

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: December 23, 2008
CASE # [REDACTED]
CENTER #: BFI
FH #: 5182116M

In the Matter of the Appeal of
[REDACTED]
as Payee for [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 26, 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

Shannon Reed, Fair Hearing Representative

ISSUE

Was the Agency's determination that the Appellant had received an overpayment of Public Assistance and owes the amount of \$8,384.37 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 was previously in receipt of Public Assistance benefits as the payee for a household of one person. The Appellant's case was closed on June 20, 2008.
2. On September 15, 2008, the Office of Revenue & Investigation of the Human Resources Administration sent a "Demand Letter" advising the Appellant of its determination that she received an overpayment of Public Assistance benefits and demanding repayment in the

FH# 5182116M

amount of \$8,384.37 based on the following recoupments: concealment in the amount of \$8,968.00, with a balance owed of \$8,361.90 and administrative error in the amount of \$22.47.

3. By Notice of Change in Grant, dated June 27, 2007, the Agency advised the Appellant of its determination to reduce the Appellant's Public Assistance benefits to recoup an overpayment of assistance in the amount of \$8,968.00 resulting from concealment.

4. The Agency previously sent the Appellant a Notice of Intent, dated June 1, 2007, advising the Appellant of its determination to reduce the Appellant's Public Assistance benefits to recoup an overpayment of assistance in the amount of \$8,968.00 resulting from concealment.

5. The notice advised the Appellant that a fair hearing must be requested within sixty days of the date of the Agency's action.

6. The Agency mailed the notice to the Appellant's address as contained in the Appellant's case record.

By Notice of Intent, dated August 8, 2008, the Agency advised the Appellant of its determination to reduce the Appellant's Public Assistance benefits to recoup an overpayment of assistance in the amount of \$22.47 resulting from agency error.

7. On December 23, 2008, 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.

Recovery of overpayments. Social services districts shall take all reasonable steps necessary to promptly correct any overpayments, including overpayments resulting from assistance paid pending a hearing decision, subject to the following conditions:

(1) Social services districts shall recover an overpayment from:

FH# 5182116M

- (i) the assistance unit which was overpaid;
 - (ii) any assistance unit of which a member of the overpaid assistance unit has subsequently become a member; or
 - (iii) any individual members of the overpaid assistance unit whether or not currently a recipient.
- (5) Recovery shall be made by appropriate legal action against the income or resources of those individuals who are no longer recipients. However, local districts may waive recovery of an overpayment from an individual no longer receiving assistance if the amount of the overpayment is less than \$125 and the overpayment was not the result of fraud on the part of the recipient as defined in section 348.1 of this Title. In cases involving fraud, local districts must continue to make an effort to recover the overpayment, regardless of the amount. When the overpayment is \$125 or more and does not involve fraud, local districts may elect to discontinue collection procedures when it is determined that the cost of recovery is greater than the cost of collection and reasonable efforts to recover the overpayment have been made. Reasonable efforts must include notification of the amount of and reason for the overpayment and that repayment is required. If recovery is not made, the social services district must recoup the amount of overpayment if the assistance unit reapplies and is found eligible.
- (7) Social services districts shall take one of the following three actions by the end of the quarter following the quarter in which the overpayment is first identified:
- (i) recover the payment;
 - (ii) initiate action to locate and/or recover the overpayment from a former recipient; or
 - (iii) initiate recoupment from a current recipient's grant.

18 NYCRR 352.31(d).

Section 358-3.1 of the Regulations provides:

Right to a fair hearing:

- (a) An applicant or recipient has the right to challenge certain determinations or actions of a social services agency or such agency's failure to act with reasonable promptness or within the time periods required by other provisions of this Title, by requesting that the department provide a fair hearing. The right to request a fair hearing cannot be limited or interfered with in any way.

FH# 5182116M

- (b) If you are an applicant or a recipient of assistance, benefits or services you have a right to a fair hearing if:
 - (17) you disagree with the amount of a claim for the overpayment of public assistance or the over-issuance of food stamp benefits, except if the amount of such claim has already been determined, in accordance with Part 359 or Part 399 of this Title, by an administrative disqualification hearing, a waiver of an administrative disqualification hearing, a court determination or a disqualification consent agreement.

Section 358-2.18 of the Regulations provides:

Recipient means a person who is, or has been, receiving a covered program or service. For the purpose of this Part, recipient includes a former recipient seeking to review a determination of a social services agency and who would have a right to a hearing under section 358-3.1 of this Part if such person were a current recipient.

Regulations at 18 NYCRR 358-3.3(a) provide that a recipient of Public Assistance, Medical Assistance or services has a right to notice when the agency:

- (i) proposes to take any action to discontinue, suspend, or reduce a Public Assistance grant, Medical Assistance authorization or services; or
- (ii) proposes to change the manner or method or form of payment of a Public Assistance grant; or
- (iii) determines that the recipient of Public Assistance or Medical Assistance is employable; or
- (iv) determines to restrict a Medical Assistance authorization.
- (v) accepts or denies an application for Public Assistance, Medical Assistance or services; or
- (vi) increases a Public Assistance grant; or
- (vii) determines to change the amount of one of the items used in the calculation of a Public Assistance grant or Medical Assistance spenddown although there is no change in the amount of the Public Assistance grant or Medical Assistance spenddown; or
- (viii) denies an application for an exemption from or an increase in a Medical Assistance utilization threshold and the recipient has reached such utilization threshold.

