
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 determination to reduce the Appellant's Public Assistance and Food Stamp benefits?

Was the Agency's determination not to include the needs of [REDACTED] as part of the Appellant's Public Assistance grant and Food Stamp household until November 4, 2010, 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 and Food Stamp benefits for herself and five children. Also in the household since his birth, is the Appellant's grandson, [REDACTED], [REDACTED].

2. On May 19, 2010, the Agency sent a Notice of Decision to the Appellant setting forth its intention to reduce the Appellant's Public Assistance and Food Stamp benefits because the Appellant allegedly failed to comply with some employment requirement.

3. On or about January 15, 2010, the Appellant requested that the needs of [REDACTED], the Appellant's new born grandson, be added to the Appellant's Public Assistance grant and Food Stamp household.

4. The Appellant verified the presence of her new born grandson, [REDACTED] in the household on or about January 15, 2010.

5. [REDACTED], [REDACTED], has been residing in the Appellant's household since his birth.

6. The Agency did not add the needs of [REDACTED] to any of the household's benefits until November 4, 2010.

7. The Appellant is a person of Limited English Proficiency (LEP) and needs a Spanish speaking interpreter and requires all documents be printed in Spanish in order for her to understand their contents.

8. On October 18, 2010, the Appellant requested this fair hearing.

APPLICABLE LAW

Section 22 of the Social Services Law provides that applicants for and recipients of Public Assistance, Emergency Assistance to Needy Families with Children, Emergency Assistance for Aged, Blind and Disabled Persons, Veteran Assistance, Medical Assistance and for any services authorized or required to be made available in the geographic area where the person resides must request a fair hearing within sixty days after the date of the action or failure to act complained of. In addition, any person aggrieved by the decision of a social services official to remove a child from an institution or family home may request a hearing within sixty days. Persons may request a fair hearing on any action of the social services district relating to food stamp benefits or the loss of food stamp benefits which occurred in the ninety days preceding the request for a hearing. Such action may include a denial of a request for restoration of any benefits lost more than ninety days but less than one year prior to the request. In addition, at any time within the period

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for which a person is certified to receive food stamp benefits, such person may request a fair hearing to dispute the current level of benefits.

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 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).

When a Food Stamp household requests a hearing to review the Agency's determination to discontinue, suspend or reduce its Food Stamp benefits, Federal regulations require that the local Agency must appear at the hearing with the household's case record. Federal Regulations also 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. (7 CFR 273.15(p))

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 Food Stamp Source Book, Section 10.

Public Assistance eligibility and benefit levels are based upon household composition. Section 352.30(a) of 18 NYCRR provides that persons considered to be in the Public Assistance household for the purposes of determining eligibility and the level of benefits shall be those persons whom the applicant, recipient or their representative indicates desire to receive Public Assistance and who reside together in the same dwelling unit. The household may include persons who are temporarily absent from such household such as children or minors attending school away from home whose full needs are not otherwise met.

The investigation of an applicant's/recipient's eligibility and degree of need is a continuous process which is concerned with all aspects of eligibility for Public Assistance and care from the period of initial application to case closing. Investigation means the collection,

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verification, recording and evaluation of factual information on the basis of which determinations of eligibility and the degree of need are made. As part of this investigation it is the responsibility of a Public Assistance recipient to provide accurate, complete and current information including information as to his or her needs and resources and family composition. 18 NYCRR 351.1, 351.2, 351.20. A recipient is responsible for notifying the local Agency of any changes in his/her circumstances. 18 NYCRR 351.20(b)(7).

Pursuant to the provisions of 18 NYCRR 351.8(c)(5):

- (i) A child who is born to a recipient of public assistance is eligible for such assistance from the date of his/her birth provided verification of the birth is received by the appropriate social services official:
 - (a) within six months of the birth of the child; or
 - (b) by the recipient's first scheduled recertification interview after the birth of the child;

whichever is later.

- (ii) The failure to present verification of a child's birth to a social services official in accordance with the provisions of subparagraph (i) of this paragraph will result in such child becoming eligible for public assistance beginning on the date that verification of the birth is provided to such official.

Persons who join an existing public assistance filing unit, who are required to be members of the unit and whose presence causes an underpayment to be made to the case will have an underpayment adjustment made only:

- (i) for those months in which the filing unit met all eligibility requirements, or
- (ii) for the period retroactive to the date that the persons joined the existing filing unit when the change in household composition is reported within 10 days of its occurrence, and if the appropriate eligibility requirements are met within such 10 day period.

