

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST January 3, 2003
CASE #
CENTER # 53
FH # 3839951M;3891293R

In the Matter of the Appeal of

J F

:
DECISION
: AFTER
FAIR
HEARING

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

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 June 3, 2003, in New York City, before Yvette H. Pomeranz, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Eugene Doyle, Appellant's Representative

For the Social Services Agency

Morris Biderman, Fair Hearing Representative

ISSUE

Was the Agency's July, 2002 determination to restrict Appellant's Public Assistance grant correct?

Was the Agency's April, 2003 determination to reduce Public Assistance 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. Appellant, age 51, resides with her husband, age 49, and their three children, ages 22, 19, and 13.
2. The household has been in receipt of a regularly recurring grant of Public Assistance.

FH# 3839951M

3. In July, 2002 the Agency determined to restrict the shelter allowance portion of Appellant's Public Assistance grant without advance written notice or stated reason.

4. On January 3, 2003 Appellant requested this fair hearing to review the foregoing determination.

5. On April 2, 2003 the Agency notified Appellant of its determination to reduce Public Assistance to recover an overpayment of \$194.50 resulting from Agency error.

6. On April 11, 2003 Appellant requested this fair hearing to review the foregoing determination.

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.

Regulations at 18 NYCRR 358-3.3(a) and 358-2.2 provide in pertinent part that a recipient of Public Assistance has a right to timely and adequate notice when the agency proposes to change the manner or method or form of payment of a Public Assistance grant.

When the inability of an applicant for or recipient of Family Assistance to handle cash has been demonstrated and when neither the granting of power of attorney by the recipient nor the appointment of a committee by the court is deemed practicable, payment of all or part of the grant shall be made by restricted payments. The recipient shall be sent written notice whenever a creditor requests a restricted payment for mismanagement on the basis of nonpayment of bills. Where payment is restricted, the reason for the decision to restrict shall be explained in the case record and the recipient shall be sent written notice of the restriction together with the reasons pertaining thereto. The recipient shall be sent written notice of any decision not to use a restricted payment. The local social services district shall initiate discussion concerning the client's reasons for nonpayment of bills and shall make renewed effort to help the client assume responsibility for paying his own bills.

18 NYCRR 381.3(a)

In making a determination of mismanagement in Family Assistance cases, the following considerations shall apply:

- (1) Methods shall be in effect to identify children whose relatives have demonstrated such an inability to manage funds that payments to the relative have not been or are not currently used in the best interest of the child. This means that the relative has misused funds to such an extent that allowing him or her to manage the grant is a threat to the health or safety of the child. Nonpayment of bills may be used as an indication that

mismanagement may exist. However, a determination of such mismanagement shall not be made solely on the fact that bills are not paid on a timely basis. All relevant consideration shall be taken into account including, but not limited to the following:

- (i) The fact that more than one month has passed since the bill payment was due and payment has not yet been made shall be considered rebuttable presumptive evidence of inability to handle cash. Notice of the termination of essential services due to nonpayment of bills shall also be considered rebuttable presumptive evidence of such inability to handle cash. Examples of how this presumption may be rebutted include, but are not limited to:
 - (a) where a recipient demonstrates that the family has experienced some emergency or extraordinary event for which it was appropriate for available funds to be spent;
 - (b) where a recipient demonstrates extraordinary expenses for necessary items not normally provided for by the public assistance grant or by the medical assistance program or for which payment is not otherwise readily available from some other source;
 - (c) where a recipient demonstrates that the family has withheld the payment of bills as a reasonable exercise of consumer rights where there is a legitimate dispute as to whether the terms of an agreement have been met.
- (ii) When a recipient is more than one month in arrears, and the vendor or designated agent desires restricted payment, the vendor or designated agent must make such request in writing to the local social services official. Prior to making such written request, the vendor or designated agency shall attempt to collect the overdue payments from the recipient and shall provide evidence of such attempt to the social services official when the written request is made.

18 NYCRR 381.4(b)

A shelter allowance payment shall not be restricted where a recipient's rent is in excess of the amount allowed as a shelter allowance and the recipient pays the full amount of such allowance but fails to pay part or all of the amount due above the allowance, nor shall such allowance be restricted where the social services official has been withholding rent payments in accordance with the provisions of section 143-b of the Social Services Law.

18 NYCRR 381.3(d)(3)

Safety Net Assistance must be granted in cash; provided, however, that when the granting of cash may be deemed inappropriate by the social services district because of one of the following situations, Safety Net Assistance may be granted in whole or in part by restricted payment:

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 and be prepared to present evidence in support of its determination. 18 NYCRR 358-4.3(b). Except as otherwise established in law or regulation, in fair hearings concerning the discontinuance, reduction or suspension of Public Assistance, the Agency must establish that its actions were correct. 18 NYCRR 358-5.9(a).

DISCUSSION

Appellant requested this fair hearing in part to review the Agency's July, 2002 determination to restrict Public Assistance. Determinations made more than 60 days preceding the fair hearing request would be precluded from review. However, although duly notified of the time, place, and issue for the hearing, the Agency appeared but failed to produce Appellant's case record and presented no evidence to refute Appellant's claim that the Agency did not provide advance written notice of its determination, as required by Regulations, nor did the Agency submit any evidence in support of its determination to restrict Public Assistance. The present fair hearing request should be considered timely and the Agency's determination cannot be sustained.

It is noted that the restricted rent checks were made payable in a manner which could not be processed for negotiation and that Appellant's representative has returned unnegotiated restricted rent payments to the Agency for reissuance. The Agency has not reissued these payments to date.

Appellant also requested this fair hearing to review the Agency's April, 2003 determination to reduce Public Assistance. The Agency was duly notified of the time and place of the hearing. The Agency appeared at the hearing but failed to present any documentation concerning the determination at issue. Therefore, with respect to the Agency's determination to reduce Appellant's Public Assistance, the Agency failed to meet its obligations under 18 NYCRR 358-4.3(b) and failed to establish that its determination was correct pursuant to 18 NYCRR 358-5.9(a). This determination cannot be sustained.

DECISION AND ORDER

The Agency's determinations are not correct and are reversed.

1. The Agency is directed to cease its restriction of Appellant's Public Assistance shelter allowance and to restore all lost benefits, including reissuance of unnegotiated restricted payments as of July, 2002.

2. The Agency is directed to withdraw its April, 2003 Notice of Intent and restore all lost benefits retroactive to the date of the Agency action.

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

DATED: Albany, New York
September 3, 2003

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By


Commissioner's Designee