalf that the Agency provide a grant of Public Assistance to the Appellant in the amount of \$341.55 to cover the costs of water bills for the Appellant's home for the period from June 30, 1988, through June 29, 1989.

5. The Agency did not comply with the request.

6. On October 31, 1988, the Appellant's Representative requested on the Appellant's behalf that the Agency replace a check dated July 27, 1988, in the amount of \$331.80 issued by the Agency to cover the costs of water bills for the Appellant's home for the period from June 30, 1987, through June 29, 1988.

7. The Agency did not comply with the request.

8. By Notice of Intent dated November 28, 1988, the Agency determined to reduce the Appellant's grant of Public Assistance from \$94.50 to \$87.50 semi-monthly effective December 5, 1988.

9. By Notice of Intent dated December 20, 1988, to reduce the Appellant's Food Stamp benefits from \$154.00 [s.i.c.] to \$145.00 monthly effective January, 1989.

10. The Agency, duly notified of the hearing, appeared with the Appellant's case record; however, the Agency's Representatives did not present a written summary of the Agency's case, were not familiar with any of the facts of the Agency's case, had not reviewed the Agency's case, and did not have the authority to make binding decisions at the hearing on behalf of the Agency.

11. On December 19, 1988, by a letter dated December 9, 1988, the Appellant's Representative requested this hearing on the Appellant's behalf to review the following Agency determinations:

- a) to deny the Appellant's requests for a grant of Public Assistance to cover the costs of real property taxes for the Appellant's home;

1316729Y

- b) to deny the Appellant's requests for a grant of Public Assistance to cover the costs of water bills for the Appellant's home;
- a) to fail to act on the Appellant's requests that the Agency replace a check dated July 27, 1988, in the amount of \$331.80 issued by the Agency to cover the costs of water bills for the Appellant's home.

12. On December 27, 1988, by a letter dated December 21, 1988, the Appellant's Representative requested this hearing on the Appellant's behalf to review the Agency's determination, by Notice of Intent dated November 28, 1988, to reduce the Appellant's grant of Public Assistance from \$94.50 to \$87.50 semi-monthly effective December 5, 1988.

13. On December 29, 1988, by a letter dated December 24, 1988, the Appellant's Representative requested this hearing on the Appellant's behalf to review the Agency's determination, by Notice of Intent dated December 20, 1988, to reduce the Appellant's Food Stamp benefits from \$154.00 [s.i.c.] to \$145.00 monthly effective January, 1989.

14. Subsequent to the issuance of the Decision After Fair Hearing, the Appellant's representative contacted the Commissioner's office and requested a review of the third directive in the Decision and Order section. Pursuant to said request, it was determined that there was an editing error. This error has been corrected, and the directive now states that the Agency is directed to provide the Appellant with a grant of Public Assistance through the E.P.T.F. system to replace the check dated July 27, 1988, in the amount of \$331.80 issued by the Agency to cover the costs of water bills in the Appellant's home as well as for the cost of accrued interest on such water assessments and the cost of the dishonored check charge. In all other respects, the decision remains the same.

ISSUES

Was the Agency's determination, to deny the Appellant's requests for a grant of Public Assistance to cover the costs of real property taxes for the Appellant's home, correct?

Was the Agency's determination, to deny the Appellant's requests for a grant of Public Assistance to cover the costs of water bills for the Appellant's home, correct?

Was the Agency's determination, not to act on the Appellant's requests that the Agency replace a check dated July 27, 1988, in the amount of \$331.80 issued by the Agency to cover the costs of water bills for the Appellant's home, correct?

Was the Agency's determination, by Notice of Intent dated November 28, 1988, to reduce the Appellant's grant of Public Assistance from \$94.50 to \$87.50 semi-monthly effective December 5, 1988, correct?

1316729Y

Was the Agency's determination, by Notice of Intent dated December 20, 1988, to reduce the Appellant's Food Stamp benefits from \$154.00 [s.i.c.] to \$145.00 monthly effective January, 1989, correct?

APPLICABLE LAW

Social Services Law Section 131-a.1 requires Social Services districts to provide Public Assistance to needy persons who are determined to be eligible in accordance with standards of need set forth in Social Services Law Section 131-a.2. The standard of need and a monthly grant of assistance must include, among other things, amounts for shelter.

Department Regulations provide that "each social services district shall provide a monthly allowance for rent in the amount actually paid but not in excess of the appropriate maximum of such district for each family size..." 18 NYCRR 352.3.

Section 352.4(b) of the Regulations provides that, for persons who own their own home, shelter allowance shall include carrying charges such as taxes and water assessments.

Section 358.8(a) of the Regulations of the State Department of Social Services provides that timely and adequate notice of any proposed action to discontinue or reduce Public Assistance payments or to discontinue or reduce a Medical Assistance Authorization must be sent to the recipient. Timely and adequate notice means a written notice mailed at least ten days prior to the effective date of the proposed action and which contains details of the reasons for the proposed action as well as information regarding conference and hearing rights and the right to continued Public Assistance and Medical Assistance Authorization.

