

and a hearing was set for May 7, 1992. Although duly notified of the hearing, the Department did not appear at the hearing nor provide the hearing officer and the petitioner with a Commissioner's Review notice. The hearing officer takes judicial notice of the fact that this is the third time the Department has failed to attend a hearing involving the termination of day care benefits.

5. The petitioner has not continued to receive day care benefits pending appeal. At the hearing, he obviously did not know with any specificity what the reasons for the denial of his benefits were.

ORDER

The Department's decision is reversed.

REASONS

Under the fair hearing rules of the Human Services Board;

. . . The burden of proving facts alleged as the basis for agency decision to terminate or reduce an assistance grant, or to revoke or fail to renew a license, shall be on the agency.

Rule 12.

Since no one appeared for the Department in this matter, no proof was put forth by the Department as to the basis for its termination action. In fact, it could not even be ascertained from the notice or from the petitioner himself what the alleged basis for the termination might be.

As the Department has failed to meet (or even try to meet)

its burden, the matter must be decided against the Department.

The latter problem with the inadequacy of the notice also raises serious due process questions since there is nothing informing the petitioner of the reasons for the proposed action, the rule or regulation relied on to take that action, and how he could continue his benefits pending appeal. See Goldberg v. Kelly, 397 U.S. 254 (1970). Fairness requires that any future notice sent to the petitioner contain these fundamentals of due process.

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