

In the Matter of the Appeal of :
J C : DECISION
: AFTER
from a determination by the New York City Department : FAIR
of Social Services (hereinafter called the agency) : HEARING

A fair hearing was held at 330 West 34th Street, New York, New York, on July 26, 1984, before Peter Zaret, Administrative Law Judge, at which the appellant's representative and a representative of the agency appeared. The appeal is from a determination by the agency relating to the discontinuance of a Medical Assistance authorization. An opportunity to be heard having been accorded all interested parties and the evidence having been taken and due deliberation having been had, it is hereby found:

1. Prior to November 1, 1983, the appellant, who is twenty-nine years of age, had been in receipt of a Medical Assistance authorization.
 2. On January 20, 1984, the appellant requested a hearing because he did not receive Medical Assistance authorization identification cards for the months of November, 1983, to date.
 3. The appellant informed the agency that he did not receive his Medical Assistance authorization identification cards for the months of November, 1983, to date
 4. The appellant never received any notice of any agency determination to discontinue his Medical Assistance.
 5. Although duly notified of the time and place of the hearing, the agency had no records available concerning the action taken and presented no evidence that would support a determination to discontinue appellant's Medical Assistance
- Section 358.9(d) of the Regulations of the State Department of Social Services provides that when a Social Services official proposes to discontinue,

suspend or reduce a grant of assistance, he or his designee who has the appropriate authority, shall within 72 hours after receipt of notification from the department of a request for a fair hearing, send to the appellant, his representative and to the department copies of all documents to be submitted into evidence at the hearing in support of the proposed action.

Section 358.21 of the Regulations provides that when a fair hearing indicates that the social services official has misapplied provisions of law board rule, department regulation, or such official's own State-approved policy, the commissioner's letter transmitting such decision to such official may contain a direction to such official to review other cases with similar facts for conformity with the principles and findings in the decision.

Pursuant to Section 358.8 of the Regulations, timely and adequate advance written notice of the reasons for any intended action to reduce or discontinue assistance must be sent to a recipient before such action can be taken.

Section 360.16 of the Regulations provides that authorization for Medical Assistance shall be given to those persons for whom application has been made for Medical Assistance and who have been found eligible for Medical Assistance.

Administrative Directive 83 ADM-72, dated December 30, 1983, sets forth procedure for processing Medical Assistance payments and/or reimbursements as a result of Court decision or fair hearing.

At the hearing, the appellant's representative argued that the agency failed to comply with Section 358.9(d) of the Department's Regulations. The appellant's representative asserted that the agency failed to provide either the appellant or the appellant's representative with copies of the documents that the agency intended to submit at the hearing in support of the proposed action to discontinue the appellant's assistance. At the hearing, the agency had no records available and presented no documents nor any other evidence that would support a determination to discontinue the appellant's Medical Assistance authorization. Accordingly, the agency's determination is not proper.

It is noted that the agency's failure to present any evidence in support of an action to discontinue the appellant's assistance may explain why it did not send to the appellant or his representative, copies of any documents pursuant to the above-cited Regulation. However, the agency's failure to present any evidence at the hearing does not excuse or obviate the agency's responsibility to comply with Department Regulations. The agency is reminded that it must always demonstrate good faith efforts to comply with the above-cited Regulations and it is directed to comply with said requirements in the future pursuant to Section 358.21 of the Regulations.

In this case, the credible evidence establishes that the appellant was eligible for Medical Assistance from November 1, 1983, to date. It further establishes that the appellant did not receive Medicaid identification cards for said period other than the shorter period from mid-February, 1984, through the end of April, 1984. As a result, the appellant incurred medical expenses from November 1, 1983, through on or about February 15, 1984, and from May 1, 1984, to date, which might have been otherwise covered by a Medical Assistance authorization.

The agency is directed to restore the appellant's Medical Assistance retroactively to November 1, 1983, in accordance with the verified degree of need.

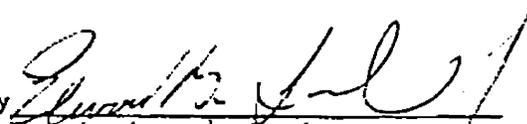
The agency is further directed to provide the appellant with an opportunity to submit verified medical expenses incurred during the disputed period within a reasonable period of time, to evaluate these expenses and to provide retroactive payment or reimbursement pursuant to Administrative Directive 83 ADM-72, if appropriate.

DECISION: The determination of the agency is not correct and is reversed.
The agency must immediately comply with the directives set forth above as
required by Section 358.22 of the Department's Regulations.

DATED: Albany, New York

CESAR A. PERALES,
COMMISSIONER

SEP 5 1984

by 
Commissioner's Designee