The level of Food Stamp benefits to which a household is entitled is based on the household's net income. A household's net income is computed by subtracting from the gross household income certain exclusions and deductions which are allowable under the Federal Food Stamp Act (7 USC 2014), Code of Federal Regulations (7 CFR 273.9, 273.10 and 273.11), specific United States Department of Agriculture (USDA) instructions and the Regulations of the New York State Department of Social Services (18 NYCRR 387.11 and 387.12).

Exclusions are allowed for certain items including in-kind benefits, vendor payments, loans, reimbursements for past or future expenses (to the extent they do not exceed actual expenses and do not represent a gain or benefit to the household), non-recurring lump sum payments, costs of producing self-employment income, and monies withheld to recover certain prior overpayments.

1316729Y

Allowable deductions include:

- (1) A 20% deduction from earned income (18% before May 1, 1986).
- (2) A standard deduction of \$106 monthly for all households on or after October 1, 1988 (\$102 before October 1, 1988) (\$99 before October 1, 1987).
- (3) Actual dependent care costs which consist of child care or other dependent care payments made to allow a household member to accept or continue employment, attend training, or pursue education in preparation for employment. Effective October 1, 1988, the deduction for dependent care is actual cost up to \$160 per month for each dependent. Prior to this, effective May 1, 1986, through November 30, 1986, the deduction for dependent care was the actual cost up to \$160 per month per household for households not containing elderly or disabled members and effective December 1, 1986, the deduction for all households for dependent care was the actual cost up to \$160 per month per household. Prior to December 1, 1986, the dependent care deduction was limited to \$149 for households containing elderly or disabled members. Prior to October 1, 1986, it was limited to \$147 for such households. (Before May 1, 1986, there was a maximum deduction of \$139 for dependent care and excess shelter costs.)
- (4) Excess shelter costs computed by subtracting 50% of adjusted income from the sum of the following items:
 - a. actual rent or mortgage payments;
 - b. actual heating costs or the heating standard, whichever is greater;
 - c. actual utility costs (other than for heat), or the utility standard, whichever is greater;
 - d. \$30 standard for a telephone or the actual cost for basic service for one telephone, whichever is greater;
 - e. any other allowable shelter costs.

Effective October 1, 1988, the excess shelter deduction is limited to \$170 (\$164 for October 1, 1987-September 30, 1988) (\$149 for October 1, 1986 -September 30, 1987) (\$147 for May 1 - September 30, 1986), unless the household contains a member sixty years of age or older or disabled. Where the household contains such a member, there is no limitation on the amount of the deduction. (Before May 1, 1986, there was a maximum deduction of \$139 for dependent care and excess shelter costs, but separate deductions are now allowed.)

- (5) Allowable unreimbursed medical costs in excess of \$35 monthly for those household members who are elderly or disabled.

Once the household's net income is determined, reference to the USDA Basis of Coupon Issuance Tables provides the household's level of Food Stamp entitlement.

1316729Y

When a Food Stamp household requests a hearing to review the Agency's determination to discontinue, suspend or reduce its Food Stamp benefits, the local Agency must appear at the hearing with the household's case record. Federal Regulations (7 CFR 273.15(p)) and the Department of Social Services Food Stamp Source Book (VIII-C-5) require that the contents of the case file be made available to the Food Stamp household during the hearing. Such information is essential in order to provide for the proper review of the Agency's determination.

Where Food Stamp benefits are lost due to an error by the Agency, the Agency is required to restore lost benefits. However, lost benefits shall be restored for not more than twelve months prior to whichever of the following occurred first:

1. The date the Agency received a request for restoration from a household; or
2. The date the Agency is notified or otherwise becomes aware that a loss to a household has occurred.

7 CFR 273.17; 18 NYCRR 387.18 and Department of Social Services Food Stamp Source Book, Section X-H-1.

Section 352.6(e) of the Regulations provide that the Agency shall provide funds for certain charges necessary to retain shelter.

Section 358-4.3(b) of the Regulations provides, among other responsibilities of the Agency, that a representative of the Agency must appear at the hearing with the case record and a written summary of the case, have reviewed the case and be prepared to present evidence in support of the action, and have the authority to make binding decisions at the hearing on behalf of the Agency.

DISCUSSION

In this case the evidence establishes that the Appellant is in receipt of a grant of Public Assistance for herself only. She resides with her husband who receives S.S.I.. Their son also resided with them until March 16, 1989. They were in receipt of Food Stamp benefits for a household of three persons.

On August 23, 1988, and September 29, 1988, the Appellant's Representative requested on the Appellant's behalf that the Agency provide a grant of Public Assistance to the Appellant in the amount of \$808.52 to cover the costs of real property taxes for the Appellant's home for the period from January 1, 1988, through December 31, 1988.

