

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: September 2, 2010
CASE #: [REDACTED]
AGENCY: Seneca
FH #: 5606419M

In the Matter of the Appeal of
[REDACTED]
[REDACTED]
[REDACTED]

:
: **DECISION**
: **AFTER**
: **FAIR**
: **HEARING**
:
:

JURISDICTION

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on November 17, 2010, in Seneca County, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[REDACTED]

For the Social Services Agency

Carmina Russo, Paralegal, Fair Hearing Representative; Amy Lagana and Patricia Irwin, Senior Welfare Examiners

ISSUE

Was the Appellant's request for a fair hearing to review the Agency determination to reduce the Appellant's Food Stamp benefits on the grounds that Appellant no longer has shelter costs timely?

Assuming the request was timely, was the Agency's determination to reduce the Appellant's Food Stamp benefits correct?

FINDINGS OF FACT

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, [REDACTED], is in receipt of Food Stamp benefits for his needs only.

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2. On [REDACTED], a Supplemental Needs Trust (SNT-W) was established with the Appellant as the beneficiary.

3. On [REDACTED], the real property where the Appellant resides was transferred into the Supplemental Needs Trust by his father and mother.

4. [REDACTED] provides that Appellant has full use, occupancy and enjoyment of such real property and while he resides there he shall pay reasonable rent.

5. Appellant receives a [REDACTED] and his sole source of income is Social Security Disability in the monthly amount of \$986.50.

6. The Appellant's household contains a member sixty years of age or older or disabled, incurs a monthly expense for shelter in the amount of \$525.00 and incurs a monthly expense for heating/cooling.

7. The Appellant's household is not a household in which all members are recipients or authorized to receive Family Assistance, Safety Net Assistance, Supplemental Security Income (SSI) benefits or TANF-funded services.

8. The Agency computed the Appellant's Food Stamp proposed budget as of April 10, 2010 is as follows:

Income

Gross Earned Income		\$0.00
Unearned Income:		
SSD	\$986.50	
Gross Unearned Income		\$986.50
Total Income (Gross Earned Income plus Gross Unearned Income)		\$986.50

Deductions

Earned Income Deduction	\$0.00	
Standard Deduction	\$141.00	
Allowable Medical Costs	\$164.50	
Dependent Care	\$0.00	
Total Deductions		\$305.50
Adjusted Income (Total Income minus Total Deductions)		\$681.00

Shelter Costs

Rent or Mortgage	\$0.00	
Combined Heating/Cooling, Utilities and Telephone	\$645.00	
Other Shelter Costs	\$0.00	
Total Shelter Costs		\$645.00

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50% of Adjusted Income	\$340.50	
Excess Shelter Costs (Total Shelter Cost minus 50% of Adjusted Income)	\$304.50	
Shelter Deduction (maximum allowable)		\$304.50
<u>Net Income</u> (Adjusted Income minus Shelter Deduction)		\$376.50
<u>Monthly Food Stamp Entitlement</u> (from USDA Table)		\$87

9. By [REDACTED] notice dated [REDACTED], the Agency advised the Appellant of its determination to reduce the Appellant's Food Stamp benefits from \$144 to \$87 on the grounds that Appellant no longer has shelter costs.

10. The notice advised the Appellant that a fair hearing must be requested within ninety days of the date of the Agency's action; specifically by [REDACTED].

11. The Agency mailed the notice to the Appellant at his address as contained in the Appellant's case record.

12. On September 2, 2010, the Appellant requested this fair hearing.

APPLICABLE LAW

Section 22 of the Social Services Law provides that applicants for and recipients of Public Assistance, Emergency Assistance to Needy Families with Children, Emergency Assistance for Aged, Blind and Disabled Persons, Veteran Assistance, Medical Assistance and for any services authorized or required to be made available in the geographic area where the person resides must request a fair hearing within sixty days after the date of the action or failure to act complained of. In addition, any person aggrieved by the decision of a social services official to remove a child from an institution or family home may request a hearing within sixty days. Persons may request a fair hearing on any action of the social services district relating to food stamp benefits or the loss of food stamp benefits which occurred in the ninety days preceding the request for a hearing. Such action may include a denial of a request for restoration of any benefits lost more than ninety days but less than one year prior to the request. In addition, at any time within the period for which a person is certified to receive food stamp benefits, such person may request a fair hearing to dispute the current level of benefits.

