

---

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 January 7, 2009, in [REDACTED], before Madeline R. Fears, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[REDACTED] Appellant

For the Social Services Agency

Mohammed Ahmed, Fair Hearing Representative

**ISSUES**

Was the Agency's determination to reduce the Appellant's grant to recover an overpayment of Public Assistance in the amount of \$1,255.15 due to the unreported receipt of Unemployment Insurance Benefits 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 has been in receipt of Public Assistance benefits for a household of one person.
2. By notice dated November 25, 2008, the Agency advised the Appellant of its determination to reduce the Appellant's grant in order to recover an overpayment of Public

FH# 5171460P

Assistance in the amount of \$1,255.15 due to the unreported receipt of Unemployment Insurance Benefits.

3. On December 7, 2008, the Appellant requested this fair hearing.

### **APPLICABLE LAW**

An adequate notice is a notice of action, an adverse action notice or an action taken notice which sets forth the action that the Agency proposes to take or is taking, and if a single notice is used for all affected assistance, benefits or services, the effect of such action, if any, on a recipient's other assistance, benefits or services. In addition, the notice must contain:

- o for reductions, the previous and new amounts of assistance or benefits provided;
- o the effective date of the action;
- o the specific reasons for the action;
- o the specific laws and/or regulations upon which the action is based;
- o the recipient's right to request an agency conference and fair hearing;
- o the procedure for requesting an agency conference or fair hearing, including an address and telephone number where a request for a fair hearing may be made and the time limits within which the request for a fair hearing must be made;
- o an explanation that a request for a conference is not a request for a fair hearing and that a separate request for a fair hearing must be made;
- o a statement that a request for a conference does not entitle one to aid continuing and that a right to aid continuing only arises pursuant to a request for a fair hearing;
- o the circumstances under which public assistance, medical assistance, food stamp benefits or services will be continued or reinstated until the fair hearing decision is issued;
- o a statement that a fair hearing must be requested separately from a conference;
- o a statement that when only an agency conference is requested and there is no specific request for a fair hearing, there is no right to continued public assistance, medical assistance, food stamp benefits or services;
- o a statement that participation in an agency conference does not affect the right to request a fair hearing;

FH# 5171460P

- o the right of the recipient to review the case record and to obtain copies of documents which the agency will present into evidence at the hearing and other documents necessary for the recipient to prepare for the fair hearing at no cost;
- o an address and telephone number where the recipient can obtain additional information about the recipient's case, how to request a fair hearing, access to the case file, and/or obtaining copies of documents;
- o the right to representation by legal counsel, a relative, friend or other person or to represent oneself, and the right to bring witnesses to the fair hearing and to question witnesses at the hearing;
- o the right to present written and oral evidence at the hearing;
- o the liability, if any, to repay continued or reinstated assistance and benefits, if the recipient loses the fair hearing;
- o information concerning the availability of community legal services to assist a recipient at the conference and fair hearing; and
- o a copy of the budget or the basis for the computation, in instances where the social services agency's determination is based upon a budget computation.

18 NYCRR 358-2.2

### **DISCUSSION**

By notice dated November 25, 2008, the Agency advised the Appellant of its determination to reduce the Appellant's grant in order to recover an overpayment of Public Assistance in the amount of \$1,255.15 due to the unreported receipt of Unemployment Insurance Benefits.

The Agency's Notice of Intent dated November 25, 2008 did not include the dollar amount of assistance prior to the reduction and the reduced amount subsequent to the reduction as required by 18 NYCRR 358-2.2. This defect in the Agency's notice renders it void and, therefore, the Agency's determination to reduce the Appellant's Public Assistance benefits cannot be sustained.

FH# 5171460P

**DECISION AND ORDER**

The Agency determination to recover an overpayment of Public Assistance in the amount of \$1,255.15 due to the unreported receipt of Unemployment Insurance Benefits is not correct and is reversed.

1. The Agency is directed not to implement the Notice of Intent dated November 25, 2008 to reduce the Appellant's grant of Public Assistance.

