
In the Matter of the Appeal of :
:
G B :
: DECISION
: AFTER
: FAIR
from a determination by the New York City :
Department of Social Services :
:
:
:

JURISDICTION

This appeal is from a determination by the local Social Services Agency to reduce Appellant's Food Stamp benefits.

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 December 22, 1988, in New York City, before Edward Shalfi, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

G. B , Appellant

Eugene Doyle, Representative

For the Local Social Services Agency

Gregory Lowe, Agency Representative

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 Food Stamp benefits for a household of three persons.
2. By notice in the form of a letter dated January 12, 1988, the Agency informed the Appellant of its determination to reduce the Appellant's Food Stamp benefits from \$214.00 to \$144.00.

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3. The letter did not advise the Appellant that a fair hearing regarding Food Stamp benefits must be requested within ninety days of the Agency's action.

4. Although duly notified of the time and place of the scheduled fair hearing, the Agency appeared but did not present any evidence to support its determination.

5. On August 2, 1988, the Appellant requested this hearing to review the Agency's determination to reduce the Appellant's Food Stamp benefits.

ISSUES

Was the Appellant's request for a fair hearing to review the Agency determination to reduce her Food Stamp benefits from \$214.00 to \$144.00 per month timely?

Assuming the request was timely, was the Agency's determination to reduce Appellant's Food Stamp benefits from \$214.00 to \$144.00 monthly correct?

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.

When a Food Stamp household requests a hearing to review the Agency's determination to discontinue, suspend or reduce its Food Stamp benefits, the local Agency must appear at the hearing with the household's case record. Federal Regulations (7 CFR 273.15(p)) and the Department of Social Services Food Stamp Source Book (VIII-C-5) require that the contents of the case file be made available to the Food Stamp household during the hearing.

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:

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-B-1.

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DISCUSSION

By handwritten letter dated January 12, 1988, the Agency notified the Appellant that it had determined to reduce Appellant's Food Stamp benefits from \$214.00 to \$144.00 monthly. Such letter had otherwise informed the Appellant of its compliance with a previous Fair Hearing decision. However, the Agency's letter neither advised the Appellant that a fair hearing could be requested, or that it must be requested within sixty days of the notice. On such basis, although the Appellant failed to request this hearing until August 2, 1988, the Statute of Limitations contained in Section 22 of the Social Services Law is tolled.

Although duly notified of the time and place of this hearing, an Agency messenger appeared at the hearing, but indicated that he did not know anything about the Appellant's case and could not present the Agency documents which he had brought. Furthermore, he indicated that there was nothing in those records pertaining to the reduction of the Appellant's Food Stamp benefits to \$144.00 per month.

DECISION AND ORDER

The determination of the Agency is not correct and is reversed.

1. The Agency is directed to take no further action on its notice of January 12, 1988.

2. The Agency is directed to provide the Appellant with Food Stamp benefits of \$214.00 per month.

3. Pursuant to 7 CFR 273.17 and 18 NYCRR 387.18, the Agency is directed to restore any benefits lost as a result of its notice of January 12, 1988, retroactive to the date of reduction.

4. Should the Agency in the future determine to implement its previous action, it is directed to issue a new Notice of Intent and to produce evidence in support of its determination at any subsequent fair hearing.

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

JAN 13 1989

CESAR A. PERALES
COMMISSIONER

By *Robert D. Mc Donnell*

Commissioner's Designee