The level of Food Stamp benefits to which a household is entitled is based on the household's net income. A household's net income is computed by subtracting from the gross household income certain exclusions and deductions which are allowable under the Federal Food Stamp Act (7 USC 2014), Code of Federal Regulations (7 CFR 273.9, 273.10 and 273.11), specific United States Department of Agriculture (USDA) instructions and the Regulations of the New York State Department of Social Services (18 NYCRR 387.11 and 387.12).

The amount of earned income used to determine Food Stamp benefits is based on an estimate of average monthly earnings. To project average monthly income, the Agency must average no less than the most recent four weeks of income, or if there has been a change

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expected to last at least 30 days, use the new information regarding the amount of pay and the frequency of pay. Income which is not of a continuing nature must not be included for purposes of projecting average income. Average monthly income is applied against need to determine the amount of Food Stamp benefits for each calendar month of a certification period. The amount of average earned income applied must be recalculated at recertification and when a periodic report is received by the Agency. Adjustments to benefits will be made prospectively whenever information is received from a household required to report changes in working hours on a monthly basis because of ABAWD eligibility requirements. 18 NYCRR 387.17(d).

Exclusions are allowed for certain items including in-kind benefits, vendor payments, loans, reimbursements for past or future expenses (to the extent they do not exceed actual expenses and do not represent a gain or benefit to the household), non-recurring lump sum payments, costs of producing self-employment income, and monies withheld to recover certain prior overpayments. In addition, all educational grants, loans and scholarships provided for education purposes other than living expenses are excluded from a household's income. The earned income of children who are members of the household, and are enrolled as elementary or high school students on at least a half time basis, and who have not attained their 18th birthday is also excluded, including money earned during temporary breaks and vacations. Legally obligated child support payments made by a Food Stamp household member to non-household members are also excluded from consideration in determining eligibility or amount of entitlement. 7 CFR 273.9; 18 NYCRR 387.11; Administrative Directive 02 ADM-07.

Adoption subsidy payments that do not exceed allowable, verified, reimbursable expenses are also excluded from a household's income. However, subsidy payments which do exceed these amounts are considered unearned income. In addition, foster care payments which do not exceed allowable, verified, reimbursable expenses are excluded from a household's income. Foster care payments which do exceed these amounts are considered unearned income; however, if the child is not included in the Food Stamp household, the total amount of the foster care payment must be excluded as income to the Food Stamp household. Administrative Directive 08 ADM-04.

Allowable deductions include:

- (1) A 20% deduction from earned income.
- (2) A standard deduction in the amount of \$142 monthly for households of three or less persons, \$153 for households of four persons, \$179 for households of five persons, and \$205 for households of six or more persons. (For the period between October 1, 2009 and September 30, 2010, the standard deduction is \$141 monthly for households of three or less persons, \$153 for households of four persons, \$179 for households of five persons, and \$205 for households of six or more persons.) This deduction is equal to 8.31 percent of the applicable net income limit (poverty level) based on household size or \$134, whichever is greater, and up to a maximum deduction equivalent to the deduction for a household of six persons.

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- (3) Actual dependent care costs which consist of costs for the care of a child or other dependents including an incapacitated adult when necessary for a household member to accept or continue employment, seek employment in compliance with the job search criteria (or an equivalent effort by those not subject to job search) or to attend training or to pursue education in preparation for employment. For the period beginning October 1, 2008, there is no limit to this deduction. Prior to that date, the deduction is capped at \$200 per month for each dependent under age two, and \$175 per month for each dependent age two and over.
- (4) Excess shelter costs computed by subtracting 50% of adjusted income from the sum of the following items:
- a. actual rent or mortgage payments;
 - b. if the household is billed separately and on a recurring basis for heating/cooling costs, the heating/cooling standard. If the household is eligible for the standard allowance for heating and/or cooling, or if the household is receiving a Home Energy Assistance Program (HEAP) payment or other Low Income Home Energy Assistance Act (LIHEAA) payment, the household is entitled to the combined standard allowance for heating and/or cooling, non-heat related utilities and telephone.
 - c. if the household is billed separately and on a recurring basis for utility costs other than heat, the utility standard. If the household is not eligible for the standard allowance for heating and/or cooling but is eligible for the standard allowance for utilities, the household is entitled to the combined standard allowance for non-heat related utilities and telephone.
 - d. if the household is not eligible for the standard allowance for heating and/or cooling or for the standard allowance for utilities, the household is entitled to the standard allowance for telephone;
 - e. any other allowable shelter costs.