FH# 5182116M

- (ix) makes changes in the manner of payment of supportive services provided to enable an individual to participate in work activities.

DISCUSSION

On September 15, 2008, the Office of Revenue & Investigation of the Human Resources Administration sent a "Demand Letter" advising the Appellant of its determination that she received an overpayment of Public Assistance benefits and demanding repayment in the amount of \$8,384.37 based on the following recoupments: concealment in the amount of \$8,968.00, with a balance owed of \$8,361.90 and administrative error in the amount of \$22.47.

By Notice of Change in Grant, dated June 27, 2007, the Agency advised the Appellant of its determination to reduce the Appellant's Public Assistance benefits to recoup an overpayment of assistance in the amount of \$8,968.00 resulting from concealment.

The Agency previously sent the Appellant a Notice of Intent, dated June 1, 2007, advising the Appellant of its determination to reduce the Appellant's Public Assistance benefits to recoup an overpayment of assistance in the amount of \$8,968.00 resulting from concealment.

Although the Agency's Notice of Change in Grant advised the Appellant that a fair hearing must be requested within sixty days of its action, the Appellant failed to request this fair hearing until December 23, 2008, which was more than sixty days after the Agency's determination.

The Appellant testified at the hearing that she did not request a fair hearing when her case was active and was being recouped because she did not know how to request a hearing. However, the Notice of Change in Grant specifically advised the Appellant of the time limitations and the methods of requesting such hearing. Accordingly, the record does not establish a sufficient basis for tolling the statute of limitations with respect to the Notice of Change in Grant dated June 27, 2007.

By Notice of Intent, dated August 8, 2008, the Agency advised the Appellant of its determination to reduce the Appellant's Public Assistance benefits to recoup an overpayment of assistance in the amount of \$22.47 resulting from agency error.

The Agency's Notice of Intent dated August 8, 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.

It is noted that this defect serves to both toll the statute of limitations contained in the August 8, 2008 Notice **and** to void the Notice. Consequently, there is no statute of limitations issue to be reviewed.

FH# 5182116M

The Regulations provide that, except for certain limited exceptions that are not applicable in this instance, payments in closed cases can only be provided if the Appellant is a current Public Assistance recipient. Consequently, as the Appellant's Public Assistance case is closed, the Agency has no obligation to restore any Public Assistance benefits to which the Appellant may be entitled until or unless the Appellant's case is reopened.

DECISION AND ORDER

As this hearing was requested more than sixty days after the Agency determination sought to be reviewed, the Commissioner is without jurisdiction to review the local Agency's determination June 27, 2007.

The Agency's determination, dated August 8, 2008, to recover an overpayment of Public Assistance in the amount of \$22.47 due to agency error is not correct and is reversed.

1. The Agency is directed not to take any further action to recover the overpayment of Public Assistance in the amount of \$22.47 and to delete the recoupment from its records.

2. In the event that the Appellant reapplies and becomes eligible to receive Public Assistance, the Agency is directed to restore any lost Public Assistance benefits that may be due to the Appellant as a result of the Agency's action.

DATED: Albany, New York
01/30/2009

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

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

Commissioner's Designee

BAY RIDGE JOB CT 70
6740 FOURTH AVENUE
BROOKLYN, NY N.Y. 11220



The City of New York

HUMAN RESOURCES ADMINISTRATION
FAMILY INDEPENDENCE ADMINISTRATION

NOTICE OF INTENT TO REDUCE PUBLIC ASSISTANCE

CLIENT COPY

H

1

DATE: 08/08/2008

CASE NO: RTI

064

AGENCY ERROR

DATE
05/20/2008

AMOUNT
\$22.47

Dear Sir or Madam:

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

08/25/2008*

OVERPAYMENT OF ASSISTANCE IN THE AMOUNT OF \$22.47.
THIS IS BECAUSE YOUR PUBLIC ASSISTANCE CASE WAS CLOSED
ON 05/16/2008. YOU HAD ALREADY RECEIVED BENEFITS FOR THE
CYCLE THAT ENDED AFTER THE CLOSING DATE. THE (PA) YOU
RECEIVED FOR THE PERIOD FROM THE CLOSING DATE UNTIL THE
END OF THE CYCLE MUST BE PAID BACK TO THIS AGENCY.

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 1 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) 921-2004 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.

BAY RIDGE JOB CT 70
6740 FOURTH AVENUE
BROOKLYN, NY N.Y. 11220



The City of New York

HUMAN RESOURCES ADMINISTRATION
FAMILY INDEPENDENCE ADMINISTRATION

NOTICE OF INTENT TO REDUCE PUBLIC ASSISTANCE

CLIENT COPY

H



DATE: 08/08/2008

CASE NO: RTI

064

	DATE	AMOUNT
AGENCY ERROR	05/20/2008	\$22.47

Dear Sir or Madam:

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

08/25/2008*

OVERPAYMENT OF ASSISTANCE IN THE AMOUNT OF \$22.47.
THIS IS BECAUSE YOUR PUBLIC ASSISTANCE CASE WAS CLOSED
ON 05/16/2008. YOU HAD ALREADY RECEIVED BENEFITS FOR THE
CYCLE THAT ENDED AFTER THE CLOSING DATE. THE (PA) YOU
RECEIVED FOR THE PERIOD FROM THE CLOSING DATE UNTIL THE
END OF THE CYCLE MUST BE PAID BACK TO THIS AGENCY.

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 1 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) 921-2004 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.