18 NYCRR 352.31(f).

For purposes of determining Food Stamp eligibility and entitlement, a household is composed of any of the following individuals or groups of individuals:

- (a) An individual living alone; or
- (b) An individual living with others but customarily purchasing food and preparing meals for home consumption separate and apart from others; or

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- (c) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

7 CFR 273.1(a); 18 NYCRR 387.1.

The following individuals living with others or groups of individuals living together must be considered as customarily purchasing food and preparing meals together, even if they do not do so:

- (a) a spouse of a member of the household;
- (b) a child or children under 18 years of age, other than a foster child or foster children, under the parental control of an adult household member who is not the child's or children's parent or stepparent;
- (c) parents and their child(ren) or stepchild(ren) 21 years of age or younger. For determinations prior to September 21, 1996, however, children or stepchildren age 21 or younger could be granted separate household status if they lived with their own children or spouses.

An otherwise eligible individual who is 60 years of age or older (and the spouse of such individual) who is living with others and who is unable to purchase and prepare meals because he/she suffers from a disability considered permanent under the Social Security Act or suffers from a non-disease-related, severe permanent disability may be a separate household. However, the income of the others with whom the individual resides (excluding the income of the individual and spouse) cannot exceed 165 percent of the poverty level.

7 U.S.C. 2012(i); 7 CFR 273.1(a); 18 NYCRR 387.1.

Certified households are required to report changes in sources of income or changes in the amount of gross monthly income in excess of \$25.00 (except changes in the Public Assistance grant), all changes in household composition, changes in residence and the resulting change in shelter costs, the acquisition of a licensed vehicle and when resources reach or exceed the allowable limits. (Note: The United States Department of Agriculture has issued a waiver of certain Food Stamp rules concerning the reporting of income. Effective April 1, 2000, a household is required to report a change in monthly earned income which exceeds \$100, rather than \$25, provided that the source of such income has not changed. Note that this waiver applies only to earned income until April 1, 2001, after which date unearned income is also subject to the \$100 rule.) A certified household must report such change within ten days of the date the change becomes known to the household. Such change can be reported on the State-prescribed form, by telephone or in person. 7 CFR 273.12(a); 18 NYCRR 387.17(e).

Certified households are required to report changes in sources of income or changes in the amount of gross monthly income in excess of \$25.00 (except changes in the Public Assistance grant), all changes in household composition, changes in residence and the resulting change in shelter costs, the acquisition of a licensed vehicle and when resources reach or exceed the allowable limits. All Food Stamp households (except for migrant workers, homeless households, households with no income, households certified for less than four months, SSI FS Autopay Project participants, group home residents in receipt of SSD or SSI, and households receiving Transitional FS benefits, all of whom must report changes within ten days) are required to report most changes only at six-month intervals. However, households subject to the six-month reporting rules are still required to report between recertifications if their total income exceeds 130 percent of the poverty level for their household size. In addition, a household that includes an individual who is subject to ABAWD time limits must report when work activity falls below 80 hours per month.

Certified households are required to report changes in sources of income, or changes in the amount of gross monthly earned income of more than \$100 or gross monthly unearned income from public sources of more than \$25. This requirement does not include changes in the Public Assistance grant. In addition, all changes in household composition, changes in residence and the resulting change in shelter costs, the acquisition of a licensed vehicle, and when resources reach or exceed the allowable limits must also be reported. For changes occurring prior to October 3, 2007, such changes must be reported within ten days of the date the change becomes known to the household. For changes occurring on or after that date, pursuant to a federal waiver from that requirement, a change must be reported by the 10th day of the month following the month in which the change occurred. Households subject to the six-month reporting rules are not required to submit any reports of changes other than changes in monthly gross income that exceed 130 percent of poverty or, in the case of ABAWD households, changes in work status. 7 CFR 273.12; 18 NYCRR 387.17(e).

Changes reported during a Food Stamp certification period shall be subject to the same verification procedures which apply at initial certification. However, the local Agency is not required to verify income, medical expenses, or actual utility expenses if the source has not changed and the amount has changed by \$25.00 or less since the last verification. 7 CFR 273.2(f)(8); 18 NYCRR 387.8(b)(5).

At recertification the local Agency shall verify a change in income or actual utility expenses if the source has changed or the amount has changed by more than \$25.00. Previously unreported medical expenses and total recurring medical expenses which have changed by more than \$25.00 shall also be verified at recertification. The local Agency shall not verify income, total medical expenses, or actual utility expenses claimed by households which are unchanged or have changed by \$25.00 or less, unless the information is incomplete, inaccurate, inconsistent or outdated. Other information which has changed may be verified at recertification. Unchanged information shall not be verified unless the information is incomplete, inaccurate, inconsistent or outdated. 7 CFR 273.2(f)(8); 18 NYCRR 387.8(b)(6).

