

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: February 27, 2009
CASE #: [REDACTED]
CENTER #: 71
FH #: 5228278H

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

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**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 April 1, 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

Valerie Dovin-Joseph, Fair Hearing Representative

ISSUE

Was the Agency's determination, dated February 19, 2009, to reduce the Appellant's grant to recoup an overpayment of Public Assistance in the amount of \$2,417.25 resulting agency error correct?

Was the Appellant's request for a fair hearing to review the Agency determination to reduce the Appellant's Public Assistance and Food Stamp benefits timely?

Assuming the request was timely, was the Agency's determination to reduce the Appellant's Public Assistance and Food Stamp benefits 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 has been in receipt of Public Assistance and Food Stamp benefits for a household of two persons consisting of herself and her son.
2. By notice dated February 19, 2009, the Agency advised the Appellant of its determination to reduce the Appellant's Public Assistance grant to recoup an overpayment of assistance in the amount of \$2,417.25 resulting from agency error.
3. By notice dated September 20, 2008, the Agency advised the Appellant of its determination to reduce the Appellant's Public Assistance and Food Stamp benefits on the grounds that that the Appellant failed to accept a job offer at the [REDACTED] Program.
4. The notice advised the Appellant that a fair hearing must be requested within sixty days of the Agency's action concerning Public Assistance and within ninety days of the Agency's action concerning Food Stamps.
5. The Agency mailed the notice to the Appellant's address as contained in the Appellant's case record.
6. On February 27, 2009, the Appellant requested this fair hearing.

APPLICABLE LAW

In general, a recipient of Public Assistance, Medical Assistance or Services (including child care and supportive services) has a right to a timely and adequate notice when the Agency proposes to discontinue, suspend, reduce or change the manner of payment of such benefits. An adequate, though not timely, notice is required where the Agency has accepted or denied an application for Public Assistance, Medical Assistance or Services; or has increased the Public Assistance grant; or has determined to change the amount of one of the items used in the calculation of a Public Assistance grant or Medical Assistance spenddown; or has determined that an individual is not eligible for an exemption from work requirements. 18 NYCRR 358-3.3(a). In addition, pursuant to 18 NYCRR 358-3.3(d), an adequate, though not timely, notice is required for a Public Assistance or Medical Assistance recipient when, for example, the Agency has factual information confirming the death of the recipient; the Agency has received a clear written statement from the recipient that he or she no longer wishes to receive Public Assistance or Medical Assistance; the Agency has reliable information that the recipient has been admitted to an institution or prison; the recipient's whereabouts are unknown and mail has been returned to the Agency; or the recipient has been accepted for Public Assistance or Medical Assistance in another district.

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A timely notice means a notice which is mailed at least 10 days before the date upon which the proposed action is to become effective. 18 NYCRR 358-2.23.

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;
- 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;

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- 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

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.

DISCUSSION

By notice dated February 19, 2009, the Agency advised the Appellant of its determination to reduce the Appellant's Public Assistance grant to recoup an overpayment of assistance in the amount of \$2,417.25 resulting from agency error.

The Agency's Notice of Intent dated February 19, 2009 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. Therefore, the Agency's determination to reduce the Appellant's Public Assistance benefits to recoup an overpayment of assistance in the amount of \$2,417.25 resulting from agency error cannot be sustained.

By notice dated September 20, 2008, the Agency advised the Appellant of its determination to reduce the Appellant's Public Assistance and Food Stamp benefits on the grounds that that the Appellant failed to accept a job offer at the [REDACTED] Program.

Although the Agency's notice advised the Appellant that a fair hearing must be requested within sixty days of its action concerning Public Assistance or Medical Assistance and within ninety days of its action concerning Food Stamp benefits, the Appellant failed to request this fair hearing until February 27, 2009, which was more than ninety days after the Agency's determination.

At the hearing, the Appellant contended that she did not request a fair hearing to contest the Agency's determination because she did not read the entire notice advising her of the statutory time limits. The Appellant's contention does not constitute a valid reason for the failure to request a timely fair hearing. Accordingly, the record does not establish a sufficient basis for tolling the statute of limitations.

DECISION AND ORDER

The Agency's determination, dated December 29, 2008, to reduce the Appellant's Public Assistance benefits to recover an overpayment of Public Assistance in the amount of \$2,417.25 resulting from 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 \$2,417.25.
2. The Agency is directed to continue to provide Public Assistance benefits to the Appellant.
3. The Agency is directed to restore all monies already recovered pursuant to RTI# [REDACTED] to the Appellant.

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4. 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 this hearing was requested more than ninety days after the Agency determination sought to be reviewed, the Commissioner is without jurisdiction to review the local Agency's determination dated September 20, 2008.

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

DATED: Albany, New York
04/08/2009

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink, appearing to read "J. Coit". The signature is written in a cursive, somewhat stylized font.

Commissioner's Designee

DYCKMAN JOB CENT 35
4055 10TH AVENUE, 1S
NEW YORK, NY N.Y. 10034



WLR
The City of New York

**HUMAN RESOURCES ADMINISTRATION
FAMILY INDEPENDENCE ADMINISTRATION**

NOTICE OF INTENT TO REDUCE PUBLIC ASSISTANCE

CLIENT COPY

H

1
[REDACTED]

DATE: 02/19/2009

CASE NO: RTI
[REDACTED]

033

AGENCY ERROR

DATE
02/13/2009

AMOUNT
\$2,417.25

Dear Sir or Madam:

This department intends to reduce your public assistance grant on

03/05/2009*

to recover an:

OVERPAYMENT OF ASSISTANCE IN THE AMOUNT OF \$2,417.25
FOR THE PERIOD BEGINNING 08/27/2008 DUE TO
RECEIPT OF EMPLOYMENT EARNINGS BY THE GRANTEE/SPOUSE.

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
117 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
(212) 569-9572

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.

Form M-328a (face)
Rev. 9/28/00

(See other side)

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.