

**TAYLOR V. DEPARTMENT OF HUMAN SERVS., 1982-NMCA-107, 98 N.M. 314, 648  
P.2d 353 (Ct. App. 1982)**

**LUCILLE TAYLOR, Plaintiff-Appellant,  
vs.  
DEPARTMENT OF HUMAN SERVICES STATE OF NEW MEXICO,  
Defendant-Appellee**

No. 5539

COURT OF APPEALS OF NEW MEXICO

1982-NMCA-107, 98 N.M. 314, 648 P.2d 353

July 01, 1982

ADMINISTRATIVE APPEAL

**COUNSEL**

CHRISTOPHER D. COPPIN, Legal Aid Society of Albuquerque, Albuquerque, New Mexico, Attorney for Plaintiff-Appellant.

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**JUDGES**

LOPEZ, J., wrote the opinion. WE CONCUR: William R. Hendley, J., (Concurring in result.), Lewis R. Sutin, J.

**AUTHOR: LOPEZ**

**OPINION**

{\*315} LOPEZ, Judge.

{1} Taylor appeals the fair hearing decision of the Human Services Department (Department) reducing her food stamp allotment, § 27-3-4, N.M.S.A. 1978. We reverse and remand. The decisive issue in this appeal is whether the Department's failure to give notice to Taylor of its reasons for reducing her food stamp benefits is fatal to its decision in this case.

{2} Taylor was certified on February 9, 1981, to receive \$70.00 per month in food stamps from March, 1981, to February, 1982. We gather from the record, which is not

clear, that Taylor's allotment was automatically reduced to \$64.00 per month in August, 1981, due to a mass change in social security benefits. She received a notice from the Department dated September ... .., 1981, certifying her for \$30.00 in food stamps per month for the months of October, 1981, through September, 1982.

{3} Taylor filed a request for a fair hearing on the action of the Department to reduce her food stamps to \$30.00 a month. A hearing was held on November 4, 1981, at which Taylor argued that the Department should have given her notice of why her food stamps were reduced to \$30.00 per month.

{4} It is undisputed that the Department's Form 427, "Notice of Adverse Action," was not sent to Taylor. Human Services Department ISD Manual § 441.33 (1982) provides that a Notice of Adverse Action is not required for mass changes. Therefore, the Department could, in terms of its own regulations, reduce Taylor's benefits from \$70.00 to \$64.00 without sending a Notice of Adverse Action.

{5} However, the reduction of benefits from \$64.00 per month to \$30.00 per month did require that Taylor be sent a Notice of Adverse Action. Notice of Adverse Action is required by 7 CFR § 273.13(a) before reducing or terminating benefits within a certification period. The Human Services Department ISD Manual § 441.24 (1982) requires a Notice of Adverse Action when benefits are reduced or terminated and the certification period is shortened. The Department must follow its own regulations.

**Hillman v. Health and Social Services Dept.**, 92 N.M. 480, 590 P.2d 179 (Ct. App.1979); **Martinez v. Health and Social Services Dept.**, 90 N.M. 345, 563 P.2d 608 (Ct. App.1977).

{6} In **Hillman**, the New Mexico Court of Appeals reversed the decision of the Department because state regulations were not followed, and the court ordered retroactive benefits reinstated until a fair hearing decision was made in accordance with state regulations. **Hillman** is controlling in the case at bar. We hold that the action of the Department in not giving notice to Taylor of the reason why her benefits were reduced, invalidates the decision of the Department affirming Taylor's recertification at \$30.00 per month. It was impossible for Taylor effectively to challenge at her fair hearing the reduction of her food stamps without notice of the reason for the reduction.

{7} The cause is reversed and remanded with instructions to reinstate Taylor with food stamp benefits of \$64.00 per month minus any monthly allotments given, until such time as a fair hearing has been held according to law.

{8} Appellate costs shall be paid by the Department.

{9} IT IS SO ORDERED.

WE CONCUR: Hendley, J. (concur in result), and Sutin, J.