2. The Agency is directed to restore any lost Public Assistance benefits to the Appellant as a result of the Agency's action.

3. In the event that the Agency determines to implement its previously contemplated action, the Agency is directed to provide the Appellant with a notice that meets the requirements set forth in 18 NYCRR 358-2.2.

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

DATED: Albany, New York  
01/14/2009

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink, appearing to read "J. Coit", written in a cursive style.

Commissioner's Designee

DEKALB JOB CENTE 64  
500 DEKALB AVENUE  
BROOKLYN NY N.Y. 11205



*City*  
**The City of New York**  
HUMAN RESOURCES ADMINISTRATION  
FAMILY INDEPENDENCE ADMINISTRATION

**NOTICE OF INTENT TO REDUCE PUBLIC ASSISTANCE**

CLIENT COPY

H

1  
[REDACTED]

DATE: 11/25/2008

CASE NO: RTI  
[REDACTED]

021

CONCEALMENT	DATE	AMOUNT
	11/13/2008	\$1,255.15

Dear Sir or Madam:

This department intends to reduce your public assistance grant on  
to recover an:

12/09/2008\*

OVERPAYMENT OF ASSISTANCE IN THE AMOUNT OF \$1,255.15.  
FOR THE PERIOD BEGINNING 08/03/2008 DUE TO UNREPORTED  
RECEIPT OF UNEMPLOYMENT INSURANCE BENEFITS.

THE REGULATION WHICH ALLOWS US TO DO THIS IS  
18 NYCRR 352.31(D).  
YOUR GRANT WILL BE REDUCED BY 10 PERCENT OF YOUR  
HOUSEHOLD NEEDS.  
IF YOU HAVE AN EXISTING RECOUPMENT AT THE MAXIMUM RATE, NO  
FURTHER REDUCTION IN YOUR GRANT WILL BE MADE UNTIL THE  
CURRENT RECOUPMENT IS COMPLETED.

\* IF YOU ARE NOT RECEIVING A GRANT, THE REDUCTION WILL  
START IF YOU RESUME PUBLIC ASSISTANCE.

If a reduction is to take effect beginning with the first regular grant received after the date of the proposed reduction, you will be informed of the starting date and the amount of the first reduced grant. Thereafter, the amount recouped each cycle may vary as changes occur in your household needs and the number of recoupments on record, but will not be affected by budgeted income.

If your current household needs (pre-added, rent and miscellaneous allowance if any) and the number of recoupments remain the same, recoupment will last for approximately  
72 issues.

**YOU MAY HAVE A CONFERENCE TO DISCUSS THIS NOTICE**

If you do not understand this notice or are in disagreement with the action, we will review this decision with you if you call us at (718) 636-2457

and ask for a LOCAL CONFERENCE. You also have the right to ask for a STATE FAIR HEARING. You must request a STATE FAIR HEARING within 60 days of the date on the top of this Notice. You must meet this deadline to request a STATE FAIR HEARING even if you ask for a LOCAL CONFERENCE first. The STATE FAIR HEARING is held by the New York State Office of Temporary and Disability Assistance. If you request a STATE FAIR HEARING before the effective date of this Notice, you will continue to receive your benefits unchanged until the STATE FAIR HEARING decision is issued. A request for a LOCAL CONFERENCE alone will not result in a continuation of benefits.

**BE SURE TO READ THE REVERSE ON HOW TO APPEAL THIS DECISION.**

**CONFERENCE AND FAIR HEARING INFORMATION**

**CONFERENCE (Informal meeting with us):** If you think our decision was wrong or if you do not understand our decision, please call the Fair Hearing and Conciliation (FH&C) Unit at the number found on the front, or write to your Income Support/Job Center to arrange a meeting. Sometimes this is the fastest way to solve any problems you may have. We encourage you to do this even when you ask for a fair hearing. At the conference, if we discover that we made a wrong decision or if, because of information you provide, we change our decision, we will take corrective action and give you a new notice. (See Keeping Your Benefits the Same, below.)

