

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: April 22, 2015

AGENCY: 64

FH #: 7012102Q

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 May 13, 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

Morris Bidderman, Fair Hearing Representative

ISSUE

Was the Appellant's request to review the Agency's determination of January 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:

1. The Appellant has been in receipt of Public Assistance benefits.

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2. By Notice of change in grant dated January 15, 2015, the Agency advised the Appellant of its determination to change the Appellant's Public Assistance benefits on the grounds that the Agency sought to recoup or recover an overpayment of assistance in the amount of \$93.17 due to Agency error.

3. On April 22, 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 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

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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;
- 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;

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- 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.

DISCUSSION

The evidence establishes that the Agency sent a Notice of Notice of change in grant dated January 15, 2015, the Agency advised the Appellant of its determination to change the Appellant's Public Assistance benefits on the grounds that the Agency sought to recoup or recover an overpayment of assistance in the amount of \$93.17 due to Agency error.

The evidence establishes that the Appellant failed to request this fair hearing until April 22, 2015, which was more than sixty days after the Agency's determination. Section 22 of the Social Services Law provides that the Appellant's request for a fair hearing to review the Agency's determination had to be made within sixty days of the date of the Agency's action for Public Assistance and Medical Assistance purposes and within ninety day of the Agency's determination for SNAP purposes.

A review of the notice 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. The above-noted defects therefore, does establish a sufficient basis for tolling the statute of limitations and the Appellant's appeal is deemed timely.

For the same reason, the Notice of change in grant is deemed void due to the stated defects in the notice, namely that the notice 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.

DECISION AND ORDER

The Agency's 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.

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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
06/02/2015

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

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

Commissioner's Designee