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All changes which result in an increase in a household's benefits shall be verified prior to taking action on such changes. For changes which result in an increase in a household's benefits, other than because of the addition of a household member or a decrease in \$50 or more in monthly gross income, the Agency must make the change effective no later than the first allotment issued ten days after the date the change was reported. For changes which result in an increase in the household's benefits due to the addition of a new household member who is not a member of another certified household, or due to a decrease of \$50 or more in gross monthly income, the local agency shall make the change effective not later than the first allotment issued ten days after the date the change was reported; however, in no event may these changes take effect any later than the month following the month in which the change is reported. The household shall be allowed ten days from the date the change is reported to provide the required verification. The time frames for issuing the benefit shall run from the date the change was reported, not from the date of verification. Should the household fail to provide the required verification within ten days after the change is reported but provide verification at a later date, then the time frames shall run from the date verification is provided rather than from the date the change is reported. When the local agency fails to take action on a change which increases a household's benefits within the time limits specified above, all lost benefits shall be restored to the household. 7 CFR 273.12(c)(1); 18 NYCRR 387.17(e).

The local agency shall act upon changes that decrease a household's benefit level or make a household ineligible to participate in the Food Stamp Program no later than the allotment for the month following the month in which the notice of adverse action period has expired, provided a fair hearing and continuation of benefits have not been requested. 7 CFR 273.12(c)(2); 18 NYCRR 387.17(e).

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);

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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:

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 May 19, 2010, advising the Appellant that it had determined to reduce the Appellant’s Public Assistance and Food Stamp benefits. The Agency first raised the issue of the timeliness of this request. The Appellant acknowledged the receipt of the Notice of Decision but stated that since she does not read English, hence she could not understand said notice. 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, namely the Notice of Decision printed only in English, the Agency Representative stated that he was instructed to rely solely on the timeliness issue.

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

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The Appellant is also contesting the Agency's failure to add the needs of her grandson [REDACTED], [REDACTED]. The Appellant testified that on or about January 15, 2010, she provided the Agency with a copy of her grandchild's birth certificate and Social Security card and the Agency has failed to add his needs to the Public Assistance grant, Food Stamp household and Medical Assistance authorization. The Appellant only realized that her grandson's needs had not been added to the household's benefits when she went to her recertification interview on September 14, 2010.

Although duly notified of the subject matter, time and place of this hearing, the Agency failed to provide any documentation regarding this issue. The Agency did provide a Client Information computer screen indicating that the Appellant's grandchild had been added to the Public Assistance grant on November 4, 2010 and to the Food Stamp budget on November 1, 2010. Accordingly, the Agency's failure to add the needs of the Appellant's grandson act retroactive to his birth cannot be sustained.

DECISION AND ORDER

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

1. The Agency is directed to withdraw its Notice of Decision dated May 19, 2010, with respect to Appellant's Public Assistance and Food Stamp benefits.
2. The Agency is directed to continue to provide Public Assistance and Food Stamp benefits to the Appellant.
3. The Agency is directed to restore Appellant's Public Assistance and Food Stamp benefits retroactive to the date of the Agency action.

The Agency's determination not to include the needs of her grandson, [REDACTED], [REDACTED], as part of the Appellant's Public Assistance grant and Food Stamp household until November 4, 2010 is not correct and is reversed.

1. The Agency is directed to recompute the Appellant's Public Assistance grant [REDACTED], the date the Appellant's grandson was born, and include the needs of [REDACTED] in the grant.
2. The Agency is directed to restore to the Appellant any benefits lost as a result of the failure to include such person's needs in the household grant, retroactive to the date of the Appellant's grandson's birth.
3. The Agency is directed to recompute the Appellant's Food Stamp benefits the date of the first allotment issued not later than ten days after Appellant verified [REDACTED]'s presence in the household and include [REDACTED] in the Food Stamp household.

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4. The Agency is directed to restore to the Appellant any Food Stamp benefits lost as a result of the failure to include such person in the Food Stamp household, retroactive to the date of the first allotment issued not later than ten days after the Appellant verified [REDACTED]'s presence in the household.

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.

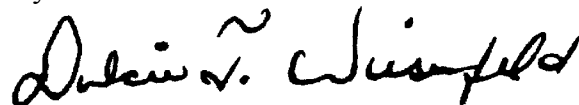
Should the Agency need additional information from the Appellant in order to comply with the above directives, it is directed to notify the Appellant promptly in writing as to what documentation is needed. If such information is requested, the Appellant must provide it to the Agency promptly to facilitate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