

STATE OF NEW YORK  
DEPARTMENT OF SOCIAL SERVICES

CASE #  
CENTER # 54  
FH # 1025385Q

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In the Matter of the Appeal of

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

: DECISION  
: WITHOUT  
: EVIDENTIARY  
: HEARING

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By letter dated February 24, 1987, the appellant's representative, Eugene Doyle, requested that a decision without an evidentiary hearing be issued pursuant to 18 NYCRR 358.19. Pursuant to 18 NYCRR 358.19(b), by letter dated March 5, 1987, a copy of the appellant's request and supporting documents were sent to the Agency. More than ten working days have lapsed and no response was received from the Agency.

FACT FINDINGS

An opportunity to be heard having been afforded to all interested parties and evidence having been submitted and due deliberation having been had, it is hereby found that:

1. Appellant, age 44, has been in receipt of Home Relief for herself since November, 1986, in the amount of \$59.50 semi-monthly.

2. By notice (Form M-3H-A) dated February 18, 1987, the Agency notified the Appellant that her Public Assistance case would be closed as of February 18, 1987 on the grounds that Appellant's income from Supplemental Security Income is sufficient to meet her budgetary needs.

3. On February 24, 1987, the appellant's representative, Eugene Doyle, requested that a decision without an evidentiary hearing be issued pursuant to 18 NYCRR 358.19 to determine whether the Agency's notice dated February 18, 1987 was defective as a matter of law.

4. Although requested to do so by letter dated March 5, 1987, the Agency has not submitted any evidence in opposition to the Appellant's allegations.

ISSUE

Was the Agency's notice dated February 18, 1987 discontinuing Appellant's Public Assistance effective February 18, 1987 defective as a matter of law?

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APPLICABLE LAW

Except as provided in 18 NYCRR 358.8(d)(1), timely and adequate notice of any proposed action to discontinue Public Assistance payments must be sent to a recipient. 18 NYCRR 358.8(a). Timely notice means a written notice mailed at least ten days prior to the effective date of the proposed action. Adequate notice means a notice which contains the details of the reasons for the proposed action as well as information regarding conference and hearing rights and the right to continued Public Assistance if a hearing is requested. In the limited circumstances where timely notice may be dispensed with pursuant to 18 NYCRR 358.8(d)(1), the recipient is still entitled to adequate notice.

DISCUSSION

In this case, the uncontroverted evidence establishes that by notice dated February 18, 1987, the Agency advised Appellant that her Public Assistance would be discontinued that same day on the grounds that "the income you receive from Supplemental Security Income is sufficient to meet you budgetary needs." The notice also advised the Appellant that her Food Stamp benefits were being continued at their present level and that her Medical Assistance was being discontinued through the Public Assistance Program but would be continued through a separate program, presumably as a "Medicaid only" recipient.

In addition, the notice advised the Appellant that she had a right to a fair hearing if she did not agree with the Agency's actions. The second page of the notice included a telephone number to request a hearing and an address to request a hearing in writing.

The basis for the Agency's discontinuance of Appellant's Public Assistance grants does not fall within the exceptions to the requirement in 18 NYCRR 358.8(d)(1) that a recipient is entitled to timely notice before his/her Public Assistance grant is discontinued. A notice dated the effective date of the effective date of the discontinuance is not timely. In addition, the notice was not adequate. It did not advise the Appellant of her right to aid-continuing until the fair hearing decision is issued, as required by 18 NYCRR 358.8(a).

DECISION AND ORDER

The Agency's notice dated February 18, 1987 is defective as a matter of law since it does not meet the requirements contained in 18 NYCRR 358.8 for timely and adequate notice. Therefore, the determination of the Agency to discontinue Appellant's Public Assistance is not correct and is reversed.

1. The Agency is directed to restore Appellant's Public Assistance grant to \$59.50 semi-monthly retroactive to February 18, 1987.

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2. The Agency is directed to cease using form notice (Form M-3H-A) which was used in this case and to replace it with a new notice which meets the requirements of 18 NYCRR 358.8, including appropriate language regarding rights to aid-continuing.

3. The Agency is directed to submit a proper form notice for approval by the Division of Income Maintenance within thirty days of this decision and to issue no further notices of discontinuance using the defective form notice (Form M-3H-A).

4. The Agency is directed to give timely notice in all instances where it seeks to discontinue Public Assistance grants except where otherwise permitted by 18 NYCRR 358.8(d)(1).

5. Should the Agency in the future determine to implement its previous action with respect to this Appellant, the Agency is directed to issue a timely and adequate Notice of Intent.

As required by Department Regulations at 18 NYCRR 358.22, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York

**APR 8 1987**

CESAR A. PERALES  
COMMISSIONER

BY *Henry G. Skiffman*  
Commissioner's Designee