

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: October 9, 2003
CASE NO: PXXXXXXBR
CENTER : Erie
FH No. : 3995222H

In the Matter of the Appeal of :
WM : DECISION
from a determination by the Erie County : AFTER
Department of Social Services : FAIR
: HEARING
:

JURIDICTION

Pursuant to Section 22 of the New York State Social Services Law (hereinafter referred to as "the Social Services Law") and Part 358 of Title 18 of the New York Code of Rules and Regulations (18 NYCRR, hereinafter referred to as "the Regulations"), a Fair Hearing was held on January 26, 2004, in Buffalo, New York, before Administrative Law Judge Snitzer. The following persons appeared:

For the Appellant

WM, the Appellant; BM, the Appellant's brother; MF, the Appellant's sister; Marilyn Bradley, the Appellant's representative (NLS)

For the Erie County Department of Social Services (herein referred to as "the Agency")

Ms. Flavin, Head Social Welfare Examiner

ISSUE

Was a determination to discontinue the Appellant's Temporary Assistance and Medical Assistance, based on her failure to recertify, correct?

FACT FINDINGS

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 had been in receipt of Temporary Assistance and, Medical Assistance ("Medicaid") for two children.
 - a. The Appellant's own separate needs are met through her receipt of Supplemental Security Income ("SSI"), based on her disability status.
2. On September 9, 2003, the Agency determined to discontinue the Temporary Assistance and Medicaid coverage for the Appellant's two children, based on her failure to recertify.
3. On October 9, 2003, a request for a Fair Hearing was made by or on behalf of the Appellant, seeking review of the Agency's determination.

APPLICABLE LAW

Section 351.20 of the Regulations requires that continuing eligibility for Temporary Assistance must be established through periodic recertification. Section 360-2.2 of the Regulations pertains to periodic recertification for Medicaid, and provides that local districts must redetermine eligibility for every recipient at least every twelve months, or whenever there is a change in the recipient's circumstances likely to affect eligibility. However, Section 351.26 of the Regulations also provides that an applicant or recipient may be excused from eligibility requirements if good cause for failure to comply is shown.

From time-to-time, recipients of Temporary Assistance are required to respond to eligibility questionnaires and/or to personally appear at face-to-face interviews, to present appropriate documentation to demonstrate their continuing eligibility for such assistance.

Section 351.22 of the Regulations provides that if a recipient fails to appear at a scheduled face-to-face interview without good cause, the Agency must send a notice of proposed discontinuance to the recipient informing him or her that unless he or she responds to the notice within ten days, his or her case will be closed. Any request for assistance made after the closure of the case will be considered a new application for assistance. If, however, the recipient to whom such a notice is sent responds before the effective date, another face-to-face interview must be scheduled. If the recipient is found to be eligible as a result of such interview, the notice of discontinuance must be cancelled and the recipient's Temporary Assistance must be continued.

Subpart 360-2 of the Regulations describes the Application Process for the Medical Assistance program. Section 360-2.2(f) requires that a personal interview shall be conducted with a person initially applying for Medicaid, or that person's designated representative. **However, effective April 1, 2003, a personal interview will NOT be required for Medicaid recertification. Rather, Medicaid "renewal" will be by a simplified statewide form that will include requests only for information that is reasonably necessary to determine continued eligibility, or subject to change since the date of the recipient's initial application or previous recertification.**

DISCUSSION

The Agency representative sought to show that the Appellant was scheduled to appear for a recertification interview on September 5th; however, she failed to show that any notification regarding the recertification had actually been sent to the Appellant. While she later offered a print-out of system-based information, consisting of a "batch notice" entry screen, that was insufficient to prove that notification was actually sent to the Appellant.

The Appellant testified that she did not report for any recertification interview on September 5th because she had not received any notification that she was required to do so. She credibly testified that she did not actually receive a recertification packet mailed to her through the Client Notification System until October 7th, when a neighbor brought it over to her apartment. In support of her testimony, she submitted an October 7th statement from a ND, indicating that she had found items of the Appellant's mail in her mailbox when she returned home from out-of-town, expressing her

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belief that it was mis-delivered by the letter carrier.

The record is sufficient to establish that the Appellant had good cause for her failure to report for a recertification interview scheduled for September 5th. Accordingly, although the determination to discontinue the Temporary Assistance for the Appellant's household may have been correct when made, that action cannot be affirmed at this time.

Because the Applicable Law eliminated all requirements for a personal interview for Medicaid recertification, any determination to discontinue Medicaid based on the Appellant's failure to report for a personal interview cannot be affirmed.

It was noted that the Appellant subsequently re-applied, and the case is currently open and active.

DECISION AND ORDER

The September 9, 2003 determination to discontinue the Medical Assistance authorized for the Appellant's children, based on failure to report for a recertification interview, is not correct, and is reversed.

The determination to discontinue to discontinue the Temporary Assistance provided for the Appellant's children, based on the Appellant's failure to report for a recertification interview, was correct when made.

However, because the Appellant had good cause for her failure to report, the action taken by the Agency based on that determination cannot be affirmed.

- * The Agency is directed to take no further action on its September 9, 2003 notice, restore all assistance lost by reason of action already taken, and continue to provide assistance in accordance with the household's verified degree of need.

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

DATED: Albany, New York
February 10, 2004

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee