

In the Matter of the Appeal of :
H P :
from a determination by the NEW YORK CITY Department :
of Social Services (hereinafter called the agency) :
DECISION
WITHOUT
EVIDENTIARY
HEARING

By letter dated January 7, 1987, the appellant's representative, Eugene Doyle, requested that a decision be issued without an evidentiary hearing. On January 29, 1987, the agency submitted a response to such request and the appellant's representative subsequently submitted a rebuttal received on February 10, 1987

FACT FINDINGS

1. The appellant, age forty-eight, is a recipient of Medical Assistance benefits.
2. By notice dated December 18, 1986, the agency proposed to discontinue the appellant's Medical Assistance authorization effective December 31, 1986, for the reason that the appellant failed to complete recertification for eligibility by failing to do 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 submit all the documents and information requested at the face-to-face recertification interview.
3. On or about January 29, 1987, the agency reviewed the appellant's request for a decision without evidentiary hearing. As a result of this review the agency determined that based upon its incomplete documentation it would withdraw the notice of discontinuance dated December 18, 1986, and provide appellant with continued Medical Assistance coverage retroactive to December 31, 1986, the date of discontinuance, until appellant's record was reviewed and proper notification sent.

4. A letter dated January 29, 1987, advising appellant of the agency withdrawal and restoration of appellant's benefits was forwarded by the agency to the Office of Administrative Hearings.

ISSUE

Was the agency's Notice of Intent to discontinue the appellant's Medical Assistance authorization for failure to meet recertification requirements defective as a matter of law?

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 affected class of persons.

Pursuant to Section 358.8(a) in cases of any proposed action to discontinue 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 provides the local agency with mandated client notices for use in informing Medical Assistance recipients of intended changes in coverage. Specifically, in any notice to discontinue Medical Assistance authorization, 84-ADM-41 requires the agency to include both the reason for the discontinuance and the law or regulation upon 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 for failure to complete recertification, effective December 31, 1986. The notice used by the agency contained two pre-printed reasons for the discontinuance: failure to appear for a 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

In a recent decision, Matter of Lorraine S., (November 6, 1986) involving the same agency notice and agency action, it was held that this notice was defective as a matter of law because it failed to specify the reason upon which the agency action was based. In that case which was in a similar posture as the instant matter, the agency was 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.

DECISION AND ORDER

The agency's notice dated December 18, 1986, was defective as a matter of law, since it failed to specify the reason upon which the agency's action to discontinue Medical Assistance was based. In addition the notice was issued contrary to a specific directive of the Commissioner as set forth in written decision dated November 6, 1986. The determination of the agency is not correct and is reversed.

1. Although the agency has stipulated in accordance with the provisions of Annunziata v. Blum, to provide Medical Assistance coverage from the date of discontinuance until appellant's record has been reviewed and proper notification is sent, the agency is directed to not take any action on the notice of December 18, 1986, in the future.

2. Furthermore, the agency again is directed to cease using this form notice and to replace the notice with a new notice which conforms to the provisions of

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(4)

84-ADM-41.

3. The agency is further directed to submit a proper notice for approval by the Division of Medical Assistance within thirty days of this decision and to issue no further notices of discontinuance of Medical Assistance authorization based upon failure to comply with recertification requirements until a new notice form is approved by the Division of Medical Assistance.

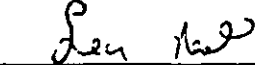
As required by Department Regulations at 18 NYCRR 358.22, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York

MAR 9 1987

CESAR A. PERALES,
COMMISSIONER

BY



Commissioner's Designee