

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

REQUEST: November 21, 1991
CASE No.
CENTER No. Oneida
FH No. 1752151M

In the Matter of the Appeal of	:	
	:	
R R	:	
	:	DECISION
	:	AFTER
	:	FAIR
from a determination by the Oneida County	:	HEARING
Department of Social Services	:	
	:	
	:	

JURISDICTION

This appeal is from a determination by the local Social Services Agency relating to 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 January 2, 1992, in Oneida County, before Orrie Eihacker, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

R R , Appellant
Nancy Stormer, Legal Aid Society of Mid-New York
E , Appellant's mother

For the Local Social Services Agency

Thomas Serviss, Agency Representative
Phyllis Fenton, Agency Representative
Michelle Stys, Food Stamp Agency 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 is in receipt of Food Stamp benefits for a four person household consisting of herself and three children.

2. By notice dated October 29, 1991, effective November 1, 1991, the Agency advised the Appellant of its determination to reduce her Food Stamp benefits due to an increase in her income because she is now receiving SSI benefits.

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3. On November 21, 1991 the Appellant requested this fair hearing to review the Agency's determination to reduce her Food Stamp benefits.

ISSUE

Was the Agency's determination to reduce the Appellant's Food Stamp benefits correct?

APPLICABLE LAW

Department regulations at 18 NYCRR 358-3.3(b)(1) and Federal regulations at 7 CFR 273.13 provide that a recipient of Food Stamp benefits has a right to timely and adequate notice when the agency proposes to take any action to reduce Food Stamp benefits within the certification period.

Department regulations at 18NYCRR 358-2.23 define "timely notice" as follows:

Timely notice means a notice which is mailed at least 10 days before the date upon which the proposed action is to become effective.

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.

DISCUSSION

The record establishes that by notice dated October 29, 1991 effective November 1, 1991 the Agency advised the Appellant of its determination to reduce her Food Stamp benefits from \$352.00 to \$217.00 due to an increase in her income from SSI benefits. This action was not taken as the result of a recertification, but occurred during a certification period. Since the action was taken during a certification period, the Appellant was entitled to a timely notice of reduction. Timely means a notice sent at least ten days before the day the action is to become effective. In this case, the notice was sent only three days before the effective date, and thus is not a timely notice..

At the hearing the Agency's Food Stamp worker stated that she did not give ten days notice because she did not want to create an overissuance of Food Stamp benefits. The Regulations do not provide such an exception to the requirements for timely notices.

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Accordingly, the Agency's determination to reduce the Appellant's Food Stamp benefits was not proper and cannot be upheld.

DECISION AND ORDER

The Agency's determination to reduce the Appellant's Food Stamp benefits is not correct and is reversed.

1. The Agency is directed to take no further action on the notice of October 29, 1991 and to restore all benefits lost as a result of that notice, if it has not already done so.

2. Should the Agency determine to take the same action in the future, it is directed to provide the Appellant with a timely and adequate notice of its determination.

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

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

JAN 29 1992

By



Commissioner's Designee