
In the Matter of the Appeal of
[REDACTED]
[REDACTED]

:
: **DECISION**
: **AFTER**
: **FAIR**
: **HEARING**
:
:

JURISDICTION

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on November 30, 2010, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[REDACTED]

For the Social Services Agency

Walter Ward, Fair Hearing Representative

ISSUE

Has the Agency acted correctly with respect to its first determination to reduce the Appellant's Public Assistance benefits?

Was the Agency's second determination to reduce the Appellant's Public Assistance benefits correct?

Was the Agency's determination to discontinue the Appellant's Public Assistance and Food Stamp benefits correct?

Was the Agency's computation of Appellant's entitlement to her cash Public Assistance benefits for the first semi-monthly period of October 2010 to the present correct?

FINDINGS OF FACT

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 Public Assistance benefits for herself and three children.
2. The Appellant is a person of Limited English Proficiency (LEP) and is in need of a Spanish speaking interpreter and cannot fully understand any documents that are printed in English.
3. On August 4, 2010, the Agency sent a Notice of Decision to the Appellant setting forth its intention to reduce the Appellant's Public Assistance benefits because the Appellant allegedly failed to keep an appointment with the Office of Child Support Enforcement (OCSE) scheduled for July 19, 2010. The Notice of Decision dated August 4, 2010, which was sent to the Appellant was printed in English.
4. On September 3, 2010, the Agency sent a Notice of Decision to the Appellant setting forth its intention to reduce the Appellant's Public Assistance benefits because the Appellant allegedly failed to keep some employment requirement.
5. On October 13, 2010, the Agency sent a Notice of Decision to the Appellant setting forth its intention to discontinue the Appellant's Public Assistance and Food Stamp benefits because the Appellant failed to report to a face-to-face recertification interview.
6. The Appellant also seeks a review of the Agency's determination regarding the adequacy of Public Assistance benefits for the first semi-monthly period of October 2010 when she failed to receive any cash grant.
7. During all or part of the period under review, the Appellant's grant may have been reduced to recover one or more overpayments of Public Assistance.
8. On October 18, 2010, the Appellant requested this fair hearing.

APPLICABLE LAW

Regulations at 18 NYCRR 358-3.7(a) provide that an appellant has the right to examine the contents of the case record at the fair hearing. At the fair hearing, the agency is required to provide complete copies of its documentary evidence to the hearing officer. In addition, such documents must be provided to the appellant and appellant's authorized representative where such documents were not provided otherwise to the appellant or appellant's authorized representative in accordance with 18 NYCRR 358-3.7. 18 NYCRR 358-4.3(a). In addition, a representative of the agency must appear at the hearing along with the case record and a written summary of the case and be prepared to present evidence in support of its determination. 18

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NYCRR 358-4.3(b). Except as otherwise established in law or regulation, in fair hearings concerning the discontinuance, reduction or suspension of Public Assistance, Medical Assistance, Food Stamp benefits or Services, the Agency must establish that its actions were correct. 18 NYCRR 358-5.9(a).

Section 131-a.2 of the Social Services Law establishes the standards of monthly need for Public Assistance households depending upon size of household. The standard of monthly need, when not a whole dollar amount, shall be rounded to the next lower whole dollar amount. When the estimate of regularly recurring monthly need as set forth in Section 131-a.2 exceeds available income and/or resources, the difference is known as a budget deficit. In any month in which a budget deficit of \$10.00 or more exists, a household is entitled to Public Assistance. Where the budget deficit is less than \$10.00, the household is not considered to be in need of or entitled to any cash assistance; however, household members are considered recipients of Public Assistance for other purposes. Social Services Law 131-a.2; 18 NYCRR 352.29.

Households determined to be in need receive a monthly grant equal to the standard of need based on household size minus any income to the household. This monthly grant includes a basic allowance, an amount for shelter, an amount for fuel for heating when heat is not included in the cost of shelter, a home energy allowance, a supplemental home energy allowance, an amount for the additional costs of meals for persons who are unable to prepare meals at home, and an amount for other special items of need.

Agencies are required to take all necessary steps to correct any overpayment or underpayment of assistance to a Public Assistance recipient. Overpayments shall include payments made to an eligible person in excess of his/her needs and payments made to an ineligible person. In addition, overpayments shall include aid-continuing payments made to such person pending a fair hearing decision. Social Services Law Section 106-b; 18 NYCRR 352.31(d).

Pursuant to 18 NYCRR 352.31(d), the Agency must recover the overpayment from:

- (1) the assistance unit that was overpaid;
- (2) any assistance unit of which an adult member of the overpaid assistance unit subsequently has become a member; and
- (3) any adult individual member of the overpaid assistance unit, whether or not currently a recipient.

