
In the Matter of the Appeal of
██████████
from a determination by the New York City
Department of Social Services

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**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 1, 2013, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

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For the Social Services Agency
Felix Gonzalez, Fair Hearing Representative

ISSUE

Was the Agency's determination to reduce the Appellant's Medical Assistance benefits based on its Notice of Intent dated August 20, 2013 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 has been in receipt of Medical Assistance benefits.
2. By notice dated August 20, 2013, the Agency advised the Appellant of its determination to reduce the Appellant's Medical Assistance benefits on the grounds that the Appellant's excess income (Spenddown) amount is \$161.00.

3. The Agency's Notice of Intent dated August 20, 2013 did not contain information about the exact action (a reduction or an increase) the Agency proposed to take or had taken, did not contain the effective date of the action, did not contain the previous amount of excess income or spenddown, did not contain the circumstances under which Medical Assistance will be continued or reinstated until the fair hearing decision is issued, did not set forth a proposed date of reduction of ten days subsequent to the date of the Notice, and did not contain the specific laws and/or regulations upon which the action is based.

4. On September 16, 2013, the Appellant requested this fair hearing.

APPLICABLE LAW

In general, a recipient of Public Assistance, Medical Assistance or Services (including child care and supportive services) has a right to a timely and adequate notice when the Agency proposes to discontinue, suspend, reduce or change the manner of payment of such benefits. An adequate, though not timely, notice is required where the Agency has accepted or denied an application for Public Assistance, Medical Assistance or Services; or has increased the Public Assistance grant; or has determined to change the amount of one of the items used in the calculation of a Public Assistance grant or Medical Assistance spenddown; or has determined that an individual is not eligible for an exemption from work requirements. 18 NYCRR 358-3.3(a). In addition, pursuant to 18 NYCRR 358-3.3(d), an adequate, though not timely, notice is required for a Public Assistance or Medical Assistance recipient when, for example, the Agency has factual information confirming the death of the recipient; the Agency has received a clear written statement from the recipient that he or she no longer wishes to receive Public Assistance or Medical Assistance; the Agency has reliable information that the recipient has been admitted to an institution or prison; the recipient's whereabouts are unknown and mail has been returned to the Agency; or the recipient has been accepted for Public Assistance or Medical Assistance in another district.

In general, a SNAP recipient has a right to a timely and adequate adverse action notice when the Agency proposes to take any action to discontinue, suspend or reduce the recipient's SNAP benefits during the certification period. 18 NYCRR 358-2.3; 18 NYCRR 358-3.3(b). An adequate, though not timely, action taken notice is required where the Agency has accepted or denied an application for SNAP benefits; or has increased the SNAP benefits; or has determined to change the amount of one of the items used in the calculation of the SNAP benefits. 18 NYCRR 358-3.3(b). However, pursuant to 18 NYCRR 358-3.3(e), there is no right to an adverse action notice when, for example, the change is the result of a mass change, the Agency determines that all members of the household have died or the household has moved from the district or when the household has failed to reapply at the end of the certification period.

A timely notice means a notice which is mailed at least 10 days before the date upon which the proposed action is to become effective. 18 NYCRR 358-2.23.

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An adequate notice is a notice of action, an adverse action notice or an action taken notice which sets forth the action that the Agency proposes to take or is taking, and if a single notice is used for all affected assistance, benefits or services, the effect of such action, if any, on a recipient's other assistance, benefits or services. In addition, the notice must contain:

- o for reductions, the previous and new amounts of assistance or benefits provided;
- o the effective date of the action;
- o the specific reasons for the action;
- o the specific laws and/or regulations upon which the action is based;
- o the recipient's right to request an agency conference and fair hearing;
- o the circumstances under which public assistance, medical assistance, SNAP benefits or services will be continued or reinstated until the fair hearing decision is issued;
- o the right of the recipient to review the case record and to obtain copies of documents which the agency will present into evidence at the hearing and other documents necessary for the recipient to prepare for the fair hearing at no cost;
- o an address and telephone number where the recipient can obtain additional information about the recipient's case, how to request a fair hearing, access to the case file, and/or obtaining copies of documents;
- o the right to representation by legal counsel, a relative, friend or other person or to represent oneself, and the right to bring witnesses to the fair hearing and to question witnesses at the hearing;
- o the right to present written and oral evidence at the hearing;
- o the liability, if any, to repay continued or reinstated assistance and benefits, if the recipient loses the fair hearing;
- o information concerning the availability of community legal services to assist a recipient at the conference and fair hearing; and
- o a copy of the budget or the basis for the computation, in instances where the social services agency's determination is based upon a budget computation.

18 NYCRR 358-2.2

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DISCUSSION

The Appellant requested this hearing to review the Agency's determination to reduce the Appellant's Medical Assistance benefits based on its Notice of Intent dated August 15, 2013.

A review of the Agency's notice shows that it did not contain information about the exact action (a reduction or an increase) the Agency proposed to take or had taken, did not contain the effective date of the action, did not contain the previous amount of excess income or spenddown, did not contain the circumstances under which Medical Assistance will be continued or reinstated until the fair hearing decision is issued, did not set forth a proposed date of reduction of ten days subsequent to the date of the Notice, and did not contain the specific laws and/or regulations upon which the action is based, as required by 18 NYCRR 358-2.2. These defects in the Agency's notice make it void and therefore, the Agency's determination to reduce the Appellant's Medical Assistance benefits cannot be sustained.

DECISION AND ORDER

The Agency's determination to reduce the Appellant's Medical Assistance benefits is not correct and is reversed

1. The Agency is directed to restore the Appellant's Medical Assistance benefits retroactive to the date of the Agency's action.
2. In the event that the Agency determines to implement its previously contemplated action, the Agency is directed to provide the Appellant with a notice that meets the requirements set forth in 18 NYCRR 358-2.2.

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.

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DATED: Albany, New York
11/06/2013

NEW YORK STATE
DEPARTMENT OF HEALTH

By

A handwritten signature in black ink, appearing to read "James J. Walter". The signature is written in a cursive style with a large initial "J".

Commissioner's Designee