
In the Matter of the Appeal of :
L B : DECISION
from a determination by the Oswego County : AFTER
Department of Social Services : FAIR
: HEARING
:

JURIDICTION

Pursuant to Section 22 of the New York State Social Services Law (hereinafter referred to as "the Social Services Law") and Part 358 of Title 18 of the New York Code of Rules and Regulations (18 NYCRR, hereinafter referred to as "the Regulations"), a Fair Hearing was held on September 23, 1997, in Mexico, New York, before Administrative Law Judge Snitzer. The following persons appeared:

For the Appellant

Linda B. the Appellant; Heidi Seigfried, the Appellant's attorney; Terry Ratcliff, the Appellant's case manager

For the Oswego County Department of Social Services
(herein referred to as "the Agency")

Teresa Samson, Examiner

ISSUE

Was a determination to discontinue the Appellant's Food Stamp benefits, based on failure to recertify, correct?

FACT FINDINGS

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 had been in receipt of Food Stamp benefits for her household, which consists of herself, her husband and three children. The family also receives Medical Assistance ("Medicaid").
2. On September 3, 1997, the Appellant was verbally informed that she had not received Food Stamp benefits for September because her case had been closed effective August 31st, based on her failure to recertify.
3. On September 3, 1997, a request for a Fair Hearing was made by or on behalf of the Appellant seeking review of the adverse Food Stamp action.

APPLICABLE LAW

Section 387.17 of the Regulations (based on federal regulations at 7 CFR 273.14) requires periodic recertification for Food Stamp benefits. It provides that such benefits shall be terminated, if a participating household does not make application to recertify, or if a representative of the household fails to attend an interview scheduled for recertification, or fails to submit all necessary verification within the required time.

Under provisions of Section 358-2.11 of the Regulations, as well as Section 387.17 of the Regulations, each participating Food Stamp household must be sent a notice of expiration of benefits prior to the first day of the last month of each certification period. The notice must contain, among other things, information regarding the consequences of failure to comply with the expiration notice; the date the current certification period ends; the date by which the recipient's household must reapply to receive uninterrupted benefits; and the date of any scheduled interview.

Section 387.17(f) of the Regulations provides that households are generally required to submit an application for recertification by the fifteenth day of the last month of certification. A household representative must be interviewed and must submit all required verification prior to the end of the final month of the certification period, for the household to be entitled to uninterrupted benefits. If no household representative appears for a scheduled recertification interview and no timely recertification application is filed, the local district must terminate the household's benefits as of the date of expiration of its prior certification, without further notice. Any application submitted thereafter shall be processed as a new application. If a new application is submitted within the first month after the expiration of the prior certification, and the household is found to have been eligible, the new certification must be effective as of the date of the application, NOT the first day of that month (as previously permitted).

DISCUSSION

The Appellant credibly testified that she never received any notification regarding the ending of her prior Food Stamp certification period or scheduling a recertification appointment. In support of her testimony, she submitted a letter from the local postmaster confirming that the route carrier has observed children getting into the Appellant's mailbox after mail delivery. The Appellant also noted that she did receive a separate communication advising her to report for Medicaid recertification on August 27th, commenting that prior recertifications had usually been for both Medicaid and Food Stamps at the same time. However, because she gave birth on August 27th, she was not able to complete her Medicaid recertification until September 12th. At that time, she submitted a new Food Stamp application, but is currently seeking restoral of the amount lost due to the action taken effective August 31st.

Although the Agency representative expressed a belief that a "CNS" notice had been issued to the Appellant on or about July 10, 1997, advising her to appear for a recertification interview on July 24th, she was unable to

submit a copy of that notice, having only a listing of notices reportedly issued on July 10th.

The available evidence from the Agency is not sufficient to overcome the Appellant's credible testimony regarding non-delivery of the notification required under the Applicable Law in regard to Food Stamp recertification. Thus, the action to terminate the household's Food Stamp benefits effective August 31, 1997 cannot be affirmed.

DECISION AND ORDER

The action to terminate Food Stamp benefits for the Appellant's household, based on failure to recertify, is not correct, and is reversed.


- * The Agency is directed to restore all lost Food Stamp benefits in accordance with the household's verified program entitlement, retroactive to the date of the action under review.

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

DATED: Albany, New York
October 8, 1997

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By


Commissioner's Designee