Effective October 1, 2010, the excess shelter deduction is limited to \$458 (\$459 for October 1, 2009 through September 30, 2010), unless the household contains a member sixty years of age or older or disabled. Where the household contains such a member, there is no limitation on the amount of the deduction.

- (5) Allowable unreimbursed medical costs in excess of \$35 monthly for those household members who are elderly or disabled.

Once the household's net income is determined, reference to the USDA Basis of Coupon Issuance Tables provides the household's level of Food Stamp entitlement.

Under the Food Stamp Program in order to be eligible for Food Stamp benefits all households must meet a monthly gross income eligibility standard (gross income test) unless the household meets certain exemption requirements. Households in which all members are recipients of or authorized to receive Family Assistance, Safety Net Assistance or Supplemental Security Income are deemed categorically eligible for Food Stamp benefits and therefore are exempt from the gross and net income tests. 7 CFR 273.2(j), 18 NYCRR 387.14(a)(5). In addition, households containing a member who is elderly (sixty years of age or older) or who is disabled are not subject to the gross income test. Such households, however, must meet a net income eligibility standard. 7 CFR 273.9(a) and 18 NYCRR 387.10(a).

Pursuant to Administrative Directive 07 ADM-09, recipients of a particular TANF-funded service may also be deemed categorically eligible for Food Stamps. This TANF-funded service is the provision of a brochure entitled "Helping Hands. This brochure (and thus the service) is provided to all Food Stamp recipients. In order to be deemed categorically eligible, a household receiving the brochure must meet the 130 percent gross income test or, if the household has an elderly or disabled member, the 200 percent gross income test. If that test is passed, the household will be deemed categorically eligible for a period of one year and will not be subject to gross or net income tests or to the Food Stamp resource test. Note that this does not apply to households which are disqualified due to an intentional program violation or a sanction.

Administrative Directive 09 ADM-06 provides that, effective March 1, 2009, a household receiving the above-referenced brochure will be subject to a 200 percent gross income test rather than the 130 percent test if such household has out-of-pocket dependent care expenses.

For households subject to the gross income test, the monthly gross income eligibility standard is 130 percent of the annual federal income poverty level divided by twelve. 7 CFR 273.9(a), 18 NYCRR 387.10(a).

DISCUSSION

The Appellant did not personally appear at the Fair Hearing, however, a written authorization signed by him allowed his mother (M) to represent him at the hearing. Appellant's representative, M, stated and it was undisputed that her son is in receipt of [REDACTED]. M further asserted that while her son understands what is said to him he cannot articulate a response but instead becomes frustrated and problematic. She also stated and it was uncontroverted that he has short term memory problems.

On April 10, 2010, the Agency notified the Appellant that it had determined to reduce the Appellant's Food Stamp benefits on the grounds that Appellant no longer has shelter costs. Such notice was addressed to him only.

Although the Agency's notice advised the Appellant that a fair hearing must be requested within ninety days of its action, the Appellant failed to request this fair hearing until September 2, 2010, which was more than ninety days after the Agency's determination. Due to the

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Appellant's brain injury including his short term memory problems, the record does establish a sufficient basis for tolling the statute of limitations.

The Agency next asserted that the Appellant no longer had a shelter cost basing its conclusion on Food Stamp Source Book (FSSB) Section 12-Page 278 (28) Supplemental Needs Trusts (SNTs). Such section provides with reference to a payment by the SNT of disbursements not to the household but directly to a third party , such as shelter expenses would not be allowed as a deduction. However this provision of FSSB relates to payments made by the SNT. It has no bearing on payments made by a beneficiary of a SNT from his own resources. M asserted and provided documentary evidence that her son was paying rent from his own bank account to the SNT as is provided in the SNT Article II (H). Accordingly, the Agency's determination cannot be sustained.

DECISION AND ORDER

The Agency's determination to reduce the Appellant's the Appellant's Food Stamp benefits is not correct and is reversed.

The Agency is directed to:

1. Take no action pursuant to [REDACTED], to reduce Appellant's Food Stamp benefits.
2. Redetermine the Appellant's Food Stamp benefit retroactive to its date of reduction, [REDACTED] and restore any lost benefits retroactive to [REDACTED], the effective date of the Agency's action.
3. Issue a timely, accurate written determination to Appellant.

Pursuant to 18 NYCRR 358-6.4, the Agency must immediately comply with the directives set forth above.

DATED: Albany, New York
12/08/2010

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By



Commissioner's Designee