The term "adult" refers to any member of the assistance unit who, at the time the overpayment occurred, exceeds the age requirements of an eligible child. An eligible child is a child under age 18 (or under age 19 if he or she is a full-time student regularly attending a secondary school, or in the equivalent level of vocational or technical training). An eligible child who is a member of the assistance unit at the time the overpayment occurred must not be held

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liable for the recoupment or recovery of the overpayment if such individual, at any age, subsequently joins another assistance unit or ceases to be a recipient.

The proportion of the current assistance grant that must be deducted for recoupment is ten percent of the household's needs. If undue hardship is claimed and substantiated, the recoupment must not be less than five percent of the household's needs. For purposes of determining the amount to be deducted from a Public Assistance grant, the household's needs include an allowance for recurring needs, the home energy and supplemental home energy allowances, the shelter allowance, any fuel for heating allowance, any personal needs allowance, any restaurant allowance, any allowances for chattel mortgages or conditional sales contracts, any pregnancy allowance and any water allowance. When the grant amount is less than the appropriate recoupment rate, the full grant must be recouped. 18 NYCRR 352.11; 18 NYCRR 352.31(d).

Administrative Directive 06-ADM-05 Revised, issued on April 27, 2006, consolidates existing policy guidance issued by OTDA for providing access to persons with disabilities and/or Limited English Proficiency (LEP), who are inquiring about, applying for, or receiving Temporary Assistance (TA), Food Stamps (FS) and assistance under the Home Energy Assistance Program (HEAP).

Local social services districts have the responsibilities to:

ensure that applicants for and recipients of TA, FS and HEAP have equal access to all benefits, programs and services for which they are eligible, including those offered by other agencies operating on behalf of a district;

ensure that emergency/immediate needs are addressed as may be appropriate to the case, and protect the filing or application date when an appointment is rescheduled for a person with a disability and/or LEP because reasonable accommodations cannot be made or no interpreter is available on the date the application is filed;

document any limitations, necessary accommodations and/or LEP requirements to ensure access and coordinate services (e.g., note in the case record and on the Welfare-to-Work Case Management System that an individual is unable to climb stairs);

provide information to applicants and recipients of public assistance or care, and not discriminate against anyone making the inquiry based on race, color, religion, national origin, age, sex, handicap (physical or mental impairment), genetic pre-disposition or carrier status, creed, arrest/convictions, marital status, sexual orientation, military status and/or retaliation; and

assign a person to serve as ADA and LEP contact(s), to investigate any complaints of discrimination or improper case administration, and to inform applicants/recipients with a disability and/or LEP of their complaint procedures.

For access by persons with LEP, districts have the responsibilities to:

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obtain a qualified interpreter, but may not deny access to an application for benefits, programs or services based on the inability to provide adequate interpretation services;

provide applicants/recipients the choice to use a relative or friend as an interpreter, but may not require applicants/recipients to bring their own interpreter; and

make interpreter services desk guides available to workers and language posters available in all client areas.

Specifically, all local service districts must continue to post the "Interpreter Services Poster" (PUB-4842) in all TA, MA and FS Benefits client areas. Informational Letter 05-INF-08 notified all local districts that the mandated "Interpreter Services Poster (PUB-4842) and the recommended "Interpreter Services Desk Guide" (PUB 4843) have been updated.

DISCUSSION

The evidence establishes that the Agency sent a Notice of Decision to the Appellant, dated August 4, 2010, advising the Appellant that it had determined to reduce the Appellant's Public Assistance benefits. The Agency Representative raised the issue of the timeliness of this request to review such a Notice. While the Appellant admitted receiving the Notice of Decision in question, the Appellant testified that it was printed in English and that she can only read and understand documents printed in the Spanish language. Accordingly, there is a basis to toll the time limitations requirement.

The Agency was duly notified of the time and place of the hearing.

However, while the Agency produced some evidence at the hearing in support of its determination, it failed to produce any documentation that the Appellant had ever been notified regarding an appointment scheduled for July 19, 2010. In fact the Agency Representative testified that he was instructed to rely solely on the time limitations argument, hence had no additional documentation.

With respect to the Agency's determination to reduce the Appellant's Public Assistance benefits, the Agency failed to meet its obligations under 18 NYCRR 358-4.3(b) and failed to establish that its determination was correct pursuant to 18 NYCRR 358-5.9(a).

The evidence also establishes that the Agency sent a Notice of Decision to the Appellant, dated September 3, 2010, advising the Appellant that it had determined to reduce the Appellant's Public Assistance benefits because the Appellant allegedly failed to keep some employment requirement.

At the hearing the Agency agreed to withdraw its September 3, 2010, Notice of Decision to reduce the Appellant's Public Assistance benefits. The Agency also agreed to restore any assistance and benefits lost by the Appellant based on such action retroactive to the date of the Agency's action and to continue to provide assistance and benefits to the Appellant.

