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In the Matter of the Appeal of :  
R S : AMENDED  
 : DECISION  
 : AFTER  
 : FAIR  
 : HEARING  
 :  
from a determination by the New York City  
Department of Social Services

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JURISDICTION

This appeal is from a determination by the local Social Services Agency relating to the adequacy of Appellant's grant of Public Assistance and Food Stamp benefits on the grounds that the Agency determined to reduce the Appellant's grant of Public Assistance and Food Stamp benefits.

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 November 6, 1986, at 80 Centre Street, New York, New York, before Carol Feinman, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

For the Local Social Services  
District (Agency)

R S , Appellant Joseph Sperling, FH Representative  
Eugene Doyle, Appellant's  
Representative

FACT FINDINGS

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 has been in receipt of a grant of Aid to Dependent Children and Food Stamp benefits for herself and four children.

2. On October 7, 1985, the Agency determined to reduce the Appellant's grant of Aid to Dependent Children by ten percent of her household's needs in order to recover an overpayment of assistance in the amount of \$385.00.

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3. On August 20, 1986, the Agency determined to reduce the Appellant's Food Stamp benefits to \$71.00 monthly because it was including, in the Appellant's Food Stamp budget, income which the Agency had previously excluded as Food Stamp income.

4. On August 20, 1986, the Agency determined to also reduce the Appellant's Food Stamp benefits to \$93.00 monthly because it was including as Food Stamp income, the amount of money paid by the Agency to the hotel in which the Appellant's household resides, up to the maximum shelter allowance allowable for a household of five persons.

5. The Appellant resides in a hotel for which the Agency pays monthly rent in excess of the monthly shelter allowance for a household of five persons (\$281.00).

6. The Appellant attended a fair hearing on July 15, 1986. As a result of her attendance, the Appellant incurred child care expenses in the amount of \$21.75, the payment of which she verified to the Agency.

7. On September 23, 1986, the Agency provided the Appellant with a special grant in the amount of \$14.00 to reimburse her for her July 15, 1986, child care expenses.

8. On October 18, 1985, the Appellant requested this hearing to review the Agency's determination to recover an overpayment of Public Assistance in the amount of \$385.00.

9. On August 31, 1986, the Appellant renewed her October 18, 1985, request for a review of the Agency's October 7, 1985, recoupment, and also requested this fair hearing to review the Agency's determinations to reduce her Food Stamp benefits and its determination not to provide her with full reimbursement for child care expenses.

10. A prior Decision After Fair Hearing in this matter was issued on January 14, 1987. Subsequent to the issuance of said decision, the Appellant's representative made an inquiry to the Commissioner's offices concerning the failure of the Commissioner to direct the Agency to restore the Appellant's Food Stamps to \$177.00 monthly, the amount received by the household prior to the Agency's determination of August 20, 1986 to reduce the benefits provided to the household to \$93.00. This inquiry was made on several alternative grounds. However, inasmuch as the Appellant was entitled to have her Food Stamps continued at their previous level pending a new Agency determination as to the amount of Food Stamps to which the household is entitled, the prior Decision After Fair Hearing is vacated and this decision substituted therefor.

#### ISSUES

1. Was the Appellant's request for a hearing regarding the Agency's determination of October 8, 1985, timely?

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2. Assuming the request was timely, was the Agency's determination of October 8, 1985, to reduce the Appellant's grant of Aid to Dependent Children correct?

3. Was the Agency's determination of August 20, 1986, to reduce the Appellant's Food Stamp benefits to \$71.00 monthly by including as Food Stamp income, part of the Appellant's grant of Public Assistance which was previously excluded as Food Stamp income correct?

4. Was the Agency's determination not to reimburse the Appellant for the full amount of her child care expenses incurred on July 15, 1986, as a result of her attendance at a fair hearing, correct?

5. Was the Agency's determination of August 20, 1986, to reduce the Appellant's Food Stamp benefits to \$93.00 monthly, by including as Food Stamp income the Agency's payment of rent to the Appellant's hotel correct?

#### APPLICABLE LAW

Section 22(4) of the Social Services Law provides that a request for a fair hearing to review an Agency determination relating to Public Assistance must be made within sixty days of the date of the Agency's action complained of.

Department Regulations at 18 NYCRR 352.31(d) provides that the Agency shall take all reasonable steps necessary to promptly correct any overpayments, including overpayments resulting from assistance paid pending a fair hearing decision.

Department Regulations at 18 NYCRR 358.10 provides, in part, that the Agency shall provide an Appellant with child care expenses reasonably related to a fair hearing.

Department Regulations at 18 NYCRR 387.11(a) provides that monies withheld from an assistance payment which are voluntarily or involuntarily returned to repay a prior overpayment received from that income source may be excluded from household income in computation of Food Stamp benefits. However, monies withheld from assistance from a Federal, State or local welfare program which is means-tested and distributes public-funded benefits for purposes of recouping an overpayment which resulted from the household's failure to comply with the other program's requirements shall not be excluded.

Section XII(G)(1) of the Food Stamp Source Book provides that intentional failure to comply with Public Assistance requirements is defined for this purpose as conviction by a court, or recipient admission of fraudulent receipt of Public Assistance benefits.

Pursuant to Administrative Directive 83 ADM-45, which became effective September 1, 1983, the total amount of any payments for shelter made to persons temporarily housed in hotels/motels must be

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excluded as income for Food Stamp purposes, if the payment is made either to the vendor or as a restricted payment. These households would not have any countable shelter expenses for Food Stamp purposes.

