

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: June 26, 2015

AGENCY: BFI
FH #: 7063809M

In the Matter of the Appeal of
[REDACTED]

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

:
:
:
:
:
:

**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 July 27, 2015, 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

Ladinia Johnson, Fair Hearing Representative

ISSUE

Was the Appellant's request to review the Agency's determination of June 15, 2015 to reduce the Appellant's Public Assistance timely?

Assuming the request was timely, has the Agency acted correctly with respect to its determination to reduce the Appellant's Public Assistance 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:

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 had previously been in receipt of Public Assistance benefits.
2. The Agency determined by Notice dated June 15, 2015 to reduce the Appellant's Public Assistance to recover an overpayment of assistance purported paid to the Appellant in excess of what he was entitled to in the amount of \$3606.17.
3. On June 26, 2015, 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 SNAP benefits or the loss of SNAP 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 SNAP benefits, such person may request a fair hearing to dispute the current level of benefits.

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

FH# 7063809M

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 SNAPs; 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.

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 procedure for requesting an agency conference or fair hearing, including an address and telephone number where a request for a fair hearing may be made and the time limits within which the request for a fair hearing must be made;
- o an explanation that a request for a conference is not a request for a fair hearing and that a separate request for a fair hearing must be made;
- o a statement that a request for a conference does not entitle one to aid continuing and that a right to aid continuing only arises pursuant to a request for a 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;

FH# 7063809M

- o a statement that a fair hearing must be requested separately from a conference;
- o a statement that when only an agency conference is requested and there is no specific request for a fair hearing, there is no right to continued public assistance, medical assistance, SNAP benefits or services;
- o a statement that participation in an agency conference does not affect the right to request a fair hearing;
- 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.

(e) Payments in closed cases.

- (1) Public assistance payments are to be made only to persons who are current recipients of public assistance and care on the date of payment except as provided below:
 - (i) payment must be made to former applicants for and recipients of ADC whose cases have been closed and who are owed ADC benefits for periods after July 1, 1985 if such benefits are owed solely because such persons are not current recipients of ADC and:

- (a) such benefits are:
 - (1) requested by the former applicant or recipient or the appropriate social services district is otherwise informed that such payments are owed; and
 - (2) not in dispute and are acknowledged as benefits owed to the former applicant or recipient by the social services district; or
 - (b) such benefits have been established as owed to the former applicant or recipient as a result of a fair hearing requested pursuant to section 358-3.5 of this Title.
- (ii) payment must be made on behalf of closed public assistance cases when an obligation has been authorized prior to an applicant's or recipient's death or prior to the date of closing of a public assistance case if the social services district is required to pay the cost or unpaid balance of the obligation to a vendor. Payment on behalf of a closed public assistance case under this subparagraph must be by vendor payment; or
 - (iii) payment must be made to former applicants for and recipients of public assistance whose cases have been closed for energy reconciliation payments, as authorized by section 352.5 of this Title, payments for net loss of cash income as authorized by section 352.7(m) of this Title, payments for extended supportive services as authorized by section 385.3(d) of this Title, replacement payments for lost or stolen checks as authorized by section 352.7(g)(1) of this Title or replacement payments for voided checks when such applicants or recipients are eligible for such payments.
- (2) Support pass-through payments, as authorized, by section 352.15 of this Title, and burial payments, as authorized by sections 352.7(n) and 620.3(a) of this Title, may be made in closed cases.

DISCUSSION

The evidence establishes that the Agency sent a Notice dated June 15, 2015 to recover an overpayment of assistance purported paid to the Appellant in excess of what he was entitled to in the amount of \$3606.17.

The evidence establishes that the Appellant requested this fair hearing on June 26, 2015, which was not more than sixty days after the Agency's determination. Thus the Appellant's request is timely.

A review of the notice dated June 15, 2015 indicates that the notice to reduce the Appellant's Public Assistance benefits did not contain the specific laws and/or regulations upon which the action is based; an explanation that a request for a conference is not a request for a fair hearing and that a separate request for a fair hearing must be made; a statement that a request for a conference does not entitle one to aid continuing and that a right to aid continuing only arises pursuant to a request for a fair hearing; the circumstances under which public assistance, medical assistance, SNAP benefits or services will be continued or reinstated until the fair hearing decision is issued; a statement that a fair hearing must be requested separately from a conference; 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, an address and telephone number where the recipient can obtain additional information about the recipient's case, the liability, if any, to repay continued or reinstated assistance and benefits, if the recipient loses the fair hearing; how to request a fair hearing, access to the case file, and/or obtaining copies of documents as required by the regulations which in this instance the telephone number is incorrect.

Therefore, the result of the cumulative defects in the Agency's notice renders the Agency's action void and the Agency's determination to change the Appellant's Public Assistance benefits cannot be sustained.

However the Agency is not authorized to restore or correct underpayments of assistance under Section 352.31(f) of 18 NYCRR at the present time because the Appellant is not currently eligible to receive Public Assistance, and Appellant's circumstances do not fall within any of the exceptions set forth in Section 381.3(e) of 18 NYCRR. The Agency though must restore lost benefits to the Appellant at such time when the Appellant's Public Assistance case is subsequently reopened.

DECISION AND ORDER

The Agency's June 15, 2015 determination to reduce the Appellant's Public Assistance benefits is not correct and is reversed

1. The Agency is directed to restore the Appellant's Public 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.

FH# 7063809M

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

DATED: Albany, New York
10/05/2015

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink, appearing to read "Joaquin Kello". The signature is written in a cursive, flowing style.

Commissioner's Designee