**STATE FAIR HEARING**

**Deadline for Request:** If you want the State to review our decision, you must ask for a fair hearing within 60 days from the date of the notice for Public Assistance, Medical Assistance and Social Service issues, and 90 days for Food Stamp issues.

**Keeping Your Benefits the Same:** We will keep your benefits the same as they were before this notice if you ask for a fair hearing before the effective date of the notice. If you do not want your benefits to stay the same until the decision is issued, you must tell the State when you write or call for a fair hearing.

**Right to a Fair Hearing:** If you believe the action(s) we are taking is (are) wrong, you may request a State fair hearing by telephone, in writing, by fax, or in-person.

(1) **Telephone:** (212) 417-6550 (Please have this notice with you when you call.)

-OR-

(2) **Write:** Send a copy of this notice, with this side completed, to the Office of Administrative Hearings, New York State Office of Temporary and Disability Assistance, P.O. Box 1930, Albany, New York 12201. Please keep a copy for yourself.

-OR-

(3) **Fax:** Send a copy of the notice, with this side completed, to FAX Number: (518) 473-6735.

-OR-

(4) **Walk-In:** Bring a copy of the notice, with this side completed, to a New York State Office of Temporary and Disability Assistance office listed below:  
14 Boerum Place, Brooklyn  
109 East 16th Street, Manhattan, 3rd Floor  
330 West 34th Street, Manhattan, 3rd Floor

I want a fair hearing. The Agency's action is wrong because:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Participant: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Case Number: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

If you request a fair hearing, the State will send you a notice informing you of the time and place of the hearing. You have the right to be represented by legal counsel, a relative, a friend or other person, or to represent yourself. At the Fair Hearing, you or your representative have the opportunity to present written and oral evidence, establish facts and circumstances and to question or refute the evidence presented by the local agency. Your attorney or other representative will have the opportunity to present written and oral evidence to demonstrate why the action should not be taken, as well as an opportunity to question any persons who appear at the hearing.

**LEGAL ASSISTANCE:** If you need free legal assistance, you may be able to obtain such assistance by contacting your local Legal Aid Society or other legal advocate group. You may locate the nearest Legal Aid Society or advocate group by checking your Yellow Pages under "Lawyers".

**ACCESS TO YOUR FILE AND COPIES OF DOCUMENTS:** To help you get ready for the hearing, you have a right to look at your case file. If you call or write to us, we will send you free copies of the documents from your files, which we will give to the hearing officer at the fair hearing. Also, if you call or write us, we will send you free copies of other documents from your files which you think you may need to prepare for your fair hearing. To ask for documents or to find out how to look at your file, call the Fair Hearing and Conciliation (FH&C) Unit at the telephone number found on the front, or write to your Income Support/Job Center at the address listed at the top of this notice. If you want copies of documents from your case file, you should ask for them ahead of time.

If your situation is extremely serious, the State will attempt to process your request for a Fair Hearing as quickly as possible. If you call to request a Fair Hearing, please be prepared to explain your situation to the person who answers the phone. If you write for a fair hearing, please explain your situation and enclose a copy of this notice.

DEKALB JOB CENTE 64  
500 DEKALB AVENUE  
BROOKLYN NY N.Y. 11205



*The City of New York*  
HUMAN RESOURCES ADMINISTRATION  
FAMILY INDEPENDENCE ADMINISTRATION

**AVISO DEL INTENTO PARA REDUCIR ASISTENCIA PÚBLICA**

CLIENT COPY

H



**FECHA:** 11/25/2008

**NÚMERO DE CASO:** RTI



021

OCULTACION

FECHA	CANTIDAD
11/13/2008	\$1,255.15

**Estimado(a) Sr(a):**

**Este Departamento tiene la intención de reducir su concesión de asistencia**

**pública en 12/09/2008\* para recuperar:**

SOBREPAGO DE ASISTENCIA EN LA CANTIDAD DE \$1,255.15.  
POR EL PERIODO COMENZANDO EN 08/03/2008 DEBIDO A NO REPORTA  
RECIBIMIENTO DE BENEFICIOS DE SEGURO DE DESEMPLEO.

