

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: August 13, 2010
CASE #: [REDACTED]
CENTER #: 39
FH #: 5590148K

In the Matter of the Appeal of
[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 October 22, 2010, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[REDACTED]

For the Social Services Agency

Roxanna Ramnarine, Fair Hearing Representative (9/23/10)
Ruby Utley, Fair Hearing Representative (10/22/10)

ISSUES

Was the Appellant's request for a fair hearing to review the Agency determination to reduce the Appellant's Public Assistance benefits and reduce the Appellant's Food Stamp benefits timely?

Assuming the request was timely has the Agency acted correctly with respect to its determination to reduce the Appellant's Public Assistance and Food Stamp benefits?

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 has been in receipt of Public Assistance and Food Stamp benefits.
2. By notice dated June 10, 2010, the Agency advised the Appellant of its determination to reduce Appellant's Public Assistance benefits and reduce the Appellant's Food Stamp benefits on the grounds that Appellant had unsatisfactory attendance at Appellant's work activity assignment from April 30, 2010 to May 14, 2010.
3. The notice advised the Appellant that a fair hearing must be requested within 60 days of the date of the Agency's action concerning Public Assistance and within 90 days of the Agency's action concerning Food Stamps.
4. The Agency mailed the notice to the Appellant's address as contained in the Appellant's case record.
5. On August 13, 2010, the Appellant requested this fair hearing.

APPLICABLE LAW

Section 22.4 of the Social Services Law provides that, for actions other than those concerning food stamp benefits, a request for a fair hearing to review an Agency's determination must be made within sixty days of the date of the Agency's action or failure to act.

A person is allowed to request a fair hearing on any action of a local social services agency relating to food stamp benefits or loss of food stamp benefits which occurred in the ninety days preceding the request for a hearing. Such action includes a denial of a request for restoration of any benefits lost more than ninety days but less than a 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. Social Services Law Section 22.4(b), 18 NYCRR 358-3.1, 18 NYCRR 358-3.5, 7 CFR 273.15.

Regulations at 18 NYCRR 358-3.7(a) provide that an appellant has the right to examine the contents of the case record at the fair hearing. At the fair hearing, the agency is required to provide complete copies of its documentary evidence to the hearing officer. In addition, such documents must be provided to the appellant and appellant's authorized representative where such documents were not provided otherwise to the appellant or appellant's authorized representative in accordance with 18 NYCRR 358-3.7. 18 NYCRR 358-4.3(a). In addition, a representative of the agency must appear at the hearing along with the case record and a written summary of the case and be prepared to present evidence in support of its determination. 18 NYCRR 358-4.3(b). Except as otherwise established in law or regulation, in fair hearings concerning the discontinuance, reduction or suspension of Public Assistance, Medical Assistance, Food Stamp benefits or Services, the Agency must establish that its actions were correct. 18 NYCRR 358-5.9(a).

When a Food Stamp household requests a hearing to review the Agency's determination to discontinue, suspend or reduce its Food Stamp benefits, Federal regulations require that the local Agency must appear at the hearing with the household's case record. Federal Regulations also require that the contents of the case file be made available to the Food Stamp household during the hearing. Such information is essential in order to provide for the proper review of the Agency's determination. (7 CFR 273.15(p))

Where Food Stamp benefits are lost due to an error by the Agency, the Agency is required to restore lost benefits. However, lost benefits shall be restored for not more than twelve months prior to whichever of the following occurred first:

1. The date the Agency received a request for restoration from a household; or
2. The date the Agency is notified or otherwise becomes aware that a loss to a household has occurred.

7 CFR 273.17; 18 NYCRR 387.18 and Food Stamp Source Book, Section 10.

DISCUSSION

On June 10, 2010, the Agency notified the Appellant that it had determined to reduce the Appellant's Public Assistance benefits and reduce the Appellant's Food Stamp benefits on the grounds that Appellant had unsatisfactory attendance at Appellant's work activity assignment from April 30, 2010 to May 14, 2010.

Although the Agency's notice advised the Appellant that a fair hearing must be requested within sixty days of its action concerning Public Assistance benefits and within ninety days of its action concerning Food Stamp benefits, the Appellant failed to request this fair hearing until August 13, 2010, which was more than 60 days after the Agency's action concerning Public Assistance. The Appellant requested this fair hearing within 90 days after the Agency's determination concerning Food Stamps.

With respect to the Appellant's failure to request a fair hearing within the applicable time limits regarding Public Assistance benefits, the Appellant contended, at the hearing, that this failure was caused by the fact that Appellant was ill [REDACTED], had left home to stay with a family member for care and support and had not received the June 10, 2010 notice. Appellant presented documentation to the effect that Appellant has been receiving treatment for Appellant's condition since June 15, 2010. Appellant's contention of non-receipt of the mailed notice is found to be credible because Appellant testified in a consistent and detailed manner. Therefore, the record does establish a sufficient basis for tolling the statute of limitations, regarding Public Assistance benefits.

The Appellant request for a Fair Hearing was timely, regarding Food Stamps benefits. Accordingly, the Fair Hearing will be decided on the underlying merits of the Notice of Intent dated June 10, 2010 to reduce Public Assistance and Food Stamps benefits.

The evidence establishes that the Agency sent a Notice of Intent to the Appellant, dated June 10, 2010, advising the Appellant that it had determined to reduce Appellant's Public Assistance and Food Stamp benefits on the grounds that Appellant had unsatisfactory attendance at Appellant's work activity assignment from April 30, 2010 to May 14, 2010.

The Agency was duly notified of the time and place of the hearing.

However, while the Agency produced some evidence at the hearing in support of its determination, it failed to produce sufficient evidence of Appellant's unsatisfactory attendance at Appellant's work activity assignment from April 30, 2010 to May 14, 2010.

With respect to the Agency's determination to reduce the Appellant's Public Assistance and Food Stamp benefits, the Agency failed to meet its obligations under 18 NYCRR 358-4.3(b) and federal regulations, and failed to establish that its determination was correct pursuant to 18 NYCRR 358-5.9(a).

DECISION AND ORDER

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

1. The Agency is directed to withdraw its Notice of Intent dated June 10, 2010, with respect to Appellant's Public Assistance and Food Stamp benefits.
2. The Agency is directed to continue to provide Public Assistance and Food Stamp benefits to the Appellant.

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3. The Agency is directed to restore Appellant's Public Assistance and Food Stamp benefits retroactive to the date of the Agency action.

Should the Agency in the future determine to implement its previous action, it is directed to procure and review the Appellant's case record, to issue a new Notice of Intent and to produce the complete relevant case record at any subsequent fair hearing.

Should the Agency need additional information from the Appellant in order to comply with the above directives, it is directed to notify the Appellant promptly in writing as to what documentation is needed. If such information is requested, the Appellant must provide it to the Agency promptly to facilitate such compliance.

As required by 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York
11/09/2010

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By



Commissioner's Designee