

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST May 16, 2003
CASE #
CENTER # 53
FH # 3911014P

In the Matter of the Appeal of

:

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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 July 15, 2003, in New York City, before Glenn E. Harris, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Eugene Doyle, Appellant's Representative

For the Social Services Agency

Valerie Dolvin-Joseph, Fair Hearing Representative;
Aronda Watson, Fair Hearing Representative

ISSUES

Has the Agency acted correctly with respect to its determination to discontinue the Appellant's Public Assistance benefits?

Has the Agency acted correctly with respect to its determination to discontinue the Appellant's Food Stamp benefits?

FACT FINDING

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 and Food Stamp benefits.

2. On May 8, 2003, the Agency sent a Notice of Intent to the Appellant setting forth its intention to discontinue the Appellant's Public Assistance benefits because Appellant failed to complete the eligibility process.

3. On May 8, 2003, the Agency sent a Notice of Intent to the Appellant setting forth its intention to discontinue the Appellant's Food Stamp benefits because the Appellant's Transitional Food Stamp benefits period has expired.

4. On May 16, 2003, the Appellant requested this fair hearing.

APPLICABLE LAW

A party to a hearing may make a request to a hearing officer that the hearing officer remove himself from presiding at the hearing. The grounds for removing a hearing officer are that such hearing officer has: previously dealt in any way with the substance of the matter which is the subject of the hearing except in the capacity of hearing officer; or, any interest in the matter, financial or otherwise, direct or indirect, which will impair the independent judgment of the hearing officer; or, displayed bias or partiality to any party to the hearing. The request for removal made by a party must be made in good faith; and, be made at the hearing in writing or orally on the record; and, describe in detail the grounds for requesting that the hearing officer be removed. 18 NYCRR 358-5.6(c).

Regulations at 18 NYCRR 358-3.7(a) provide that an appellant has the right to examine the contents of the case record at the fair hearing. At the fair hearing, the agency is required to provide complete copies of its documentary evidence to the hearing officer. In addition, such documents must be provided to the appellant and appellant's authorized representative where such documents were not provided otherwise to the appellant or appellant's authorized representative in accordance with 18 NYCRR 358-3.7. 18 NYCRR 358-4.3(a). In addition, a representative of the agency must appear at the hearing along with the case record and a written summary of the case and be prepared to present evidence in support of its determination. 18 NYCRR 358-4.3(b). Except as otherwise established in law or regulation, in fair hearings concerning the discontinuance, reduction or suspension of Public Assistance, Medical Assistance, Food Stamp benefits or Services, the Agency must establish that its actions were correct. 18 NYCRR 358-5.9(a).

When a Food Stamp household requests a hearing to review the Agency's determination to discontinue, suspend or reduce its Food Stamp benefits, Federal regulations require that the local Agency must appear at the hearing with the household's case record. Federal Regulations also require that the contents of the case file be made available to the Food Stamp household during the hearing. Such information is essential in order to provide for the proper review of the Agency's determination. (7 CFR 273.15(p))

Where Food Stamp benefits are lost due to an error by the Agency, the Agency is required to restore lost benefits. However, lost benefits shall be restored for not more than twelve months prior to whichever of the following occurred first:

1. The date the Agency received a request for restoration from a household; or
2. The date the Agency is notified or otherwise becomes aware that loss to a household has occurred.

7 CFR 273.17; 18 NYCRR 387.18 and Food Stamp Source Book, Section X-H-1.

18 NYCRR 358-3.9(a) states that an organization or an individual other than an attorney or employee of a law firm must have written authorization to represent an Appellant in any conference or fair hearing and to review the Appellant's case record. An employee of an attorney will be considered an authorized representative if such employee presents written authorization from your attorney or if such attorney advises the social services agency by telephone of such employee's authorization. There is no requirement that an attorney provide written authorization to represent an Appellant in a fair hearing.

Once a social services agency and the department have been notified that a person or organization has been authorized to represent an Appellant at a fair hearing, such representative will receive copies of all correspondence from the social services agency and the department relating to the conference and fair hearing. 18 NYCRR 358-3.9(b)

DISCUSSION

Prior to the hearing, the Agency representative requested that the hearing officer presiding over the hearing recuse himself. The Agency representative stated that the Administrative Law Judge engaged in ex-parte communications with the Appellant's representative prior to the instant fair hearing. The Agency representative alleged that this act displayed bias and partiality.

