

STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST December 11, 2002
CASE # Mxxxxxx
CENTER # Nassau
FH # 3827079K

In the Matter of the Appeal of :
ST :

DECISION
: **AFTER**
FAIR
HEARING

from a determination by the Nassau 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 March 3, 2003, in Nassau County, before Jonathan M. Kastoff, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

ST, Appellant
Herb Harris, Representative

For the Social Services Agency

Israel Karol, Fair Hearing Representative

ISSUE

Was the Agency's determination to deny the Appellant's application for Medical Assistance benefits for failure to provide documentation necessary to determine the Appellant's eligibility for such 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 for a household of three persons on June 27, 2002.

2. The Appellant was advised by the Agency on September 20, 2002 to submit the following documentation to the Agency by September 30, 2002:

Verification of application for NYS Unemployment Insurance Benefits (UIB).

3. Appellant failed to submit the requested verification.

4. On October 12, 2002, the Agency sent a Denial Notice setting forth

its determination to deny the Appellant's application for Medical Assistance benefits because the Appellant had failed to return to the Agency with certain documentation necessary to determine Appellant's eligibility for Medical Assistance benefits.

5. On December 11, 2002, the Appellant requested this fair hearing.

APPLICABLE LAW

Regulations at 18 NYCRR 360-2.3(c)(1) provide that, in determining whether an applicant for or recipient of Medical Assistance is financially eligible therefor, the social services district must review all sources of income and resources available or potentially available to the applicant/recipient. To be eligible for Medical Assistance, the applicant must pursue any potential income and resources that may be available.

Section 360-2.2(f) of the Regulations requires that a personal interview be conducted with all applicants for Medical Assistance. Such personal interview shall be conducted before a decision on Medical Assistance eligibility is authorized or reauthorized. The State may grant a waiver of the personal interview requirement for recertification of aged, certified blind or certified disabled recipients when the Agency demonstrates that alternative procedures have been established to verify that recipients continue to meet all eligibility requirements for Medical Assistance. Section 360-2.3 of the Regulations provides that the Medical Assistance applicant and recipient has a continuing obligation to provide accurate and complete information on income, resources and other factors which affect eligibility. An applicant or recipient is the primary source of eligibility information. However, the Agency must make collateral investigation when the recipient is unable to provide verification. The applicant's or recipient's failure or refusal to cooperate in providing necessary information is a ground for denying an application for a Medical Assistance Authorization or for discontinuing such benefits.

Regulations at 18 NYCRR 360-7.5(a)(1) provide that payment for services or care under the Medical Assistance Program may be made to a recipient or the recipient's representative at the Medical Assistance rate or fee in effect at the time such care or services were provided when an erroneous determination by the Agency of ineligibility is reversed. Such erroneous decision must have caused the recipient or the recipient's representative to pay for medical services which should have been paid for under the Medical Assistance Program. Note: the policy contained in the regulation limiting corrective payment to the Medical Assistance rate or fee at the time such care or services were provided has been enjoined by Greenstein et al. v. Dowling et al. (S.D.N.Y.).

Regulations at 18 NYCRR 360-7.5(a)(5) provide that payment for services or care under the Medical Assistance Program may be made to a recipient or the recipient's representative at the Medical Assistance rate or fee in effect at the time such services or care were provided for paid medical bills for medical expenses incurred during the period beginning three months prior to the month of application for Medical Assistance and ending with the recipient's receipt of a Medical Assistance identification card, provided that the recipient was eligible in the month in which the medical care and services were received and that the medical care and services were furnished by a provider enrolled in the Medical Assistance Program. The provisions of this regulation which limit reimbursement for paid medical bills only to

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providers enrolled in the Medical Assistance Program when such bills were incurred during the period from three months prior to the month the recipient applied for Medical Assistance to the date of application has been declared invalid in the courts in Seittelman, et al v. Sabol, et al. (N.Y., 1998) and Carroll et al. v. DeBuono, et al. (N.D.N.Y., 1998). Further, the Court in Seittelman held that limiting reimbursement to the Medical Assistance fee or rate was permissible for such period.

Section 360-2.4(c) of the Regulations provides that an initial authorization for Medical Assistance will be made effective back to the first day of the first month for which eligibility is established. A retroactive authorization may be issued for medical expenses incurred during the three month period preceding the month of application for Medical Assistance, if the applicant was eligible for Medical Assistance in the month such care or services were received.

DISCUSSION

Appellant testified that she did not submit the requested documentation because she failed to receive the Agency's request in the mail. Appellant further testified that she thought she was applying for Child Health Plus only, that she did not realize that a Medical Assistance determination had to be made first, and that her only contacts were with a Child Health First worker in F and not with the Agency's Medical Assistance unit in M. Appellant had filed a "Growing Up Healthy" application through a facilitator in F and had circled Child Health Plus A at the top of the application. Although the Agency's appointment notice indicated that it was completed by the worker on September 20, 2002, the appointment notice did not indicate the address to which it was mailed, how it was mailed, or a mailing date. Appellant's testimony was consistent as to detail, plausible and persuasive. Appellant presented sufficient evidence to establish good cause for Appellant's failure to submit the requested verification. Therefore, the Agency's determination to deny Appellant's application for Medical Assistance cannot be sustained at this time.

It is noted that at the hearing Appellant stated that she commenced employment on September 29, 2002 and that she so notified her facilitator. Appellant also entered a copy of her pay history into the record, which indicated average gross weekly earnings of approximately \$150.00 from September 29, 2002 through February 16, 2003.

DECISION AND ORDER

The Agency's determination to deny the Appellant's application for Medical Assistance benefits is not correct and is reversed.

1. The Agency is directed to continue to process the Appellant's application, to afford the applicant the opportunity to submit any other documents necessary to establish eligibility, and then to determine Appellant's eligibility to receive Medical Assistance.

2. The Agency is directed to notify the Appellant in writing of its determination.

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

DATED: Albany, New York
March 17, 2003

NEW YORK STATE DEPARTMENT
OF HEALTH

By

Commissioner's Designee