1316729Y

The Agency did not comply with the request. The Appellant is entitled to a grant of Public Assistance to cover the costs of real property taxes for the Appellant's home for the period from January 1, 1988, through December 31, 1988. The Agency's determination, not to provide same, cannot be sustained.

On August 23, 1988, and September 29, 1988, the Appellant's Representative requested on the Appellant's behalf that the Agency provide a grant of Public Assistance to the Appellant in the amount of \$341.55 to cover the costs of water bills for the Appellant's home for the period from June 30, 1988, through June 29, 1989.

The Agency did not comply with the request. The Appellant is entitled to a grant of Public Assistance to cover the costs of water bills for the Appellant's home for the period from June 30, 1988, through June 29, 1989. The Agency's determination, not to provide same, cannot be sustained.

On October 31, 1988, the Appellant's Representative requested on the Appellant's behalf that the Agency replace a check dated July 27, 1988, in the amount of \$331.80 issued by the Agency to cover the costs of water bills for the Appellant's home for the period from June 30, 1987, through June 29, 1988. The Agency did not comply with the request.

The evidence establishes that check was provided by the Agency as a "two-party" check which was held by the water company until the check was no longer valid. Although the Appellant's Representative returned the check to the Agency, the Agency failed or refused to replace same.

By Notice of Intent dated November 28, 1988, to reduce the Appellant's grant of Public Assistance from \$94.50 to \$87.50 semi-monthly effective December 5, 1988. The Agency's Notice is not dated at least ten days prior to the proposed effective date and is therefore not timely.

The Agency's failure to give timely and adequate notice of its proposed actions violates Department Regulations. 18 NYCRR 358.8(a).

By Notice of Intent dated December 20, 1988, to reduce the Appellant's Food Stamp benefits from \$154.00 [s.i.c.] to \$145.00 monthly effective January, 1989.

The Agency, duly notified of the hearing, appeared with the Appellant's case record; however, the Agency's Representatives did not present a written summary of the Agency's case, were not familiar with any of the facts of the Agency's case, had not reviewed the Agency's case, and did not have the authority to make binding decisions at the hearing on behalf of the Agency.

The evidence establishes that the Appellant's were entitled to Food Stamp benefits in the amount of \$214.00 monthly as a result of a Fair Hearing Decision (F.H.# 1261305Z-held December 22, 1989) for the months of January, February, and March, 1989, and until such time as the Agency issues a new Notice of Intent to reduce the Appellant's Food Stamp benefits.

1316729Y

DECISION AND ORDER

The Agency's determination, to deny the Appellant's requests for a grant of Public Assistance to cover the costs of real property taxes for the Appellant's home, was not correct and is reversed.

1. The Agency is directed to provide the Appellant provide a grant of Public Assistance to the Appellant in the amount of \$808.52 to cover the costs of real property taxes for the Appellant's home for the period from January 1, 1988, through December 31, 1988, as well as the cost of accrued interest on such taxes.

The Agency's determination, to deny the Appellant's requests for a grant of Public Assistance to cover the costs of water bills for the Appellant's home, was not correct and is reversed.

2. The Agency is directed to provide the Appellant provide a grant of Public Assistance to the Appellant in the amount of \$341.55 to cover the costs of water bills for the Appellant's home for the period from June 30, 1988, through June 29, 1989, as well as the cost of accrued interest on such water assessments.

The Agency's determination, not to act on the Appellant's requests that the Agency replace a check dated July 27, 1988, in the amount of \$331.80 issued by the Agency to cover the costs of water bills for the Appellant's home, was not correct and is reversed.

3. The Agency is directed to provide the Appellant with a grant of Public Assistance through the E.P.F.T. system to replace the check dated July 27, 1988, in the amount of \$331.80 issued by the Agency to cover the costs of water bills in the Appellant's home as well as for the cost of accrued interest on such water assessments and the cost of the dishonored check charge.

The Agency's determination, by Notice of Intent dated November 28, 1988, to reduce the Appellant's grant of Public Assistance from \$94.50 to \$87.50 semi-monthly effective December 5, 1988, was not correct and is reversed.

4. The Agency is directed to restore the Appellant's grant of Public Assistance to the amount of \$94.50 semi-monthly retroactive to the date of the Agency's determination.

Should the Agency in the future determine to implement its previous action, it is directed to issue a timely and adequate Notice of Intent.

The Agency's determination, by Notice of Intent dated December 20, 1988, to reduce the Appellant's Food Stamp benefits from \$154.00 [s.i.c.] to \$145.00 monthly effective January, 1989, was not correct and is reversed.

5. The Agency is directed to provide the Appellant with supplementary Food Stamp benefits for the difference between the amount provided and the amount of \$214.00 monthly during January, February, and March, 1989, and until such time as the Agency issues a new Notice of Intent to reduce the Appellant's Food Stamp benefits.

As required by Department Regulations at 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York

CESAR A. PERALES
COMMISSIONER

By



Commissioner's Designee

APR 7 1989