

STATE OF NEW YORK
OFFICE OF CHILDREN AND FAMILY SERVICES

REQUEST: November 10, 2015

████████████████████
AGENCY: DAY
FH #: 7171994M

In the Matter of the Appeal of
████████████████████ :
 : **DECISION**
 : **AFTER**
 : **FAIR**
 : **HEARING**
from a determination by the New York City :
Department of Social Services :
:

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 2, 2016, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

████████████████████

For the Social Services Agency

Y. Demaro, Fair Hearing Representative

ISSUE

Was the Agency's determination to increase the Appellant's weekly child care fee from \$15.00 to \$124.00 effective December 7, 2015, 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 child day care services for her child.
2. The Appellant was advised that, effective December 7, 2015, the Appellant's weekly child care fee would be increased from \$15.00 to \$124.00.

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3. On November 10, 2015, the Appellant requested this fair hearing, contesting the increase in her child care fee.

4. By Placement Notice dated January 21, 2016, the Agency advised the Appellant that, effective December 7, 2015 the Appellant's weekly child care fee will be \$124.00.

APPLICABLE LAW

Pursuant to 18 NYCRR 358-3.3, a recipient of child care services has a right to timely and adequate notice when a social services agency proposes to take any action to discontinue services or to make changes in the manner of payment for child care services and such change results in the discontinuance, suspension, reduction or termination of benefits or forces a recipient to make changes in child care arrangements.

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;

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- 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.

DISCUSSION

The evidence establishes that the Appellant has been in receipt of child day care services for her child; that the Appellant was advised that, effective December 7, 2015, the Appellant's weekly child care fee would be increased from \$15.00 to \$124.00 and that, by Placement Notice dated January 21, 2016, the Agency advised the Appellant that, effective December 7, 2015 the Appellant's weekly child care fee will be \$124.00.

Although the Agency representative argued otherwise, the Agency's increase in the weekly child care fee is, in effect, a reduction of child day care services. As such, pursuant to the above-cited Regulations, the Appellant was entitled to a timely and adequate notice of the

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Agency's subject action. Other than the Agency's Placement Notice of January 21, 2016, the Agency did not claim or produce at the hearing any other notice of its action to reduce the Appellant's child day care services. The Agency representative contended that the Agency's Placement Notice is not a "notice of action" but merely advises the Appellant of the state of her current child day care services. Given that the Agency failed to claim or produce at the hearing any other notice of its action to reduce the Appellant's child day care services, the Agency's failure to give timely and adequate "notice of action" violates the Regulations.

In any event, even if the Agency's Placement Notice of January 21, 2016 was viewed as a "notice of action" within the meaning of the Regulations, the notice is so defective as to be rendered void. Indeed, a review of the notice demonstrates that the notice is untimely, insofar as it was not mailed at least 10 days before the date upon which the proposed action is to become effective. The notice is also inadequate, insofar as it fails to set forth, among other things, the previous and new amounts of assistance or benefits provided; the specific laws and/or regulations upon which the action is based; the recipient's right to request an agency conference and fair hearing; and the circumstances under which the Appellant's child day care services will be continued or reinstated until the fair hearing decision is issued, all in violation of the Regulations.

Based on all of the foregoing, the Agency's determination to increase the Appellant's weekly child care fee from \$15.00 to \$124.00 effective December 7, 2015 cannot be sustained.

DECISION AND ORDER

The Agency's determination to increase the Appellant's weekly child care fee from \$15.00 to \$124.00 effective December 7, 2015 is not correct and is reversed.

1. The Agency is directed to restore the Appellant's weekly child care fee to \$15.00 and to accordingly supplement its child care payments to the Appellant's child care provider on the record with the Agency.

Should the Agency in the future determine to implement its previous action, it is directed to procure and review the Appellant's case record with respect to a determination relating to the Appellant's child day care services, to issue a new Notice of Intent and to produce the required case record(s) 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.

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

DATED: Albany, New York
03/08/2016

NEW YORK STATE OFFICE OF
CHILDREN AND FAMILY SERVICES

By

A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a series of loops and a horizontal line extending to the right.

Commissioner's Designee