

TRANSMITTAL OF FAIR HEARING DECISION - OTHERS

11

NEW YORK STATE

DEPARTMENT OF SOCIAL SERVICES

MONROE CTY. LEGAL SERVICES
LORETTA SCHEG
16 WEST MAIN ST.
ROCHESTER NY 14614

DECISION
DATE 12/03/85

HEARING
DATE 11/06/85

FAIR HEARING NO.0736229F.

CASE NUMBER	CATEGORY	AGENCY	REPRESENTATIVE
	FS /SPP	MONROE	MONROE CTY. LEGAL SERVICES

ENCLOSED IS THE DECISION RENDERED IN THE FAIR HEARING FOR:

C	R
ROCHESTER	NY

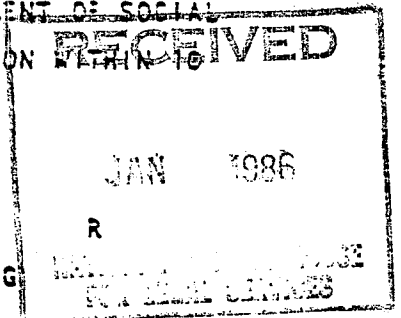
IF THE DECISION IS IN FAVOR OF THE APPELLANT, THE LOCAL SOCIAL SERVICE DEPARTMENT IS REQUIRED TO COMPLY WITH THE DECISION FORTHWITH, AND IS REQUIRED TO NOTIFY THE APPELLANT OF ITS COMPLIANCE. THE APPELLANT HAS BEEN ADVISED TO NOTIFY THE STATE DEPARTMENT OF SOCIAL SERVICES IF THE AGENCY FAILS TO COMPLY WITH THE DECISION WITHIN 10 DAYS AFTER HIS RECEIPT OF THE DECISION.

COPY SENT TO: MONROE

COUNTY

C

LORETTA SCHEG



In the Matter of the Appeal of :

R C

DECISION

: AFTER

FAIR

from determinations by the Monroe County
of Social Services (hereinafter called the agency)

Department

HEARING

:

A fair hearing was held at Rochester, New York, on November 6, 1985, before Raymond J. Sweeney, Jr., Administrative Law Judge, at which the appellant, the appellant's representative and representatives of the agency appeared. The appeal is from determinations by the agency relating to the alleged overissuance of Food Stamp benefits to the appellant. 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) At the time of the alleged overissuance of Food Stamp benefits, herein, appellant was in receipt of a Food Stamp authorization for himself, his wife and two minor children.
- (2) On May 10, 1985, the agency determined that, due to inadvertent household error, the appellant had received an overissuance of Food Stamps for the period February 15, 1984, to March 15, 1984, in the amount of \$274.00, due to a duplicate issuance of appellant's Authorization to Participate in the Food Stamp Program for such period. The agency requested that this \$274.00 be repaid to the agency.
- (3) On June 3, 1985, the appellant requested a fair hearing to contest this determination.
- (4) The agency did not establish that appellant received an overissuance of Food Stamps for the period February 15, 1984, to March 31, 1984, in the amount of \$274.00.

Changes in the "Claims Against Household" procedures contained in Section IX of the New York State Food Stamp Manual are summarized in the June, 1983, Food Stamp Correspondence. These changes require that all claims must be made within one of the following categories:

1. Inadvertent Household Error Claim

An overissuance caused by misunderstanding or unintended error on the part of the household. These errors include, but are not limited to, cases in which the household unintentionally:

- a. failed to provide correct or complete information;
- b. failed to report a change in household circumstances;
- c. received more benefits than it was entitled to because the household requested aid continuing while awaiting a fair hearing decision.

2. Administrative Error Claim

An overissuance caused by the local district or local district failure to take action. These errors include, but are not limited to, cases in which the local district:

- a. failed to take prompt action on a reported change;
- b. incorrectly computed a household's allotment, income, deductions, or otherwise assigned an incorrect allotment;
- c. incorrectly issued duplicate authorizations to participate which were both transacted;
- d. continued to issue benefits after a household's certification period expired without a reapplication determination;
- e. failed to reduce Food Stamp benefits because of a Public Assistance grant change.

A claim for an administrative error or inadvertent household error claim shall not be established if an overissuance occurred as a result of the following:

The household transacted an expired authorization to participate unless the household altered the authorization to participate.

