
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
:

By telephone request on August 15, 1988 and by subsequent letter dated August 21, 1988, the Appellant's representative, Eugene Doyle, requested that a decision without an evidentiary hearing be issued pursuant to 18 NYCRR 358.19 concerning a notice, dated August 3, 1988, issued to the Appellant by the Agency. By a second letter, dated August 23, 1988, the Appellant's representative requested that such decision without evidentiary hearing also review another notice, dated August 12, 1988. Pursuant to 18 NYCRR 358.19, by letter dated September 1, 1988, copies of the Appellant's request and supporting documents were sent to the Agency with a request for answering papers within ten working days. No evidence has been received from the Agency and the time to submit such evidence has expired.

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 has been in receipt of Public Assistance, Medical Assistance and Food Stamp benefits.
2. By notice dated August 3, 1988, the Agency notified the Appellant that her Public Assistance, Medical Assistance and Food Stamp benefits would be discontinued effective August 12, 1988, based upon her failure to verify her past maintenance.
3. By a second notice, dated August 12, 1988, the Agency notified the Appellant that her Public Assistance grant, Medical Assistance and Food Stamp benefits had been discontinued effective that date, due, in part, to her failure to verify her past maintenance. This notice further indicated that she had failed to report to her Income Maintenance Center "as requested on August 3, 1988."
4. On August 15, 1988 and August 21, 1988, 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 August 3, 1988 was defective because a) it failed to cite any legal authority for the Agency's intended actions; b) it failed to recite a telephone number by which the Appellant could request a conference to discuss the Agency's intended action; c) such notice provided

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the Appellant with less than ten days between the date of the notice and the effective date thereof within which to request an aid-continuing fair hearing; and d) with respect to the discontinuance of Food Stamp benefits, the Agency had failed to use a State-mandated notice.

5. On August 23, 1988, the Appellant's representative, Eugene Doyle, requested that the decision without evidentiary hearing also include review of the second notice, dated August 12, 1988, to determine whether such notice was defective because a) it failed to cite any legal authority for the Agency's intended actions; b) it failed to recite a telephone number by which the Appellant could request a conference to discuss the Agency's action; and c) with respect to the discontinuance of Food Stamp benefits, the Agency had failed to use a State-mandated notice.

6. Although requested to do so by letter dated September 1, 1988, the Agency has not submitted any evidence in opposition to the Appellant's allegations.

ISSUE

Was the Agency's notice of intent to discontinue the Appellant's Public Assistance, Medical Assistance and Food Stamp benefits, dated August 3, 1988, a proper notice?

Was the Agency's notice of discontinuance of the Appellant's Public Assistance, Medical Assistance and Food Stamp benefits, dated August 12, 1988, a proper notice?

APPLICABLE LAW

Federal Regulations at 45 CFR 205.10(a)(4)(i)(B) and Department policy (81 ADM-55) require that a notice of intent to discontinue Public Assistance benefits cite the legal authority upon which the proposed action is based.

Federal Regulations at 42 CFR 431.210(c) require that a notice of intent to discontinue Medical Assistance benefits cite the legal authority upon which the proposed action is based.

Department Regulations at 18 NYCRR 387.20(b) provide as follows:

Notification to recipients. Each Food Stamp household shall be notified in writing of any change, reduction or termination of the household's Food Stamp benefits. The notification letter shall explain, in easily understandable language: the proposed action, the reason for the proposed action including the applicable regulatory citation; a copy of the new food stamp budget; the household's right to request a fair hearing, a telephone number to secure additional information, the availability of continued food stamp benefits; and the liability of the household for any food stamp benefits received while awaiting a fair hearing decision if the decision affirms the local department's action.

DISCUSSION

The uncontroverted evidence establishes that by notice dated August 3, 1988, the Agency notified the Appellant that her Public Assistance grant, Medical Assistance and Food Stamp benefits would be discontinued, effective August 12, 1988, because she failed to verify her past maintenance.

The uncontroverted evidence further establishes that, by a second notice, dated August 12, 1988, the Agency notified the Appellant that her Public Assistance, Medical Assistance and Food Stamp benefits had been discontinued as of that date, because she failed to verify her past maintenance and had failed to report to the Income Maintenance Center as requested on August 3, 1988.

Neither notice advises the Appellant of the authority for the Agency's proposed actions. Thus, the notices of August 3, 1988 and August 12, 1988 were in violation of the above-cited provisions of 45 CFR 205.10(a)(4)(i)(B), Administrative Directive 81 ADM-55, 42 CFR 431.210(c) and 18 NYCRR 387.20(b).

Although duly notified of the request for a decision without an evidentiary hearing pursuant to 18 NYCRR 358.19, the Agency did not produce any evidence that the notices dated August 3, 1988 and August 12, 1988 were proper.

Since the instant notices are in violation of the above-cited Regulations, it is not necessary to reach the other issues raised by the Appellant's representative concerning these notices.

DECISION AND ORDER

With regard to the Agency's determination of August 3, 1988, the Agency's notice was not a proper one.

1. The Agency is directed to withdraw that its notice dated August 3, 1988, and to restore any lost Public Assistance, Medical Assistance and/or Food Stamp benefits retroactive to date of the Agency action.

2. The Agency is directed to continue assistance and benefits to the Appellant in the verified degree of need.

With regard to the Agency's determination of August 12, 1988, the Agency's notice was not a proper one.

1. The Agency is directed to withdraw its notice dated August 12, 1988, and to restore any Public Assistance, Medical Assistance and/or Food Stamp benefits lost as a result of such notice retroactive to the date of the Agency's action.

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2. The Agency is directed to continue assistance and benefits to the Appellant in the verified degree of need.


Should the Agency in the future determine to implement either of its previous actions, it is directed to issue a proper notice.

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

CESAR A. PERALES
COMMISSIONER

OCT 12 1988

BY 
Commissioner's Designee