EL REGLAMENTOS QUE NOS PERMITE LLEVAR ESTO A CABO ES EL  
18 NYCRR 352.31(D).

SU CHEQUE SERA REDUCIDO UN 10 POR CIEN DE LAS NECESIDADES  
DE SU HOGAR.

SI USTED TIENE UNA RECUPERACION EXISTENTE DEL PERCENTAJE  
MAXIMO, NO SE EFECTUARA NINGUNA REDUCCION ADICIONAL DE SU  
ASIGNACION HASTA QUE SE TERMINE LA RECUPERACION ACTUAL.

\* SI NO ESTA RECIBIENDO BENEFICIOS, LA REDUCCION EMPEZARA  
CUANDO REANUDE LA ASISTENCIA PUBLICA.

Si una reducción se va a llevar a cabo comenzando con la primera concesión recibida a partir de la fecha de la reducción propuesta, se le informará la fecha en que comienza y la cantidad de la primera concesión reducida. De allí en adelante, la cantidad recuperada cada ciclo pueda variar de acuerdo a cambios en las necesidades de su hogar y el número de recuperaciones en registro, pero no será afectada por ingreso presupuestado.

Si sus necesidades actuales de su hogar (pre-sumada, alquiler y asignaciones misceláneas, si existe alguno) y el número de recuperaciones permanece igual, la recuperación durará aproximadamente 72 emisiones.

**USTED TIENE EL DERECHO DE APELAR ESTA DECISIÓN**

Si usted no entiende este aviso o está en desacuerdo con la acción, nosotros revisaremos la decisión con usted si nos llama al (718) 636-2457

y solicita una CONFERENCIA LOCAL. Usted también tiene derecho a solicitar una VISTA IMPARCIAL ESTATAL. Usted debe solicitar una VISTA IMPARCIAL ESTATAL. Usted debe solicitar la VISTA IMPARCIAL ESTATAL a no más de 60 días de la fecha que aparece en este aviso para Asistencia Pública y asuntos de Asistencia Médica. Usted debe cumplir con este límite de tiempo para solicitar una VISTA IMPARCIAL ESTATAL, aun si ha solicitado una CONFERENCIA LOCAL primero. La VISTA IMPARCIAL ESTATAL es conducida por el New York State Office of Temporary and Disability Assistance. Si usted solicita una VISTA IMPARCIAL ESTATAL antes de la fecha de vigencia de este aviso, usted continuará recibiendo sus beneficios hasta que la decisión de la VISTA IMPARCIAL ESTATAL sea tomada. Una solicitud para una CONFERENCIA LOCAL, por sí sola, no resultará en la continuación de sus beneficios.



## INFORMACIÓN SOBRE CONFERENCIA Y AUDIENCIA IMPARCIAL

**CONFERENCIA** (Reunión informal con nosotros): Si usted considera que nuestra decisión fue errónea o si no entiende nuestra decisión, por favor llame al Fair Hearing and Conciliation (FH&C) Unit, al número de teléfono que aparece al frente, o escriba a su Income Support/Job Center para acordar una cita. A veces esta es la manera más rápida para resolver cualquier problema que usted pueda tener. Nosotros le recomendamos que haga esto aún cuando ha solicitado una audiencia imparcial. Si durante la conferencia nosotros descubrimos que tomamos una decisión errónea o si, debido a la información que usted provea, determinamos cambiar nuestra decisión tomaremos acción correctiva y le proporcionaremos una nueva notificación. (Vea debajo: Manteniendo Sus Beneficios Iguales.)

### AUDIENCIA IMPARCIAL ESTATAL

**Límite de Tiempo para Peticiones:** Si usted desea que el estado revise nuestra decisión, usted debe solicitar una audiencia imparcial antes de los 60 días de la fecha del aviso de Asistencia Pública, Asistencia Médica y Asuntos de Servicios Sociales, y antes de los 90 días para asuntos de Cupones de Alimento.

