
In the Matter of the Appeal of
[REDACTED]
from a determination by the New York City
Department of Social Services

:
:
:
:
:
:
:

**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 March 20, 2007, in [REDACTED] before Vincent O'Connor, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[REDACTED], Appellant

For the Social Services Agency

Regine Ehigiator, Fair Hearing Representative

ISSUE

Has the Agency acted correctly with respect to its August 21, 2006 determination to reduce the Appellant's Public Assistance benefits because her household had earlier received a \$386.31 utility advance?

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 her sixteen-month-old grandson. Appellant herself receives Supplemental Security Income (SSI).

FH# 4727822H

2. On August 21, 2006, the Agency sent a Notice of Intent to the Appellant setting forth its intention to reduce the Appellant's Public Assistance benefits because the Appellant's household had earlier received a \$386.31 utility advance.

3. On February 13, 2007, 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 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).

DISCUSSION

At the hearing, the Agency cited the Statute of Limitations, and asserted the Commissioner lacks jurisdiction to review this matter, since Appellant had not sought administrative review until February 13, 2007. The Agency noted this exceeded the 60-day limit allowed. Appellant credibly stated she was diagnosed with cancer during this period, however, and this prevented her from earlier requesting the hearing. Not only was her testimony detailed, spontaneous, and consistent, but Appellant also introduced medical documentation to support her statements. Appellant's testimony was convincing. The Statute of Limitations is tolled.

FH# 4727822H

Next, the evidence establishes the Agency sent a Notice of Intent to the Appellant, dated August 21, 2006, advising the Appellant it had determined to reduce her household's Public Assistance benefits because it had earlier received a \$386.31 utility advance.

Although the Agency was duly notified of the time and place of the hearing and introduced some evidence, it failed to produce documentation showing Appellant actually had received a \$368.31 utility advance, as alleged.

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

DECISION AND ORDER

The determination of the Agency to reduce the Appellant's Public Assistance benefits because her household had earlier received a \$386.31 utility advance is not correct and is reversed.

1. The Agency is directed to withdraw its Notice of Intent dated August 21, 2006, 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 retroactively to the date of the Agency action.

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.

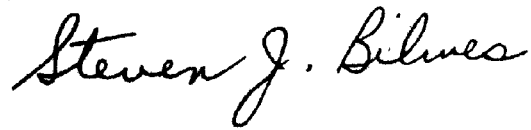
As required by 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

FH# 4727822H

DATED: Albany, New York
03/28/2007

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink that reads "Steven J. Bilmes". The signature is written in a cursive style with a large, stylized 'S' and 'B'.

Commissioner's Designee

LINDEN JC 67
45 HOYT ST.
BKLYN N.Y. 11201



The City of New York

HUMAN RESOURCES ADMINISTRATION
DEPARTMENT OF INCOME MAINTENANCE

NOTICE OF CHANGE IN GRANT
AVISO DE CAMBIO DE BENEFICIO

DATE/FECHA:
08/21/06

CLIENT COPY

H

1

CASE NO./NUMERO DEL CASO:
[REDACTED]

CURRENT GRANT/BENEFICIO ACTUAL:
\$54.50

NEXT GRANT/PROXIMO BENEFICIO:
\$91.80

FOLD

UTILITY ADVANCE

DATE AMOUNT
10/15/03 \$386.31

FOLD

** SEE ENCLOSURE FOR UPDATED FAIR HEARING/CONFERENCE **
** INFORMATION. **
ON 09/01/06, YOUR SEMI-MONTHLY GRANT WILL BE CHANGED TO THE
AMOUNT SHOWN ABOVE BECAUSE OF THE ABOVE LISTED OVERPAYMENT.
(NOTE: IF YOUR CURRENT GRANT IS BELOW \$2.50, THE RECOUPMENT WILL
NOT START NOW, BUT WILL START WHENEVER YOUR GRANT IS INCREASED.)

THIS ACTION IS IN ACCORDANCE WITH A 'NOTICE(S) OF INTENT TO
REDUCE PUBLIC ASSISTANCE' SENT TO YOU PREVIOUSLY OR IN ACCORDANCE
WITH AN 'ACKNOWLEDGEMENT OF REDUCTION' SIGNED BY YOU PREVIOUSLY.

THE AMOUNT OF THE REDUCTION REPRESENTS 10 PERCENT OF YOUR
HOUSEHOLD NEEDS.

WHEN THERE ARE NO LONGER ANY RECOUPMENTS ON RECORD, YOU
WILL RECEIVE A 'NOTICE OF COMPLETED RECOUPMENT'.

