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In the Matter of the Appeal of :

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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 the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on August 26, 1994, in New York City, before Konstantinos Pertsas, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Roseann Waldstein, Appellant's Representative

For the Social Services Agency

Stephen Klips, Fair Hearing Representative

ISSUE

Was the Agency's determination to discontinue the Appellant's Public Assistance benefits based on its Notice of Intent dated January 31, 1994 correct?

Was the determination of the Agency to discontinue the Appellant's Food Stamp benefits without notice 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 and Food Stamp benefits.

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2. By notice dated January 31, 1994, the Agency advised the Appellant of its determination to discontinue the Appellant's Public Assistance benefits on the grounds that the Appellant's monthly Supplemental Security Income (SSI) benefits are sufficient to meet her budgetary needs.

3. The Agency's Notice of Intent dated January 31, 1994 did not include a copy of the budget or the basis for its computation.

4. Effective February 1994, the Agency discontinued the Appellant's Food Stamp benefits, without notice.

5. On July 8, 1994, the Appellant requested this fair hearing.

APPLICABLE LAW

Section 22 of the Social Services Law provides that a request for a fair hearing to review an Agency's determination must be made within sixty days of the date of the Agency's action or failure to act.

A recipient of Public Assistance, Medical Assistance or Services has a right to an adequate notice when the Agency proposes to discontinue, suspend, reduce or change the manner of payment of such benefits. 18 NYCRR 358-3.3(a). In addition, in most circumstances, a Food Stamp recipient has a right to an adequate adverse action notice when the Agency proposes to take any action to discontinue, suspend or reduce the recipient's Food Stamp benefits during the certification period. 18 NYCRR 358-2.3; 18 NYCRR 358-3.3(b). However, pursuant to 18 NYCRR 358-3.3(e), there is no right to an adverse action notice when, for example, the change is the result of a mass change, the Agency determines that all members of the household have died or the household has moved from the district or when the household has failed to reapply at the end of the certification period.

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;

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- 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;
- 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

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where the social services agency's determination is based upon a budget computation.

18 NYCRR 358-2.2

Department 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. 18 NYCRR 358-4.3(b).

Pursuant to the settlement in the case of Rodriguez v. Blum, the New York City Agency is required to produce the Appellant's complete relevant case record at any fair hearing that involves the discontinuance, reduction, or restriction of Public Assistance benefits. If the Agency appears at the hearing without the complete relevant case record, the Agency is required to withdraw its Notice of Intent.

The Food Stamp Program is a federal program regulated by the United States Department of Agriculture Food and Nutrition Service. Program regulations are set forth in the Code of Federal Regulations (7 CFR). Section 273.15 of 7 CFR requires that a state must provide a fair hearing to any household aggrieved by an action which affects the household's participation in the Food Stamp Program. New York Department of Social Services Regulations at 18 NYCRR 358-3.1 set forth the situations in which an applicant or recipient has a right to a fair hearing.

A person is allowed to request a fair hearing on any action of a local social services agency relating to food stamp benefits or loss of food stamp benefits which occurred in the ninety days preceding the request for a hearing. Such action includes a denial of a request for restoration of any benefits lost more than ninety days but less than a 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. Social Services Law Section 22.4(b), 18 NYCRR 358-3.1, 18 NYCRR 358-3.5, 7 CFR 273.15.

Department regulations at 18 NYCRR 358-3.3(b)(1) and Federal regulations at 7 CFR 273.13 provide that a recipient of Food Stamp benefits has a right to notice when the agency proposes to take any action to discontinue or reduce Food Stamp benefits.

Where Food Stamp benefits are lost due to an error by the Agency, the Agency is required to restore lost benefits. However, lost benefits shall be restored for not more than twelve months prior to whichever of the following occurred first:

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1. The date the Agency received a request for restoration from a household; or
2. The date the Agency is notified or otherwise becomes aware that a loss to a household has occurred.

7 CFR 273.17; 18 NYCRR 387.18 and Department of Social Services Food Stamp Source Book, Section X-H-1.

#### DISCUSSION

The Appellant requested this hearing to review the Agency's determination to discontinue the Appellant's Public Assistance benefits based on its Notice of Intent dated January 31, 1994.

Although the Agency's determination is based upon a computation of the Appellant's budget, the Agency's notice did not set forth or include a copy of the budget or the basis for such computation as required by 18 NYCRR 358-2.2, above.

The above-noted defects in the Agency's notice would render such notice defective. Therefore, the statutes of limitations could not be raised in any event as an affirmative defense due to the defective notice, and the hearing request is timely.

The evidence establishes that the Agency sent a Notice of Intent dated January 31, 1994, to the Appellant advising the Appellant that it had determined to discontinue the Appellant's Public Assistance benefits because the Appellant was in receipt of monthly Supplemental Security Income (SSI) benefits sufficient to meet her budgetary needs.

Although duly notified of the time and place of the hearing, the Agency failed to produce the Appellant's complete relevant case record at the hearing on the issue of the Agency's determination to reduce the Appellant's Public Assistance grant and failed to withdraw its Notice of Intent and Notice of Change as required by Rodriguez v. Blum.

The Appellant's representative stated that the Agency discontinued the Appellant's Food Stamp benefits in February 1994 without sending the Appellant any notices. The Agency failed to produce any notices of discontinuance at the hearing. The Agency presented no evidence to effectively contradict the Appellant's claim or to establish a proper basis for discontinuing Appellant's Food Stamp benefits.

Furthermore, the Agency produced no evidence to show that the Appellant was notified of or was aware of the existence of the ninety day statute of limitations. The statute of limitations is therefore tolled under the circumstances of this case.

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The Agency's failure to give notice of its proposed actions violates the above cited regulations.

DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Public Assistance benefits is not correct and is reversed.

1. The Agency is directed to restore the Appellant's Public Assistance benefits retroactive to the date of the Agency's action.

2. 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.

The determination of the Agency to discontinue the Appellant's Food Stamp benefits without notice is not correct and is reversed.

1. The Agency is directed to restore the Appellant's Food Stamp benefits retroactive to the date such benefits were discontinued.

2. Should the Agency in the future determine to implement its previous action with respect to the Appellant's Food Stamp benefits, it is directed to issue a timely and adequate Notice of Intent.

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

DATED: Albany, New York

AUG 30 1994

NEW YORK STATE DEPARTMENT  
OF SOCIAL SERVICES

By

  
Commissioner's Designee