

**STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE**

REQUEST December 10, 2002  
CASE # 00xxxxxxxxxx  
CENTER # 64  
FH # 3825647Z

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In the Matter of the Appeal of :

D B

**DECISION  
: AFTER  
FAIR  
HEARING**

from a determination by the New York City  
Department of Social Services :

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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 January 28, 2003, in New York City, before Lori Ann Romeo, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

D B, Appellant  
Jennifer Werdell, NY Legal Assistance Group  
Michael Scherz, NY Legal Assistance Group

For the Social Services Agency

M. Matheson, Fair Hearing Representative

ISSUES

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

Was the Agency's failure to provide an adequate shelter allowance to the Appellant from October 2002 to January 2003, correct?

FACT FINDING

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.
2. On September 16, 2002, the Agency determined to reduce the Appellant's Public Assistance benefits because Appellant received an overpayment of Public Assistance in the amount of \$160.95 as a result of a utility advance.
3. In or about October 2002, the Appellant advised the Agency that her

rent increased to \$132 per month, with heat included.

4. On December 10, 2002, 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.

Section 131-s of the Social Services Law and Section 352.5(f)(2) of 18 NYCRR provide that payment made on behalf of a Public Assistance recipient to prevent utility service shut-off or to restore utility service is not recoupable if the recipient has documented that he/she fully applied his/her Public Assistance grant to the purposes intended to be included in such grant. Section 352.5(f)(2) of 18 NYCRR provides that, for recipients not budgeted in accordance with the Section 8 certificate housing provisions set forth in Section 352.3(d)(2)(ii) of the Regulations, such documentation must include:

- o proof of payment of an amount equal to or greater than the recipient's combined monthly Home Energy Allowance and Supplemental Home Energy Allowance toward the monthly utility bill for domestic energy costs (lights, cooking, hot water);
- o proof of payment of an amount equal to or greater than the recipient's monthly fuel for heating allowance toward incurred heating costs;
- o proof of application of the recipient's monthly shelter allowance toward shelter costs; and
- o no other evidence of mismanagement.

Section 352.5(f)(2) of 18 NYCRR further provides that, for recipients who are budgeted in accordance with the Section 8 certificate housing provisions set forth in Section 352.3(d)(2)(ii) of the Regulations, such documentation must include:

- o proof of payment of an amount equal to or greater than the recipient's combined monthly Home Energy Allowance and Supplemental Home Energy Allowance toward the monthly utility bill for domestic energy costs (lights, cooking, hot water);
- o proof of payment of an amount equal to or greater the shelter allowance budgeted in the Public Assistance grant towards shelter, heating, water and other shelter-related items covered by the federal Department of Housing and Urban Development utility allowance;
- o no other evidence of mismanagement.

If the Appellant is ineligible for a non-recoupable grant or for other

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available non-recoupable grants including Home Energy Assistance Program benefits, payment must be provided as an advance allowance, subject to recoupment. Such recoupment must be ten percent of the household's needs (15 percent for Safety Net Assistance recipients prior to December 1, 2001). If undue hardship is claimed and substantiated, the recoupment must not be less than five percent of household 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. 18 NYCRR 352.5(f)(3); 18 NYCRR 352.11; 18 NYCRR 352.31(d).

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).

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.

Section 352.3 provides that each Social Services district shall provide a monthly allowance for rent in the amount of rent actually paid, but not in excess of the maximum in such district for the appropriate family size. The maximum monthly shelter allowance for a household of 2 persons residing in heated premises in New York City is \$250.

## DISCUSSION

The Appellant requested this hearing in part to contest the Agency's determination to reduce her Public Assistance benefits on the grounds that she received an overpayment of Public Assistance.

Ordinarily issues pertaining to periods in excess of 60 days immediately preceding the fair hearing request would be precluded from review. However, the Appellant contended that she did not receive the Agency's September 2002, notice advising her that her benefits would be reduced. The Appellant asserted that she learned about the recoupment action in December 2002. The Agency did not provide any evidence that the reduction notice was duly mailed in the regular course of the Agency's business or any evidence to rebut the Appellant's assertion of non-receipt. Accordingly, the record fails to establish that the Agency complied with its obligations to provide timely and adequate written notice of its determination to the Appellant and the statute of limitations must therefore be tolled and the present fair hearing request be considered timely.

With respect to the merits of the action, the Agency had determined to reduce the Appellant's Public Assistance benefits because Appellant received an overpayment of Public Assistance in the amount of \$160.95 as a result of a utility advance.

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 proof that the Appellant mismanaged her Public Assistance grant or that the grant was recoupable. See, Section 131-s of the Social Services Law and Section 352.5(f)(2) of 18 NYCRR.

Accordingly, the Agency determination cannot be sustained.

The Appellant also requested this hearing to contest the Agency's failure to provide an adequate shelter allowance for the period from October 2002 to January 2003.

The Appellant contended that she notified the Agency in October 2002, that her rent had increased to \$132 per month. However, the Agency, for the period from October 2002 to January 2003, failed to provide a shelter allowance in the amount of \$132 per month, but rather provided a lesser amount.

The Agency, although duly notified of the time, date and issue of the hearing did not present the Appellant's case record and did not refute the Appellant's contentions.

Accordingly, the Agency determination cannot be sustained.

## DECISION AND ORDER

The 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 dated September 16, 2002 with respect to Appellant's Public Assistance benefits.

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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.

Should the Agency in the future determine to implement its previous action, it is directed to procure and review the Appellant's case record with respect to a determination relating to the Appellant's Public Assistance benefits, and to issue a new Notice of Intent and to produce the required case record(s) at any subsequent fair hearing.

The Agency's failure to provide an adequate shelter allowance to the Appellant from October 2002 to January 2003, is not correct and is reversed.

1. The Agency is directed to provide Appellant with an appropriate shelter allowance retroactive to October 2002, to the extent that such benefits have not been provided.

2. The Agency is directed to notify the Appellant in writing of the basis for its computations.

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

DATED: Albany, New York  
February 4, 2003

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee