

NEW YORK STATE

DEPARTMENT OF SOCIAL SERVICES

EUGENE DOYLE
102-12 164TH AVENUE
HAMILTON BEACH, NEW YORK 11414

DECISION
DATE 11/06/86

HEARING
DATE

FAIR HEARING NO. 0929264N

CASE NUMBER	CATEGORY	AGENCY	REPRESENTATIVE
	MA	NEW YORK CITY	P.O.O.R.

ENCLOSED IS THE DECISION RENDERED IN THE FAIR HEARING FOR:

L S

, NEW YORK

IF THE DECISION IS IN FAVOR OF THE APPELLANT, THE LOCAL SOCIAL SERVICE DEPARTMENT IS REQUIRED TO COMPLY WITH THE DECISION FORTHWITH, AND IS REQUIRED TO NOTIFY THE APPELLANT OF ITS COMPLIANCE. THE APPELLANT HAS BEEN ADVISED TO NOTIFY THE STATE DEPARTMENT OF SOCIAL SERVICES IF THE AGENCY FAILS TO COMPLY WITH THE DECISION WITHIN 10 DAYS AFTER HIS RECEIPT OF THE DECISION.

COPY SENT TO:

L S

NEW YORK CITY

EUGENE DOYLE

In the Matter of the Appeal of

:

L S

DECISION
: WITHOUT
EVIDENTIARY
HEARING

from a determination by the New York City Department
of Social Services (hereinafter called the agency)

:

By letter dated July 31, 1986, the appellant's representative, Eugene Doyle, requested that a decision be issued without an evidentiary hearing. On September 22, 1986, the agency submitted a response to such request and the appellant's representative subsequently submitted a rebuttal dated October 9, 1986 and received on October 24, 1986.

FACT FINDINGS

(1) The appellant, age 55 is a recipient of Medical Assistance benefits.

(2) By notice dated July 16, 1986, the agency proposed to discontinue the appellant's Medical Assistance authorization effective July 31, 1986 for the reason that the appellant failed to complete recertification for eligibility for one or both of the following:

(A) Appellant failed to appear for a face-to-face interview to determine continued eligibility.

(B) Appellant failed to bring in all documents and information requested at the face-to-face recertification interview.

(3) In a letter dated September 13, 1986, the agency indicated that the appellant has been receiving Medical Assistance on an aid-to-continue basis, that there has been no lapse in coverage and that the appellant will be sent a recertification appointment in March 1987.

ISSUE

Was the agency's notice of intent to discontinue the appellant's Medical Assistance authorization defective as a matter of law in that it failed to adhere to the mandated notice requirements set forth in Section 358.8 of the Regulations of

the State Department of Social Services and Administrative Directive 84 ADM-41?

APPLICABLE LAW

Section 358.19(a) of the Regulations of the State Department of Social Services provides that a request for a decision without a hearing shall be granted when it is determined by the Commissioner or an appropriate member of his staff that there are no unresolved material issues of fact involved in the case and the only questions presented are questions of law.

Section 358.19(f) further provides that if the Commissioner determines that a local agency action or failure to act is contrary to law, department regulation or the local district's own State approved policy, the Commissioner may issue a decision requiring the local agency to perform specific actions for the benefit of the appellant. If the action or failure to act is based on any local policy which is found to be contrary to law, as noted above, the directive may contain instructions as to the application of such policy to any effected class of persons.

Pursuant to Section 358.8(a) in cases where the agency proposes to discontinue a client's Medical Assistance authorization, timely and adequate notice detailing the reason for the proposed action shall be sent to the recipient. Additionally, Administrative Directive 84 ADM-41 provided the local agency with client notices which were mandated for use in informing Medical Assistance recipients of the indicated eligibility decisions. Specifically in any action to discontinue Medical Assistance, 84 ADM-41 requires the agency to include in its notice both the reason for the discontinuance and the law or regulation on which such discontinuance is based.

DISCUSSION

The evidence submitted in this case establishes that the local agency sent a notice of intent to discontinue the appellant's Medical Assistance effective July 31, 1985 for failure to complete recertification. The notice used by the agency contained

two pre-printed reasons for the discontinuance: failure to appear for face-to-face recertification, and failure to submit all documents and information. However, the notice failed to give any indication as to upon which particular reason the agency was relying in support of its action to discontinue the appellant's Medical Assistance. Furthermore, the notice failed to set forth the specific law or regulation which would allow the agency to take such action.

DECISION

The agency's notice dated July 16, 1986 was defective as a matter of law, since it failed to specify either the reason or legal authority upon which the agency's action to discontinue Medical Assistance was based. The determination of the agency is not correct and is reversed.

Although the agency has indicated that it has taken no action pursuant to this notice, and that there has been no interruption of appellant's Medical Assistance, the agency is directed to not take any action on this notice in the future.

Furthermore, the agency is directed to cease using this notice in all similar cases and to replace the notice with a new notice which conforms to the provisions of 84 ADM-41.

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

NOV - 6 1986

CESAR A. PERALES,
COMMISSIONER

BY *Cesar Perales*
Commissioner's Designee