

STATE OF NEW YORK  
DEPARTMENT OF SOCIAL SERVICES

REQUEST February 1, 1994  
CASE#  
CENTER# Erie  
FH# 2081007M

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In the Matter of the Appeal of :

M C

DECISION  
: AFTER  
FAIR  
HEARING

from a determination by the Erie County  
Department of Social Services :

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JURISDICTION

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on March 15, 1994, in Erie County, before Susan Dowd, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

M C , Appellant; Theresa Simmons, Neighborhood Legal Services.

For the Social Services Agency

Ms. Nolan, Fair Hearing Representative

ISSUE

Was the Agency's determination to deny the Appellant's application for Public Assistance, Medical Assistance and Food Stamp 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, age 34, applied for Public Assistance, Medical Assistance and Food Stamp benefits for a household of one on December 6, 1993.

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2. The Appellant was advised by the Agency on December 13, 1993 to verify his identity, marital status, social security card, disability, shelter expenses, application for SSI and source of past maintenance.

3. The Agency form used to advise the Appellant that he must submit these documents fails to state the date on which these documents must be returned to the Agency.

4. The caseworker originally assigned to Appellant's case left the Agency before the Appellant's application was completed.

5. Another worker was assigned to Appellant's case by the Agency on or about January 13, 1994.

6. This worker made no written record of her verbal conversations with Appellant and, although the Appellant's application was incomplete, she did not provide the Appellant with written notice of missing verification, nor did she schedule a follow up interview for Appellant.

7. On January 19, 1994, the Agency sent a Denial Notice setting forth its determination to deny the Appellant's application for Public Assistance benefits because the Appellant had failed to return to the Agency with certain documentation necessary to determine Appellant's eligibility for Public Assistance. The notice does not address the Appellant's eligibility for Medical Assistance and Food Stamp benefits.

8. It is undisputed that the notice was mailed to the wrong address and it was returned to the Agency.

9. The notice indicated that the Appellant failed to verify his shelter expenses, his alleged disability status, his marital status and the whereabouts of his spouse, and his application for SSI.

10. On February 1, 1994, the Appellant requested this fair hearing.

#### APPLICABLE LAW

Department Regulations at 18 NYCRR 351.1 and 351.2 require that to demonstrate eligibility, applicants for and recipients of Public Assistance must present appropriate documentation of such factors as identity, residence, family composition, rent payment or cost of shelter, income, savings or other resources and, for aliens, of lawful residence in the United States. Section 351.5 of the Regulations provides that if the applicant or recipient has previously verified necessary information which is not subject to change and the Agency possesses documentation of such verification in its files, the applicant or recipient is not required to resubmit verification of such information. Section 351.6 of the Regulations provides that verification of data is an essential element of the eligibility investigation process. The applicant or recipient is the primary source of the required information. However, when the applicant or

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recipient is unable to provide the required verification, the Agency must assist the applicant or recipient in obtaining the verification or make collateral investigation. 18 NYCRR 351.5 and 351.6. If a third party seeks to impose a charge or fee for providing required information to the applicant or recipient, the Agency must pay such fee or must assist the applicant or recipient in obtaining the information by other means. 18 NYCRR 351.5. The applicant's or recipient's failure or refusal to cooperate in providing necessary information is a ground for denying or discontinuing Public Assistance.

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. 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.

Department 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.

Department 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.

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.

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The Food Stamp application process includes filing and completing the application form, being interviewed and having certain information verified. If the household refuses to cooperate with the Agency in completing this process, the application shall be denied. In order for a determination of refusal to be made, the household must be able to cooperate but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. 7 CFR 273.2(d); 18 NYCRR 387.5, 387.6, 387.7.

For households initially applying for Food Stamp benefits mandatory verification shall be completed regarding: gross nonexempt income, alien status, shelter expenses, medical expenses, residency, household size, Social Security number, identity, date of birth, utility expenses, resources, disability and, if questionable, household composition and citizenship and any other questionable information that has an effect on the household's eligibility and benefit level. 7 CFR 273.2(f); 18 NYCRR 387.8(c).

To be considered questionable, the information on the application must be inconsistent with statements made by the applicant, or inconsistent with other information on the application or previous applications. The local department shall determine if information is questionable based on the household's individual circumstances. 7 CFR 273.2(f); 18 NYCRR 387.8(c).

