
In the Matter of the Appeal of :

N L

DECISION
: AFTER
FAIR
HEARING

from a determination by the Erie County
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 May 31, 1995, in Erie County, before Susan Dowd, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

N L , Appellant; Barbara Peoples, Neighborhood Legal Services

For the Social Services Agency

No appearance

ISSUE

Was the Agency's denial/failure to act on the Appellant's request for child care disregards and supplements for the period September 24, 1994 through November 10, 1994 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, age 26 was in receipt of a grant of Public Assistance for a household of three persons during the period September 1994 through November 15, 1994.

2. The Appellant verbally reported her employment at Nursing Home to the Agency on September 23, 1994 and presented verification of the employment on or about October 3, 1994 through a letter from the employer.

3. The Appellant requested assistance with child care costs associated with her employment on September 23, 1994 and again at the time she verified her employment. Appellant was verbally advised that no such assistance could be provided.

4. By notice dated October 18, 1994 the Agency advised the Appellant of its intent to reduce her Public Assistance due to budgeting of wages. The notice did not set forth any regulatory authority and did not address the Appellant's request for child care disregards or supplemental allowances.

5. On April 26, 1995, the Appellant requested this fair hearing to review her entitlement to child care allowances for the period September 24, 1994 through November 15, 1994.

APPLICABLE LAW

Department regulations at 18 NYCRR 352.19 provide that the first \$90.00 of earned income must be disregarded and deducted from the gross monthly earnings of each individual engaged in employment. In addition, for the care of each dependent child or any incapacitated individual living in the household and receiving Public Assistance, the actual cost of such care, not to exceed \$175.00 or, in the case of a child under the age of two, \$200.00, shall be exempted and disregarded. In addition, effective October 1, 1990, pursuant to 18 NYCRR 415.8(b)(1), if actual child care expenses exceed the child care disregard, an employed caretaker relative is entitled to a supplemental payment which, when added to the child care disregard, equals the actual cost of child care up to the applicable rate set forth in 18 NYCRR 415.9.

Federal regulations at 45 CFR 205.10(a)(5)(iii) governing requirements for fair hearings for applicant/recipients of Aid to Families with Dependent Children provide that an appellant must be provided with a reasonable time not to exceed 90 days in which to appeal an agency action. In New York State, "a reasonable time" has been determined to be 60 days as set forth in Section 22 of the Social Services Law which provides that a request by such an applicant/recipient 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.

DISCUSSION

Though duly notified of the time and date of the hearing, the Agency representative (Mr. Snyder) appeared before the record was open, left when advised that the hearing would be delayed by 5 to 10 minutes to wait for the Appellant representative and indicated that he had no intention of returning to the hearing or of presenting any records on the issue on the grounds that the Appellant had previously adjourned and defaulted on a hearing on the same issue. Mr. Snyder was advised that his failure to return to the hearing or to present any written records could result in a reversal of the Agency determination. Nonetheless, the Agency did not appear at the hearing and did not present any records to support the Agency action. The only written Agency notices presented at the hearing were the notice dated October 18, 1994, reducing the grant due to wages and a recoupment and a

notice dated November 3, 1994 closing the case at the Appellant's request. (The Appellant's case has subsequently been reopened.) These notices were presented by the Appellant's legal representative.

Although the Appellant requested this hearing more than 60 days after her request was verbally denied, review of the issue of entitlement to child care allowances is not precluded. The only notice presented at the hearing which could have addressed the Appellant's request for child care assistance was a notice dated October 18, 1994. This notice, however, did not specifically address the issue of child care allowances and did not include any regulatory citations as required by the regulations. Such notice, therefore, cannot serve as a basis for time-barring Appellant's fair hearing request.

The Appellant credibly testified that she notified the Agency of her employment and verified her wages on October 3, 1994. She credibly stated that at the time employment was reported and verified she requested child care assistance. The Appellant stated that she was advised that assistance with such costs could not be provided while she was in receipt of Public Assistance. No written notice explaining why such allowances were not available was ever issued. Appellant was entitled to written notice of denial on her request for child care assistance and the matter must be remanded for a determination of eligibility.

It is noted that although the Appellant's wages were not budgeted against household needs until November 1, 1994, the record indicated that child care costs may have exceeded the standard disregard in October 1994 and Appellant may have been entitled to a supplemental allowance, depending on her actual costs and the type of verified child care provider. Appellant's budget for the first half of November 1994 must also be reviewed and recalculated because although income was budgeted, child care disregards were not provided. The Appellant must cooperate in providing any documentation needed to verify actual child care costs. Thus, in determining the amount of the October, 1994 overpayment, the Agency must provide an appropriate child care deduction and determine the Appellant's eligibility for a supplemental allowance. The Agency must also offset the October and November overpayments against underpayments and either take appropriate action to recover any overpayments or provide the Appellant with an allowance to correct the net underpayment of assistance.

DECISION AND ORDER

The Agency's failure to review the Appellant's request for child care allowances during the period September 24, 1994 through November 15, 1994 is not correct and is reversed.

1. The Agency is directed to determine the Appellant's eligibility for child care supplements for the period September 24, 1994 through October 31, 1994 and to redetermine her budget for the period September 24, 1994 through November 15, 1994 based on verified degree of need.

2. The Agency is directed to provide written notice of its determination and to correct any net underpayments of assistance.

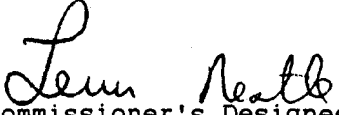
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As required by Department Regulations at 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York
July 25, 1995

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

By


Commissioner's Designee