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Based on the Agency's agreements made at the hearing, no issue remains to be decided with respect to the Agency's notice dated September 3, 2010.

The evidence also establishes that the Agency sent a Notice of Decision to the Appellant, dated October 13, 2010, advising the Appellant that it had determined to discontinue the Appellant's Public Assistance and Food Stamp benefits because the Appellant failed to report to a face-to-face recertification interview.

At the hearing the Agency agreed to withdraw its October 13, 2010, Notice of Decision to discontinue the Appellant's Public Assistance and Food Stamp benefits. The Agency also agreed to restore any assistance and benefits lost by the Appellant based on such action retroactive to the date of the Agency's action and to continue to provide assistance and benefits to the Appellant.

Based on the Agency's agreements made at the hearing, no issue remains to be decided with respect to the Agency's notice dated October 13, 2010.

The Appellant is also contesting the Agency's determination to not provide her with any cash grant for the first semi-monthly period of October 2010. Although duly notified of the time and place of the hearing and of the subject matter to be reviewed, the Agency failed to present sufficient evidence at the hearing to support its determination as to Appellant's entitlement to Public Assistance benefits for the first semi-monthly period of October 2010. Accordingly, the record fails to establish that the Agency computation of Appellant's Public Assistance benefits was correct.

DECISION AND ORDER

The first determination of the Agency to reduce the Appellant's Public Assistance benefits is not correct and is reversed.

1. The Agency is directed to withdraw its Notice of Decision dated August 4, 2010, with respect to Appellant's Public Assistance benefits.
2. The Agency is directed to continue to provide Public Assistance benefits to the Appellant.
3. The Agency is directed to restore Appellant's Public Assistance benefits retroactive to the date of the Agency action.

With respect to the Agency's Notice of Decision dated September 3, 2010, in accordance with its agreement at the hearing, the Agency is directed to take the following actions if it has not already done so:

1. Withdraw its Notice of Decision dated September 3, 2010.

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2. Take no further action on its Notice of Decision dated September 3, 2010.
3. Continue to provide Public Assistance benefits to the Appellant.
4. Restore the Appellant's Public Assistance benefits retroactive to the date of the Agency action.

With respect to the Agency's Notice of Decision dated October 13, 2010, in accordance with its agreement at the hearing, the Agency is directed to take the following actions if it has not already done so:

1. Withdraw its Notice of Decision dated October 13, 2010.
2. Take no further action on its Notice of Decision dated October 13, 2010.
3. Continue to provide Public Assistance and Food Stamp benefits to the Appellant.
4. Restore the Appellant's Public Assistance and Food Stamp benefits retroactive to the date of the Agency action.
5. Reschedule the Appellant's recertification interview.

It is noted that the Appellant must cooperate in the recertification process in order to continue receiving assistance and/or benefits.

The Agency's computations as to the Appellant's entitlement to Public Assistance benefits for the first semi-monthly period of October 2010 to the present are not correct and are reversed.

1. The Agency is directed to provide the Appellant with a semi-monthly cash grant for a household of four persons for the first semi-monthly period of October 2010.
2. After complying with all the directives listed above regarding the three Notices of Decision, the Agency is directed to determine whether the semi-monthly cash grants provided the Appellant were the correct cash grants for a household of four persons and to restore any underpayments of assistance, if any.
3. The Agency is directed to investigate the basis for any recovery of overpayments during the period under review and the amounts actually recovered as a result, to cease any such recoupment if recovery of the corresponding overpayment has been completed and to advise the Appellant in writing of the results of such investigation.
4. The Agency is directed to advise the Appellant in writing of its computations.

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The Agency's failure to comply with the directives of Administrative Directive 06-ADM-05, as cited above, is not correct and is reversed.

1. The Agency is directed to have the Appellant complete the Language Questionnaire Form W-680FF to be placed in the Appellant's case file.
2. The Agency is further directed to provide the Appellant with a Spanish speaking interpreter in the future whenever she has an appointment at her Center.
3. The Agency is also directed to send all documents to the Appellant printed in Spanish.

The Appellant is advised of the right to request another fair hearing, depending upon the Agency's determination made pursuant to the directives of this fair hearing decision.

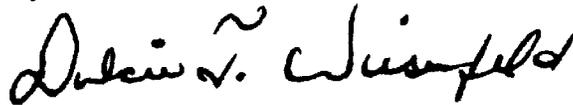
Should the Agency need additional information from the Appellant in order to comply with the above directives, it is directed to notify the Appellant promptly in writing as to what documentation is needed. If such information is requested, the Appellant must provide it to the Agency promptly to facilitate such compliance.

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

DATED: Albany, New York
12/03/2010

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By



Commissioner's Designee