

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: February 13, 2015

AGENCY: 70
FH #: 6957263M

In the Matter of the Appeal of
[REDACTED]

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 March 16, 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

A. Ukoli, Fair Hearing Representative

ISSUES

Was the Agency's determination to deny the Appellant's application for Public Assistance benefits correct?

Was the Agency's failure to make a timely determination of the Appellant's eligibility for Medical Assistance and SNAP 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 applied for Public Assistance, Medical Assistance and SNAP benefits on January 12, 2015.

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2. By notice dated January 28, 2015, the Agency advised the Appellant of its determination to deny the Appellant's Public Assistance benefits on the grounds that "You are ineligible Based upon BEV Evaluation-Manual Notice."

3. The Action Taken On Your Application dated January 28, 2015 did not include the specific laws and/or regulations upon which the action is based.

2. The Agency has failed to act on the Appellant's application for Medical Assistance and SNAP benefits and has provided no written notification of its determination either to accept or deny such application.

4. On February 13, 2015, 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.

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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;
- 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;

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- 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

Section 360-2.4 of 18 NYCRR provides that eligibility for a Medical Assistance Authorization must be determined within 45 days of application. However where Medical Assistance eligibility is dependent on disability status the agency must determine eligibility within ninety days of application. The district must determine eligibility within thirty days of the date of a Medical Assistance application if an applicant is a pregnant woman or an infant younger than one year of age whose household income does not exceed 200 percent of the applicable Federal poverty level; or the applicant is a child at least one year of age but younger than nineteen years of age whose household income does not exceed 133 percent of the applicable Federal poverty level.

Federal Regulations at 7 CFR 273.2(g) provide that the Agency shall provide eligible households which complete the initial application process an opportunity to participate in the SNAP Program as soon as possible but no later than thirty days following the date that the application was filed. Households determined to be ineligible shall be sent a denial notice as soon as possible but not later than thirty days following the date the application was filed.

If the Agency is unable to determine eligibility within thirty days of the filing of the application, the Agency must first determine whether it is the household's fault or the Agency's fault. 7 CFR 273.2(h), 18 NYCRR 387.14(a)(4).

The delay shall be considered to be the household's fault if the household has failed to complete the application process and the Agency has taken the following actions:

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- (1) offered to assist or has assisted the applicant in completing the application if the application form is incomplete;
- (2) informed the household of the need to register for work, when any member who is required to register has not done so, and has given the household at least ten days from the date of notification within which to register;
- (3) assisted the household in obtaining the required verification and documentation and allowed the household at least ten days from the date of the initial request to provide such documentation; and
- (4) attempted to reschedule the interview if the household has failed to appear at the initial interview.

7 CFR 273.2(n); 18 NYCRR 387.14(a)(4).

Delays that are the fault of the Agency include failures to assist the applicant to complete the application process as set forth above.

Whenever the delay in the initial thirty day period is the fault of the Agency, the Agency shall take immediate corrective action. It may not deny the application but must notify the household by the thirtieth day following the date the application was filed that the application is being held pending. In addition the Agency must notify the household of any action it must take to complete the application process. If verification is lacking, the Agency has the option of holding the application pending for only thirty days following the date of the initial request for the particular verification that was missing. 7 CFR 273.2(h).

DISCUSSION

The Appellant requested this hearing to review the Agency's determination to deny the Appellant's January 12, 2015 application for Public Assistance benefits.

A review of the Agency's notice shows that it did not include 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 deny the Appellant's Public Assistance benefits cannot be sustained.

The uncontroverted evidence in this case establishes that the Appellant applied for Medical Assistance and SNAP benefits on January 12, 2015. The Agency has failed to act on the Appellant's application and has provided no written notification of its determination either to accept or deny such application.

DECISION AND ORDER

The Agency's determination to deny the Appellant's Public Assistance benefits is not correct and is reversed

1. The Agency is directed to continue to process the Appellant's application for Public Assistance and, if otherwise eligible, accept the application and provide benefits retroactive to the date of establishment of eligibility or the thirtieth day subsequent to the receipt of a signed and completed application, whichever is earlier.

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.

The Agency's failure to determine the Appellant's eligibility for Medical Assistance and SNAP benefits in a timely manner was not correct and is reversed.

1. The Agency is directed to process the Appellant's application for Medical Assistance and SNAP benefits forthwith.

2. The Agency is directed to advise the Appellant as to any additional documentation required to determine eligibility.

3. The Agency is directed to notify the Appellant in writing of its determination as to eligibility.

4. The Agency is directed to restore all lost benefits resulting from the Agency's failure to process the Appellant's application in a timely manner.

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
03/30/2015

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

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