
In the Matter of the Appeal of
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from a determination by the Suffolk County
Department of Social Services

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**DECISION
AFTER
FAIR
HEARING**

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 April 18, 2007, in Suffolk County, before Jonathan Kastoff, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Jeanette Gracie,
Nicole Zuvich, Appellant's Representatives

For the Social Services Agency

Amie Salinero, Fair Hearing Representative

ISSUE

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

FINDINGS OF FACT

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 on October 17, 2006.
2. The Agency has failed to act on the Appellant's application and has provided no written notification of its determination either to accept or deny such application.

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3. On March 26, 2007, 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

The Appellant, seventy five years old, has been diagnosed with end stage renal failure, is a chronic dialysis recipient who suffers from diabetes and high blood pressure and vascular and visual sequelae. The Appellant applied for Medical Assistance to increase his treatment options, including a kidney transplant. At the hearing, the agency agreed to expeditiously process the Appellant's application for Medical Assistance, expeditiously determine the Appellant's eligibility to receive Medical Assistance and notify the Appellant in writing of the Agency's determination. The Appellant's representative rejected the Agency's agreements as a complete resolution of this matter.

Appellant's representative contended that pursuant to 18 NYCRR 350.3, the Agency has an obligation to determine eligibility within 45 days with regard to Medical Assistance. The additional 45 days is not relevant because the Appellant's disability status is not in dispute.

The appellant applied for Medical Assistance on October 17, 2006. A certification interview was held on November 9, 2006. The Appellant was requested to submit additional documentation by November 22, 2006. Documentation was submitted on November 21, 2006, with a last document faxed to the Agency on December 1, 2006. On January 8, 2007 further

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documentation was requested and that documentation was submitted on January 11, 2007. No determination was made by the Agency. The Appellant then requested this fair hearing on March 26, 2007. On March 29, 2007 the Agency determined to request income tax returns from the Appellant for 2005 and 2006. The Agency has an obligation to complete the eligibility process within the time limitations of the Regulations. Clearly, if documentation submitted brings up additional questions by the Agency regarding factors of eligibility, the Agency has an obligation to obtain documentation to resolve those questionable factors of eligibility. An example would be if bank statements submitted indicated large deposits of unknown origin, the Agency would have an obligation to determine the source of the deposit in order to verify income and/or resources. In this case all documentation requested had been submitted by the Appellant by January 11, 2007 almost ninety days after the date of application. The agency did not determine the Appellant's eligibility to receive Medical Assistance and did not request any further documentation for more than two additional months. The Agency contended that it has authorized additional Medical Assistance workers who will be hired shortly so that applications will be timely processed. 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 lack of an appropriate number of workers. 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.

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 eligibility in all similar cases. The Appellant cited other cases where the statutory time limit for determining eligibility had been exceeded. The Agency representative acknowledged that there are probably other cases where the statutory limits have been exceeded and applicants for Medical Assistance still have to wait more than 45 or 90 days for a determination of eligibility. 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 was 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

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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.

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

DATED: Albany, New York
April 24, 2007

NEW YORK STATE
DEPARTMENT OF HEALTH

By

[[Signature]]

Commissioner's Designee