

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

CASE #
CENTER # 53
FH # 1096524H

In the Matter of the Appeal of :

P S

from a determination by the New York City
Department of Social Services :

DECISION
: AFTER
FAIR
HEARING

JURISDICTION

This appeal is from a determination by the local Social Services Agency relating to the reduction of Appellant's Food Stamp benefits on the grounds that Appellant received overpayments of Food Stamps due to inadvertent household error and the adequacy of an allowance for transportation to enable Appellant's representative to attend this hearing.

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 10, 1987, at 80 Centre Street, New York, New York, before William O'Gorman, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

For the Local Social Services
District (Agency)

Mr. Eugene Doyle, Appellant's
Representative

Mr. Wendell Madison, Fair Hearing
Representative

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 has been in receipt of Food Stamp benefits for a household of three persons.

2. On July 17, 1987, the Agency determined that the Appellant had received an overpayment of Food Stamp benefits in the amount of \$3,329.00 for the period April, 1983, through October, 1983, due to inadvertent household error caused by Appellant's failure to report a change of income from employment.

P S

3. The Agency has reduced Appellant's Food Stamp benefits prior to the date of this fair hearing in order to recover the overpayments.

4. On August 11, 1987, the Appellant requested this hearing to review the Agency's determination.

5. Subsequent to the hearing, by letter to the Administrative Law Judge, Appellant's representative raised a supplemental issue regarding the Agency's refusal to reimburse the representative for his actual transportation cost related to the fair hearing.

6. The Appellant's representative resides in a two fare zone from the site of the fair hearing. Appellant's representative incurred actual costs of transportation in the amount of \$4.00 in order to attend this fair hearing on behalf of the Appellant.

7. The Agency determined to provide the Appellant's representative with an allowance for transportation for \$2.00 and denied his request for an additional allowance of \$2.00.

ISSUE

Was the Agency's determination that the Appellant had received overpayments of Food Stamp benefits in the amount of \$3,329.00 due to inadvertent household error caused by a failure to report a change in employment income for the period April to October, 1983, correct?

Was the Agency's determination to provide Appellant's representative with a transportation allowance in the amount of \$2.00 only in order to attend the instant fair hearing correct?

APPLICABLE LAW

Section 358.10 of the Regulations provides in, pertinent part, as follows:

" . . . 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."

DISCUSSION

At the hearing, the Agency agreed to restore the level of Appellant's Food Stamp benefits retroactive to the date of reduction of Appellant's Food Stamp benefits and to continue to provide Food Stamp benefits to the Appellant.

P S

Based on the Agency's agreements made on the record at the hearing, no issue remains to be decided on that matter.

Subsequent to this fair hearing, Appellant's representative requested that a supplemental issue be added to the instant fair hearing regarding the adequacy of his transportation allowance to attend this fair hearing. In the interests of expediency, and so as not to incur additional costs for another fair hearing on said issue, Appellant's representative's request to add the supplemental issue herein is granted.

After the instant hearing, the Appellant's representative requested the Agency to provide him with a transportation allowance in the amount of \$4.00 for transportation costs incurred by him in order to represent the Appellant at the hearing. The Agency determined to provide him with an allowance of only \$2.00 and to deny his request for an additional allowance.

Appellant's representative does reside in a two fare area from the site of this fair hearing. He does incur actual total costs for transportation in the amount of \$4.00 in order to travel to and from his residence to attend the fair hearing.

Therefore, the Agency's determination cannot be sustained.

DECISION AND ORDER

In accordance with the Agency's agreements made at the hearing, the Agency is directed to take the following action, if it has not already done so.

1. Restore the level of Appellant's Food Stamp benefits retroactive to the date of reduction;
2. Take no further action on the notice of July 17, 1987, to reduce Food Stamp benefits and to cancel such notice.
3. If the Agency determines to implement its previously contemplated action, issue a new timely and adequate Notice of Intent.

The Agency's determination to issue an allowance for transportation in the amount of \$2.00 only to enable Appellant's representative to attend the instant fair hearing is not correct and is reversed.

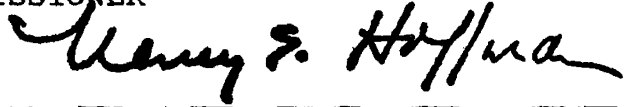
1. The Agency is directed to issue an additional allowance in the amount of \$2.00 for costs of transportation of Appellant's representative to attend this fair hearing herein.

P S

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



BY
Commissioner's Designee

DEC 9 1987