Pursuant to Administrative Directive 86 ADM-14, dated April 22, 1986, the provisions of 83 ADM-45 were recinded effective December 1, 1985.

Effective December 1, 1985, payment to the hotel/motel by voucher or restricted payment ceases to be a factor in the Food Stamp budget calculation. The Food Stamp budget procedure currently in effect for those temporarily residing in hotels/motels and receiving payment directly will now also be used when an indirect payment is made, i.e., the amount of the hotel/motel payment which is in excess of the shelter maximum is excluded from that portion of the Public Assistance grant counted as income for Food Stamps. The Food Stamp shelter expense is also limited to the Public Assistance maximum shelter allowance.

#### DISCUSSION

The record in this case establishes that on October 7, 1985, the Agency determined to reduce the Appellant's grant of Aid to Dependent Children by ten percent of her household's needs in order to recover an overpayment of assistance in the amount of \$385.00. Said overpayment was due to assistance paid pending the issuance of a Decision After Fair Hearing.

The Appellant requested a fair hearing to review the Agency's determination on both October 18, 1985, within sixty days after the Agency's determination, and again on August 31, 1986, after no action was taken on her original request. Therefore, such request must be deemed to have been timely made.

Although duly notified of the time, place and nature of this fair hearing, the Agency provided no evidence in support of its determination to recover an overpayment of assistance in the amount of \$385.00, including any documentation that such an overpayment was made by the Agency. The Appellant credibly testified that no such overpayment ever occurred. Therefore, the record does not support the Agency's determination to recover an overpayment in question.

It is noted that the Agency has not taken any action as of the present time to recover the overpayment in question.

On August 20, 1986, the Agency determined to reduce the Appellant's Food Stamp benefits by including as Food Stamp income, part of the Appellant's Public Assistance income which it had previously excluded from her Food Stamp budget. This income is presently being recouped by the Agency. Although duly notified of the time, place and nature of this hearing, the Agency failed to demonstrate that the recoupment in question is due to the Appellant's intentional failure to comply with

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Agency requirements. Therefore, the Agency failed to support its determination to reduce the Appellant's Food Stamp benefits by including such Public Assistance income in its computation of the Appellant's Food Stamp benefits.

On July 15, 1986, the Appellant attended a fair hearing which she had requested. As a result of her attendance at the fair hearing, the Appellant incurred child care expenses in the amount of \$21.75, which she and her representative verified with the Agency, and requested full reimbursement. On September 23, 1986, the Agency reimbursed the Appellant for \$14.00 worth of child care expenses, but has failed to provide her with reimbursement for the \$7.75 difference between the amount reimbursed and the full child care expenses. At the hearing, the Agency failed to provide any evidence in support of its determination not to provide the Appellant with full reimbursement for her child care expenses.

On August 20, 1986, the Agency determined to also reduce the Appellant's Food Stamp benefits to \$93.00 by including, as part of the Appellant's Food Stamp income, the rent paid by the Agency, up to the maximum shelter allowance for the Appellant's family size, for the Appellant's hotel costs.

Pursuant to Administrative Directive 86 ADM-14, the Agency must include as Food Stamp income, rent paid by the Agency on a recipient's behalf to a hotel for homeless persons. Such amount may not exceed the maximum shelter allowance for the recipient's family size. In the present case, the Agency has budgeted as additional monthly income \$281.00, which represents the maximum monthly shelter allowance for a family size of five persons. The record fails to establish, however, that the Agency's calculation of the Appellant's Food Stamp entitlement is correct, inasmuch as insufficient evidence was produced at the hearing regarding the Appellant's actual income from Public Assistance.

#### DECISION AND ORDER

The Agency's determination of October 7, 1985, to reduce the Appellant's grant of Aid to Dependent Children to recover an overpayment of assistance in the amount of \$385.00, is not correct and is reversed.

The Agency is directed to take no action on its October 7, 1985, Notice of Intent to reduce the Appellant's grant of Public Assistance.

The Agency's determination of August 20, 1986, to reduce the Appellant's Food Stamp benefits to \$71.00 by including as Food Stamp income, part of the Appellant's grant of Public Assistance which was previously excluded from her Food Stamp budget, is not correct and is reversed.

The Agency is directed to continue to exclude as Food Stamp income the amount presently recouped from the Appellant and to continue to provide the Appellant with full Food Stamp benefits.

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The Agency's determination not to provide the Appellant with full reimbursement for child care expenses incurred while the Appellant attended a fair hearing on July 15, 1986, is not correct and is reversed.

The Agency is directed to provide the Appellant with a special grant in the amount of \$7.75.

The Agency's August 20, 1986, determination to reduce the Appellant's Food Stamp benefits to \$93.00 by including, as Food Stamp income, rent paid by the Agency to the Appellant's hotel, up to the maximum shelter allowance allowable for five persons, is not correct and is reversed.

The Agency is directed to restore the Appellant's Authorization to Participate in the Food Stamp Program to \$177.00 monthly, pending recomputation of the Appellant's Authorization to Participate in the Food Stamp Program, in accordance with the foregoing.

Should the Agency in the future determine to implement said reduction of Food Stamps, a new Notice of Intent is required.

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

JUN 06 1988

BY Sebastian Addamo

Commissioner's Designee