The local district failed to insure that the household fulfilled the following procedural requirements: signed the application form, completed a current work registration form, and was certified in the correct local district.

3. Intentional Program Violation (IPV) Claim

A claim may be handled as an Intentional Program Violation Claim only if an administrative disqualification hearing official or a court of appropriate jurisdiction has determined that a household member committed an Intentional Program Violation Claim as defined in Section II of this letter, or if the individual signed a waiver of right to a disqualification hearing, or a disqualification consent decree in cases referred for prosecution.

The new regulations permit Food Stamp allotment reduction as a means of repaying either Intentional Program Violation or Household Error Claims. Other procedures for liquidating and also for suspending collection of a claim are set forth in such Food Stamp Correspondence.

The evidence, produced at the hearing, established that on April 2, 1984, the appellant advised the agency that he had not received his Food Stamp Authorization to Participate in the Food Stamp Program for the period February 15, 1984 to March 31, 1984. The appellant was then issued a second Authorization to Participate in the Food Stamp Program for such period, in the amount of \$274.00. Thereafter, the agency received from local banks two signed and cashed Authorizations to Participate in the Food Stamp Program for the period February 15, 1984 to March 31, 1984. Each were in the amount of \$274.00. At the hearing, the agency presented copies of both signed authorizations together with other copies of appellant's signature. A handwriting expert, employed by the agency, testified that, based on his examination of the specimens of appellant's handwriting, it was "highly probable" that the appellant signed both Authorizations to Purchase. The agency relied solely upon this testimony to support its determination that the appellant received an overissuance of Food Stamps for the period February 15, 1984, to March 31, 1984. It did not offer any proof as to the circumstances surrounding the receipt of appellant's initial Authorization to Participate (on March 23, 1984) at the agency office. Nor did it present any proof as to whether or not appellant ever reported loss of his Food Stamp identification card so that no one but the appellant or someone authorized by him could have cashed both Authorizations to Purchase. On the other hand, the appellant testified that he did not pick up or sign his initially authorized Authorization to Purchase and did not, therefore, sign both Authorizations to Purchase. In support of appellant's contention, appellant presented the testimony of another handwriting expert, retained for this hearing, who had also examined specimens of appellant's handwriting. Based on involuntary and fixed habits of handwriting unique to every person (e.g., "pen-lifts", "pressure points", strokes), such witness

compared seven enlarged specimens of appellant's handwriting in relation to the signature on the document in question (the initial Authorization to Participate). Such testimony effectively demonstrated that appellant did not sign both Authorizations to Participate, herein. Therefore, the credible evidence, in this case, establishes that appellant did not sign both Food Stamp authorizations, herein, resulting in the agency's overissuance of \$274.00 Food Stamps to him. Accordingly, the agency's determinations relating to overissuance of Food Stamps, as well as its request for repayment, were improper.

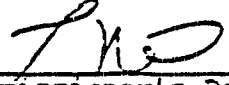
It should also be noted that the appellant's representative, herein, had previously requested the agency to pay for the professional services of appellant's handwriting expert in preparing for and testifying at this hearing. Her charges were \$150.00. Appellant's representative made his request to the agency, pursuant to Section 358.10 of the Regulations of the State Department of Social Services, which provides that, upon request, in addition to transportation and child care expenses, "other costs and expenditures reasonably related to the hearing" shall be provided by the Social Services official. The agency denied the request. Such denial was improper under the particular facts and circumstances of this case. As previously mentioned, the agency based its determination, herein, solely on the expert opinion of its handwriting expert. Such testimony could not have been effectively countered (and was not) except by the opinion of another handwriting expert. The prior analysis and testimony of appellant's handwriting expert, under the facts herein, was necessary in order to afford the appellant an opportunity to be heard. Moreover, the \$150.00 charge, made by such handwriting expert, was reasonable. Therefore, the agency is directed to provide payment of \$150.00 to appellant's handwriting expert, Margery Writz, for the services in preparation for and testimony at this hearing.

DECISION: The determinations of the agency relating to overissuance of Food Stamps, request for repayment of alleged overissuance, and its denial of appellant's request for payment of the professional services of his handwriting expert are not correct and are reversed. 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

DEC 3 1985

CESAR A. PERALES,
COMMISSIONER

BY 
Commissioner's Designee