	FECHA	CANTIDAD
ADELANTO DE GAS/ELECTRICIDAD	10/15/03	\$386.31

** VEA LA HOJA INCLUIDA PARA LA INFORMACION MAS RECIENTE **
** SOBRE UNA CONFERENCIA/VISTA IMPARCIAL. **

EN 09/01/06 SU BENEFICIO SEMI-MENSUAL SERA CAMBIADO A LA CANTIDAD
PROPORCIONADA ARRIBA DESIDO AL SOBREPAGO INDICADO ARRIBA. (NOTA:
SI SU BENEFICIO ACTUAL ES MENOS DE \$2.50, EL REEMBOLSO NO
COMENZARA AHORA, SINO EN EL MOMENTO EN QUE SU BENEFICIO SEA
AUMENTADO.)

ESTA ACCION ES DE ACUERDO CON EL 'AVISO DE INTENTO DE REDUCIR SU
ASISTANCIA PUBLICA' QUE LE FUE ENVIADO PREVIAMENTE O DE ACUERDO
CON EL 'RECONOCIMIENTO DE REDUCCION' QUE USTED FIRMO PREVIAMENTE.

LA CANTIDAD REDUCIDA REPRESENTA UN 10 POR CIENTO DE LAS
NECESIDADES DE SU HOGAR.

CUANDO YA NO QUEDEN RECUPERACIONES EN SU CASO, UD. RECIBIRA
UN 'AVISO DE TERMINACION DE RECUPERACION'.

M-328B-1 358

9-19

THIS REDUCTION IN YOUR PUBLIC ASSISTANCE GRANT MAY RESULT IN AN INCREASE IN YOUR FOOD STAMP BENEFIT. THIS INCREASE IN FOOT STAMP BENEFITS WILL CONTINUE UNTIL THE RECOUPMENT IS COMPLETED. UPON COMPLETION OF THE RECOUPMENT, YOUR FOOD STAMP BENEFITS WILL BE DECREASED AS YOUR PUBLIC ASSISTANCE GRANT IS INCREASED.

YOU HAVE A RIGHT TO A FAIR HEARING IF YOU DON'T AGREE WITH OUR ACTIONS

If you believe we should not take the above action, you should request a State fair hearing:

- (1) By telephoning 488-6550, or
- (2) By sending a copy of this notice to Fair Hearing Section, New York State Department of Social Services, P.O. Box 1930, Albany, New York 12201.

You must request a hearing within 60 days of the date we intend to reduce your public assistance.

If you request a fair hearing a notice will be sent to you telling you the time and place of the hearing. You can be represented by an attorney or other representative. You or your representative can present written and oral evidence to show why we should not reduce your public assistance grant, as well as the chance to question any persons who appear at the hearing and present evidence against you. You can bring witnesses to speak in your favor. You should bring to the hearing any documents such as paystubs, rent receipts, medical bills, heating bills, childcare expenses, etc., that may be helpful in supporting your case. You have the right to see the entire contents of your file before the hearing.

If you think you need legal assistance for your conference or fair hearing, you may be able to obtain it free if you cannot afford a lawyer by contacting a local legal aid or legal services office.

ESTA REDUCCION EN SU BENEFICIO DE ASISTENCIA PUBLICA PUEDE RESULTAR EN UN AUMENTO EN SUS BENEFICIOS POR CUPONES DE ALIMENTOS. ESTE AUMENTO EN SUS BENEFICIOS POR CUPONES DE ALIMENTOS CONTINUARA HASTA QUE EL RECUPERAMIENTO SEA COMPLETADO. DESPUES QUE SE TERMINE LA RECUPERACION, SUS BENEFICIOS POR CUPONES DE ALIMENTOS SERAN REBAJADOS Y SU BENEFICIO DE ASISTENCIA PUBLICA AUMENTADA.

USTED TIENE DERECHO A UNA AUDIENCIA IMPARCIAL SI NO ESTA DE ACUERDO CON NUESTRAS DECISIONES

Si considera que no debemos tomar la acción arriba mencionada debe solicitar una Audiencia imparcial Estatal llamando a:

- (1) Teléfono 488-6550, o
- (2) Enviando una copia de este aviso a Fair Hearing Section, New York State Department of Social Services, P.O. Box 1930, Albany, New York 12201.

Usted debe solicitar una audiencia dentro de los 60 días de la fecha en que intentamos reducir su asistencia pública.

Si solicita una audiencia imparcial, se le enviará notificación de la fecha y el lugar de la audiencia. Usted puede ser representado por un abogado u otra persona. Usted y su representante pueden presentar evidencia oral y escrita para demostrar porque no deben reducir su beneficio de asistencia pública. En la audiencia tendrá la oportunidad de interrogar cualquier persona que comparezca a la audiencia presentando evidencia en su contra. También puede traer personas que testifiquen a su favor. Debe traer a la audiencia documentos que le ayuden a presentar su caso tales como, talonarios de pagos, recibos de renta, facturas médicas, facturas de calefacción, gastos por cuidado infantil, etc. Usted tiene derecho a revisar los archivos de su caso antes de la audiencia.

Si cree que necesita asistencia legal para su conferencia o audiencia, y no puede costear un abogado, puede recibir este servicio gratis a través de ayuda legal local o en oficina de servicios legales.