**Manteniendo Sus Beneficios Iguales:** Nosotros mantendremos sus beneficios iguales a como estaban antes de este aviso, si solicita una audiencia imparcial antes de la fecha actual de este aviso. Si usted no desea que sus beneficios permanezcan iguales hasta que se emita una decisión, usted debe comunicárselo al estado cuando escriba o llame para solicitar una audiencia imparcial.

**Derecho a una Conferencia Imparcial:** Si usted cree que la(s) acción(es) que estamos tomando es(són) errónea(s), usted puede solicitar una Audiencia Imparcial Estatal por teléfono, por escrito, por fax, o en persona.

- (1) **Llame:** (212) 417-6550 (favor de tener este aviso o mano cuando llame.)  
-O-
- (2) **Escriba:** Envíe una copia de este lado completado, a: Office of Administrative Hearings, New York State Office of Temporary and Disability Assistance, P.O. Box 1930, Albany, New York 12201.  
Por favor mantenga una copia para usted.  
-O-
- (3) **Fax:** Envíe una copia de este aviso, con este lado completado, al número de Fax: (518) 473-6735.  
-O-
- (4) **Lleve:** Lleve una copia de este aviso, con este lado completado, a una de las oficinas de New York State Office of Temporary and Disability Assistance que aparece listada debajo:  
14 Boerum Place, Brooklyn  
109 East 16th Street, Manhattan, 3rd Floor  
330 West 34th Street, Manhattan, 3rd Floor

Deseo una audiencia imparcial. La acción de la agencia es errónea porque:

---

---

---

---

---

---

Firma del Participante: \_\_\_\_\_ Fecha: \_\_\_\_\_

Nombre Impreso: \_\_\_\_\_ Número de Caso: \_\_\_\_\_

Dirección: \_\_\_\_\_ Número de Teléfono: \_\_\_\_\_

Si usted solicita una audiencia imparcial, el estado le enviará una notificación informándole la hora y el lugar de la audiencia. Usted tiene el derecho de ser representado(a) por un abogado, un familiar, un amigo u otra persona, o puede representarse a sí mismo. Durante la Audiencia Imparcial, el solicitante/participante o su representante tiene la oportunidad de presentar evidencias escritas u orales, establecer hechos y circunstancias y cuestionar o argumentar la evidencia presentada por la agencia local. Su abogado u otro representante tendrá la oportunidad de presentar evidencia escrita y oral para demostrar la razón por la cual la acción no debe ser llevada a cabo, así como también tendrá oportunidad de interrogar a cualquier persona que se presente a la audiencia.

**ASISTENCIA LEGAL:** Si usted necesita asistencia legal gratis, usted puede obtener tal ayuda contactando la sociedad de ayuda legal de su localidad (Legal Aid Society) u otro grupo legal de abogacía. Usted puede localizar la sociedad de ayuda legal o grupo de abogacía más cercano, buscando en sus páginas amarillas bajo "lawyers" (abogados).

**ACCESO A SU REGISTRO Y COPIAS DE DOCUMENTOS:** Para ayudarlo a prepararse para la audiencia, usted tiene derecho a revisar el registro de su caso. Si usted nos llama o escribe le enviaremos copias gratis de los documentos de sus registros, los cuales entregaremos al oficial de audiencia en la audiencia imparcial. También, si usted nos llama o escribe, le enviaremos copias gratis de otros documentos de su registro que considere que puede utilizar para su audiencia imparcial. Para solicitar documentos o para saber cómo revisar su registro, llame al Fair Hearing and Conciliation (FH&C) Unit al número de teléfono que aparece al frente, o escriba a su Income Support/Job Center a la dirección que aparece en la parte superior de este aviso. Si usted desea copias de documentos del registro de su caso, usted debe solicitarlas con anticipación.

**Si su situación es extremadamente seria, el estado intentará procesar su petición una audiencia imparcial lo más pronto posible. Si usted llama para solicitar una audiencia imparcial, por favor este preparado para explicar su situación a la persona que conteste el teléfono. Si usted solicita una audiencia imparcial por escrito, por favor explique su situación y adjunte una copia de este aviso.**