
In the Matter of the Appeal of :
D D : **DECISION**
: **AFTER**
: **FAIR**
: **HEARING**
from a determination by the Suffolk County
Department of Social Services :

JURISDICTION

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on May 13, 2003, in Suffolk County, before Jonathan M. Kastoff, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

D D (By Telephone), Appellant
John Castellano, Representative
C D (By Telephone), Witness

For the Social Services Agency

Eleanor Fibel, Fair Hearing Representative

ISSUE

Was the Agency's failure to make a determination of the Appellant's eligibility for Medical Assistance benefits correct?

FACT FINDING

An opportunity to be heard having been afforded to all interested parties and evidence having been taken and due deliberation having been had, it is hereby found that:

1. The Appellant applied for Medical Assistance benefits on March 6, 2003.
2. In March, 2003 the Agency scheduled a certification interview for Appellant for June 3, 2003 at the Agency.
3. The Agency has taken no other action on the Appellant's application and has provided no written notification of its determination either to accept or deny such application.

4. On April 14, 2003, the Appellant requested this fair hearing.

APPLICABLE LAW

Section 360-2.4 of 18 NYCRR provides that eligibility for a Medical Assistance Authorization must be determined within 45 days of application. However where Medical Assistance eligibility is dependent on disability status the agency must determine eligibility within ninety days of application. Where an applicant for Public Assistance is determined ineligible for such benefits, the agency must make a separate determination of Medical Assistance eligibility within thirty days of the date the application for Public Assistance was denied. If timely action was not taken on the Public Assistance application, the agency must determine eligibility within thirty days of the date when action should have been taken. The district must determine eligibility within thirty days of the date of a Medical Assistance application if an applicant is a pregnant woman or an infant younger than one year of age whose household income does not exceed 185 percent of the applicable Federal poverty level; the applicant is a child at least one year of age but younger than six years of age whose household income does not exceed 133 percent of the applicable Federal poverty level; or the applicant is a child born after September 30, 1983 who is at least six years of age but younger than 19 years of age whose income does not exceed 100 percent of the applicable Federal poverty level.

When a fair hearing decision indicates that a social services agency has misapplied provisions of law, regulations, or such agency's own State-approved policy, the commissioner's letter transmitting such decision to such agency may contain a direction to the agency to review other cases with similar facts for conformity with the principles and findings in the decision. 18 NYCRR 358-6.3.

DISCUSSION

There are no issues of fact to be decided. The Agency contended that due to worker attrition and an increase in the number of applications, it has a backlog of pending applications and that it provided Appellant with the first available date for a certification interview. Department Regulations require an Agency determination of eligibility within 45 days of application. There is no provision in the Regulations to extend that period due to worker attrition or an increase in applications. The Agency failed to timely act on Appellant's application for Medical Assistance. Therefore, the Agency's failure to determine the Appellant's eligibility for Medical Assistance benefits cannot be sustained.

It is noted that Appellant has also applied for and been assessed for services under the Long Term Home Health Care Plan and that no determination on that application can be made until the Medical Assistance application is completed.

Appellant's representative contended that pursuant to 18 NYCRR 350.3, the Agency has an obligation to schedule an interview within seven working days. However, the pertinent Regulations require a determination within 45 days with regard to Medical Assistance. The certification interview should be scheduled to allow the Agency sufficient time to determine eligibility within the 45 day time frame.

Appellant's representative contended that the Commissioner conclusively resolve the issue for this hearing, determine Appellant eligible to receive Medical Assistance, and not remand the matter back to the Agency. However, the fair hearing process is set up only to determine specified issues of fact and law. It is not set up to bypass the Agency's eligibility process, regardless of whether the Agency is failing to promptly determine eligibility. Such contention is without merit.

Appellant's representative also contended that the Commissioner should direct the Agency to promptly determine Medical Assistance and Long Term Home Health Care eligibility in all similar cases. The Agency representative acknowledged that the backlog still exists and applicants for Medical Assistance still have to wait more than 45 days for their certification interview. 18 NYCRR 358-6.3 provides for the issuance of a direction in all similar cases, when a fair hearing decision indicates that a local Agency has misapplied provisions of law or appropriate Regulations.

DECISION AND ORDER

The Agency's failure to determine the Appellant's eligibility for Medical Assistance benefits is not correct and is reversed.

1. The Agency is directed to immediately process the Appellant's application for Medical Assistance benefits on an expeditious basis.
2. The Agency is directed to advise the Appellant as to any additional documentation required to determine eligibility.
3. The Agency is directed to notify the Appellant in writing of its determination as to eligibility.
4. The Agency is directed to restore all lost benefits resulting from the Agency's failure to process the Appellant's application in a timely manner.
5. The Agency is directed to schedule certification interviews in similar cases within sufficient time to determine eligibility for Medical Assistance within the time parameters of 18 NYCRR 360-2.4. This direction is made for all similar cases as required by 18 NYCRR 358-6.3.

Should the Agency need additional information from the Appellant in order to comply with the above directives, it is directed to notify the Appellant promptly in writing as to what documentation is needed. If such information is required, the Appellant must provide it to the Agency promptly to facilitate such compliance.


FH# 3893628J

As required by 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York
June 11, 2003

NEW YORK STATE DEPARTMENT
OF HEALTH

By


Commissioner's Designee