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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

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DECISION  
WITHOUT  
EVIDENTIARY  
HEARING

By letter dated 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 on a February 22, 1988 notice issued to the Appellant by the Agency. Pursuant to 18 NYCRR 358.19, by letter dated March 3, 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. Appellant has been in receipt of Public Assistance and Food Stamp benefits.
2. By notice dated February 22, 1988 the Agency notified the Appellant that her Public Assistance grant and Food Stamp benefits would be discontinued effective that date on the grounds that she had been admitted to a private institution.
3. 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 notice dated February 22, 1988 to discontinue the Appellant's Public Assistance and Food Stamp benefits was defective because a) it relied on a regulation which has no relevance to the allegation specified in the notice concerning Public Assistance; b) it failed to cite any authority for the determination regarding Food Stamp benefits; c) it failed to adequately explain the circumstances under which Public Assistance and Food Stamp benefits would be continued if a fair hearing was requested; d) it was not timely for Food Stamp purposes; and e) it was not a state-mandated form notice for Food Stamp purposes.
4. Although requested to do so by letter dated March 3, 1988, the Agency has not submitted any evidence in opposition to the Appellant's allegations.

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ISSUE

Was the Agency's notice dated February 22, 1988 to discontinue the Appellant's Public Assistance and Food Stamp benefits a proper notice?

APPLICABLE LAW

Department policy (81 ADM-55) requires that a notice of intent to discontinue Public Assistance benefits cite the regulation upon which the proposed action is based.

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 uncontroverted evidence establishes that, by notice dated February 22, 1988, the Agency advised the Appellant that the Agency intended to discontinue her Public Assistance grant and Food Stamp benefits on that date on the grounds that she had been admitted to a private institution. The only citation found in the notice advised the Appellant to "see 18 NYCRR 360.18." Department Regulation 18 NYCRR 360.18 relates to termination of Medical Assistance, changes in classification and continuation of Medical Assistance when a Public Assistance, Home Relief or Supplemental Security Income case is discontinued. It does not, in any way, provide authority for the discontinuance of Public Assistance or Food Stamp benefits due to a recipient's admission to a private institution. Thus, the notice of February 22, 1988 was in violation of the above-cited provisions of Administrative Directive 81 ADM-55 and 18 NYCRR 387.20(b).

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 notice dated February 22, 1988 was proper.

Since the instant notice is in violation of Administrative Directive 81 ADM-55 and 18 NYCRR 387.20(b), it is not necessary to reach the other issues raised by the Appellant's representative concerning this notice.

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DECISION AND ORDER

The notice dated February 22, 1988 to discontinue the Appellant's Public Assistance and Food Stamp benefits was not a proper notice.

1. The Agency is directed to withdraw its notice dated February 22, 1988 and to restore any lost Public Assistance and/or Food Stamp benefits retroactive to date of the Agency action.

2. The Agency is directed to continue assistance and benefits to the Appellant in the verified degree of need.

Should the Agency in the future determine to implement its previous action to discontinue the Appellant's Public Assistance or Food Stamp benefits, it is directed to issue a proper notice.

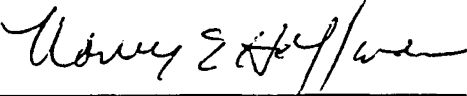
As required by Department Regulations at 18 NYCRR 358.22, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York

MAR 28 1988

CESAR A. PERALES  
COMMISSIONER

BY

  
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Commissioner's Designee