
In the Matter of the Appeal of

C O

from a determination by the Nassau County Department
of Social Services (hereinafter called the agency)

:
DECISION
: AFTER
FAIR
HEARING
:

A fair hearing was held at Mineola, New York, on February 8, 1982, before James J. Dalton, Administrative Law Judge, at which the appellant, the appellant's representative and a representative of the agency appeared. The appeal is from a determination by the agency relating to the discontinuance of a Food Stamp authorization. An opportunity to be heard having been accorded all interested parties and the evidence having been taken and due deliberation having been had, it is hereby found:

1. The appellant and three minor children were in receipt of a Food Stamp authorization. Two other self-maintaining persons, M and A B, father and daughter, reside with the appellant, and pay room and board.

2. On January 15, 1982, the agency determined to discontinue Food Stamps because the appellant failed to clarify the status of the B's, so as to qualify them as boarders for Food Stamp purposes. The agency claims that they do not pay sufficient room and board, so as to be deemed boarders for Food Stamp purposes. According to the agency, each person should have been paying \$169.00 maximum shelter for one person and a \$70.00 meals charge for one person. The agency took the action pursuant to a recertification held November 23, 1981. A hearing was requested on January 15, 1982, in order to review the agency's determination. At the hearing, the appellant's representative requested transportation reimbursement for his expenses. The agency denied the request.

3. The appellant receives \$200.00 per month room and board from the B's (for both of them). The appropriate thrifty food plan for a one-person household is \$70.00 per month; and \$128.00 per month for a two-person household.

4. The appellant failed to establish that she was receiving reasonable compensation from Mr. B and his daughter, so as to exclude them from being included as members of the household for Food Stamp purposes.

Section I(d) of the New York State Food Stamp Manual provides that it is impossible to write a manual to cover every case situation. Therefore, the eligibility worker (EW) must frequently rely on his/her judgment during the certification process. To assist the eligibility worker, the concept of the "prudent person" should be helpful. This term refers to a reasonable judgment of a case situation by an eligibility worker based on available facts.

Section III(c) of the New York State Food Stamp Manual provides that local districts must verify, prior to certification, all factors of eligibility if they are questionable, and affect a household's eligibility or benefit level. To be considered questionable, the information in the application must be inconsistent with information received by the local district. When determining if information is questionable, the local district shall base the decision on each household's individual circumstances and enter the rationale in the case file.

A reasonable monthly amount for meals shall be either of the following:

- . Boarders whose board arrangement is for three meals or more per day shall pay an amount which equals or exceeds the Thrifty Food Plan for the appropriate size of the boarder household; or
- . Boarders whose board arrangement is for two meals or less per day shall pay an amount which equals or exceeds two-thirds of the Thrifty Food Plan for the appropriate size of the boarder household.

When the boarder's payments for room are distinguishable from the payments for meals, only the amount paid for meals will be evaluated to determine if reasonable compensation is being paid for meals.

Pursuant to Section I(d)(2) of the New York State Food Stamp Manual provides that a boarder is not considered a household member for Food Stamp purposes. The Section further states that when expenses for lodging and meals cannot be separately identified, a person who does not pay a reasonable amount for both lodging and meals cannot be a boarder. The person will be counted as a member of the household which provides the lodging and meals.

The agency incorrectly computed a Public Assistance maximum shelter standard in calculating reasonable compensation and incorrectly treated the boarders, father and daughter, as two separate households for purposes of finding reasonable compensation.

However, the appellant did not establish that the B s were paying reasonable compensation for room and board. She claimed that the B s paid her

\$200.00 per month; while the monthly Thrifty Food Plan for two persons is \$128.00 for meals. This leaves \$72.00 for shelter purposes. Utilizing standards set forth in Section 352.8(b) of the Regulations of the State Department of Social Services, reasonable compensation for persons in a room and board situation should cover the cost of board, room rent, additional utilities and household supplies, and the laundering of linens, plus a reasonable profit (except where such items and services are furnished by a relative.)

The items of cost included above, plus the Food Stamp "prudent person" concept utilized by the agency, shows that \$72.00 per month is not a reasonable compensation for items other than meals, for two persons. The appellant did not establish any family relationship between her and the B s. Therefore, the agency's determination to discontinue Food Stamps was proper, as the income of all members of the household must be provided to determine eligibility.

Section 358.16 of the Regulations provides that, if requested, necessary transportation for the appellant and his representative and witnesses, child care and other costs and expenditures reasonably related to the hearing shall be provided by the social services official.

At the hearing, appellant's representative requested transportation allowance for himself and the appellant. The agency stated that it would provide a transportation allowance for the purpose of attending the hearing to the appellant but declined to provide such an allowance for appellant's representative. The agency failed to establish that the expense of the representative's transportation to the hearing was not necessary, as contemplated by the above-cited Regulation. Accordingly, the agency is directed to issue the appropriate transportation allowance to the representative for attendance at the hearing.

DECISION: The agency's determination as to the denial of appellant's representative's transportation allowance is not correct and is reversed. The agency's determination as to the discontinuance of appellant's Food Stamp authorization is correct. The agency must immediately comply with the directives set forth above as required by Section 358.22 of the Department's Regulations.

DATED: Albany, New York MAR 17 1982


Barbara Blum
COMMISSIONER

BY 
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DEPUTY COUNSEL