Written documentary evidence is to be used as the primary source of verification of all items except residency and household size. Residency and household size may be verified either through readily available documentary evidence or through a collateral contact. Residency is to be verified except where verification cannot reasonably be accomplished such as in homeless cases. 7 CFR 273.2(f); 18 NYCRR 387.8(c).

The household has the primary responsibility for providing documentary evidence to support its application and to resolve any questionable information. The local Agency, however, is obligated to offer assistance in situations where the household cannot obtain the documentation in a timely manner. Such assistance may include using a collateral contact or home visit unless otherwise required by Federal or State Regulations. 7 CFR 273.2(f); 18 NYCRR 387.8(c).

If the Agency determines to verify a deductible expense and such verification has not been obtained and obtaining the verification may delay the household's certification, then the Agency may determine eligibility and benefit level without providing a deduction for the claimed but unverified expense, including medical expense. If the household subsequently provides verification, benefits shall be redetermined. 7 CFR 273.2(f).

When a household's eligibility cannot be determined within thirty days of filing of the application, the Agency must determine the cause of the delay. If the delay is the fault of the household, then the application

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must be denied. However, if the household takes the required action within sixty days of the filing of the application, the case must be processed without requiring a new application. Prorated benefits must then be provided to the household from the date the necessary verification was provided. If the delay is the fault of the Agency, then the Agency must notify the household as to what action it must take to complete the application. The cause of the delay in failing to complete verification shall be considered the household's fault only if the Agency has assisted the household in trying to obtain the verification and allowed the household at least ten days to obtain the missing verification. If the household is found to be eligible during the second thirty-day period, prorated benefits must be provided from the date of application. 7 CFR 273.2(h); 18 NYCRR 387.14(a)(4).

If, due to the Agency's fault, the application process is not completed by the end of the second thirty-day period, the Agency must continue to process the application until an eligibility decision is reached. If the household is found eligible and the Agency was at fault for the delay in the initial thirty days, the household must receive benefits retroactive to the day of application. However, if the initial thirty-day delay was the household's fault, the household must receive benefits retroactively to the date final verification of all required eligibility factors was received. If the household was at fault for not completing the application process by the end of the second thirty-day period, the application must be denied and the household will not be entitled to any lost benefits, even if the delay in the initial thirty days was the fault of the Agency. 18 NYCRR 387.14(a)(4).

#### DISCUSSION

The Agency determination must be reversed because the Agency documentation and supportive testimony failed to establish that the Agency properly advised the Appellant of the due dates of the requested information and the notice of denial was not sent to the proper address and failed to advise the Appellant of his Food Stamp and Medical Assistance eligibility. The record showed that the verification request sheet was incomplete, the Agency staff assigned to Appellant's case had changed and some information submitted by Appellant may have been lost. The Agency caseworker admitted that she was assigned a number of new cases including the Appellants and that the cases were numerous and confusing. Although the caseworker stated that she phoned the Appellant and told him at least one time that he must submit specific information to her or meet with her, she could not assign a specific date to these conversations and she made no written record of the alleged conversations with Appellant. Under such circumstances the caseworker's testimony failed to establish that the Appellant was advised that the documentation was not complete and the due date. The worker testified that proof of SSI application was not necessary because she could look it up on a computer, yet she included this as a necessary missing document on the notice of denial. She sent the notice of denial to an old address, even though the Appellant provided her with the new address over the phone and she contended that neither address was ever verified. The record produced at the hearing was unreliable and incomplete. The notice of

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denial did not include numerous documents cited on the December 13, 1993 verification sheet (statements of past maintenance, birth certificate, etc.), yet the worker claimed at the hearing that Appellant's application file did not have any supportive verification.

DECISION AND ORDER

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

1. The Agency is directed to continue to process the Appellant's application and afford the applicant the opportunity to submit any documents necessary to establish eligibility.

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

3. The Agency is directed to provide the Appellant with a reasonable opportunity to submit verification of medical bills for the period beginning three calendar months prior to the month of application and ending when the Appellant's Medical Assistance card is issued.

4. The Agency is directed to evaluate the Appellant's household's eligibility for Food Stamp benefits.

5. In the event that the Appellant is determined to be eligible for Food Stamp benefits, the Agency is directed to provide such benefits retroactive to the date on which the Appellant originally applied therefor.

6. The Agency is directed to advise the Appellant in writing of its determinations.

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

DATED: Albany, New York

MAR 29 1994

NEW YORK STATE DEPARTMENT  
OF SOCIAL SERVICES

By

  
Commissioner's Designee