Regarding the Agency representative's request that the Administrative Law Judge remove himself from conducting the hearing, a review of the record of the hearing reveals no grounds to justify such removal. At the hearing, it was established that the Administrative Law Judge had not previously dealt in any way with the substance of the matter which was the subject of the hearing, except possibly in his capacity as a hearing officer; that the hearing officer did not have any interest in the matter that would impair his independent judgment; and that the hearing officer had not displayed bias or impartiality to any party to the hearing. Further, it was explained that the Administrative Law Judge's communications with the Appellant's representative in no way related to the merits of the case. Therefore, the request for recusal was properly denied.

The Agency also contended that the Appellant's representative was not authorized to represent the Appellant. The Agency contended that the Appellant's written authorization was not valid because it was dated June 27, 2002 and was therefore too old to be considered valid. The Regulations state that organizations or individuals other than attorneys must have written authorization to represent an Appellant in a fair hearing. The determination of whether an authorization to represent an Appellant is valid is within the discretion of the presiding Administrative Law Judge.

There is nothing in the Regulations which would support the Agency's contention that the authorization is no longer valid based on its age. The Appellant's authorization states that it is valid until revoked in writing. Nothing in the record indicates that the authorization was revoked by the Appellant. Therefore, it is found that the Appellant's Representative was authorized to represent the Appellant in accordance with the requirements of the Regulations.

The evidence establishes that the Agency sent a Notice of Intent to the Appellant, dated May 8, 2003, advising the Appellant that it had determined to discontinue the Appellant's Public Assistance benefits because Appellant failed to complete the eligibility process.

The Agency was duly notified of the time and place of the hearing. The Agency appeared at the hearing, but failed to present any documentation concerning the determination in issue. Although the Agency requested an adjournment so as to be given additional time to prepare for the hearing, such request was properly denied, inasmuch as the Agency had been notified in a timely fashion of the scheduling of this hearing.

With respect to the Agency's determination to discontinue the Appellant's Public Assistance, the Agency failed to meet its obligations under 18 NYCRR 358-4.3(b) and failed to establish that its determination was correct pursuant to 18 NYCRR 358-5.9(a).

The evidence establishes that the Agency sent a second Notice of Intent to the Appellant, dated May 8, 2003, advising the Appellant that it had determined to discontinue the Appellant's Food Stamp benefits effective May 19, 2003 because the Appellant's Transitional Food Stamp benefits period has expired.

The Agency was duly notified of the time and place of the hearing. The Agency appeared at the hearing, but failed to present any documentation concerning the determination in issue.

With respect to the Agency's determination to discontinue the Appellant's Food Stamp benefits, the Agency failed to meet its obligations under 18 NYCRR 358-4.3(b) and federal regulations, and failed to establish that its determination was correct pursuant to 18 NYCRR 358-5.9(a).

DECISION AND ORDER

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

1. The Agency is directed to withdraw its Notice of Intent dated May 8, 2003 with respect to Appellant's Public Assistance benefits.
2. The Agency is directed to continue to provide Public Assistance benefits to the Appellant.
3. The Agency is directed to restore Appellant's Public Assistance benefits retroactive to the date of the Agency action.

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 Public Assistance benefits, and to issue a new Notice of Intent and to produce the required case record(s) at any subsequent fair hearing.

The determination of the Agency to discontinue the Appellant's Food Stamp benefits is not correct and is reversed.

1. The Agency is directed to withdraw its Notice of Intent dated May 8, 2003 with respect to Appellant's Food Stamp benefits.
2. The Agency is directed to continue to provide Food Stamp benefits to the Appellant.
3. The Agency is directed to restore Appellant's Food Stamp benefits retroactive to the date of the Agency action.

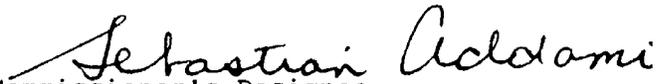
Should the Agency in the future determine to implement its previous action, it is directed to procure and review the Appellant's case record with respect to a determination relating to the Appellant's Food Stamp benefits, and to issue a new Notice of Intent and to produce the required case record(s) at any subsequent fair hearing.

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

DATED: Albany, New York
September 4, 2003

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By


Commissioner's Designee