

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

REQUEST October 8, 1993
CASE#
CENTER# F-15
FH# 2036068Z

In the Matter of the Appeal of :

B C

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 the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on January 4, 1994, in New York City, before Raymond Tucker, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Eugene Doyle, Appellant's representative

For the Social Services Agency

Barbara Curns, Fair Hearing Representative

ISSUES

Was the Agency's July 14, 1993, determination to reduce the Appellant's Food Stamp benefits from \$111.00 to \$31.00 monthly effective October 10, 1993 correct?

Was the Agency's determination to reduce the Appellant's Food Stamp benefits from \$111.00 to \$38.00 without notice effective October 5, 1993 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, a Supplemental Security Income recipient, has been in receipt of Food Stamp benefits for herself only.

2. On July 14, 1993, the Agency determined to reduce the Appellant's Food Stamp benefits effective October 10, 1993 from \$111.00 to \$31.00 monthly, because the Appellant does not pay for residential heating.

FH# 2036068Z

3. Effective October 5, 1993, the Agency reduced the Appellant's Food Stamp benefits from \$111.00 to \$38.00 monthly, without notice.

4. On October 8, 1993, the Appellant requested this fair hearing.

APPLICABLE LAW

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).

When a Food Stamp household requests a hearing to review the Agency's determination to discontinue, suspend or reduce its Food Stamp benefits, Federal regulations require that the local Agency must appear at the hearing with the household's case record. Federal Regulations also require that the contents of the case file be made available to the Food Stamp household during the hearing. Such information is essential in order to provide for the proper review of the Agency's determination. (7 CFR 273.15(p))

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:

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.

When a fair hearing decision indicates that a social services agency has misapplied provisions of law, department regulations or such agency's own State-approved policy, the commissioner's letter transmitting such decision to such agency may contain a direction to the agency to review other cases with similar facts for conformity with the principles and findings in the decision. 18 NYCRR 358-6.3.

FH# 2036068Z

DISCUSSION

The evidence establishes that on July 14, 1993, the Agency determined to reduce the Appellant's Food Stamp benefits from \$111.00 to \$31.00 monthly effective October 10, 1993, because the Appellant does not pay for residential heating.

Although duly notified of the time and place of the hearing, the Agency failed to have a case record at the hearing or to present any evidence to substantiate its determination to reduce the Appellant's Food Stamp benefits.

The evidence further establishes that effective October 5, 1993, the Agency, without sending any notice, reduced the Appellant's Food Stamp benefits from \$111.00 to \$38.00 monthly.

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

With regard to the appellant's representative's request for a direction relative to similar cases advising the Agency, specifically its Food Stamp office F-15, not to backdate notices, to provide free copies of requested documents, and to conduct conferences when requested, there is not sufficient evidence in this record to indicate that the Agency has a policy to backdate notices or not provide free copies of documents or conduct conferences upon request. Therefore, these are not appropriate subjects for directions relative to similar cases and the request for such directions must be denied. The Agency is reminded, however, of its obligation to send timely notices pursuant to 18 NYCRR 358-3.3, to provide free copies of requested documents pursuant to 18 NYCRR 358-3.7 and to conduct conferences upon request pursuant to 18 NYCRR 358-3.8.

DECISION AND ORDER

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

1. The Agency is directed to restore the Appellant's Food Stamp benefits to \$111.00 monthly retroactive to the initial date of reduction.

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

FEB 02 1994

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

By



Commissioner's Designee