

STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST March 26, 2001  
CASE # P576632  
CENTER # Nassau  
FH # 3492029J

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In the Matter of the Appeal of :

T E

**DECISION**  
: **AFTER**  
**FAIR**  
**HEARING**

from a determination by the Nassau 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 Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on April 23, 2001, in Nassau County, before Jonathan M. Kastoff, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

T E, Appellant  
Herb Harris, Representative  
R F, Witness

For the Social Services Agency

Susan Swenson, Fair Hearing Representative

ISSUE

Was the Agency's determination that the Appellant was ineligible for Public Assistance and Medical Assistance benefits on the grounds that the Appellant failed to cooperate with the Agency's Special Investigation Unit 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 Public Assistance and Medical Assistance benefits for a one person household on January 17, 2001.

2. On February 27, 2001 a worker in the Agency's special Investigation Unit made an unannounced visit to Appellant's address of record. Appellant was not present and the worker left notice for Appellant to contact the worker so that a home visit could be scheduled. Appellant failed to contact the worker.

3. On February 28, 2001 the worker mailed Appellant a letter requesting Appellant to contact the worker within five days. Appellant failed to contact the worker.

4. On March 22, 2001, the Agency sent a Denial Notice to the Appellant setting forth its determination to deny the Appellant's application for Public Assistance and Medical Assistance benefits on the grounds that the Appellant failed to cooperate with the Agency's Special Investigation Unit.

5. On March 26, 2001, the Appellant requested this fair hearing.

#### APPLICABLE LAW

Regulations define an investigation of eligibility and degree of need as a continuous process concerned with all aspects of eligibility for Public Assistance and care, including Medical Assistance, from the period of initial application to case closing. Investigation means the collection, verification, recording and evaluation of factual information on the basis of which a determination of eligibility and the degree of need is made. As part of this investigation, it is the responsibility of an applicant or recipient of Public Assistance and care to verify his/her place of residence. 18 NYCRR 351.1, 351.2 and 360-1.2, 360-2.3.

Contacts with recipients and collateral sources shall include face-to-face contacts, correspondence, reports on resources, eligibility mailouts and other documentation. Contacts with or concerning recipients shall be made as frequently as individual need, change in circumstances or the proper administration of assistance or care may require. 18 NYCRR 351.21(a)

An applicant for or recipient of public assistance is exempt from complying with any requirement concerning eligibility for public assistance if the applicant or recipient establishes that good cause exists for failing to comply with the requirement. Except where otherwise specifically set forth in regulations, good cause exists when the applicant or recipient has a physical or mental condition which prevents compliance; the applicant's or recipient's failure to comply is directly attributable to Agency error; or other extenuating circumstances, beyond the control of the applicant or recipient, exist which prevent the applicant or recipient from being reasonably expected to comply with an eligibility requirement. The applicant or recipient is responsible for notifying the Agency of the reasons for failing to comply with an eligibility requirement and for furnishing evidence to support any claim of good cause. The Agency must review the information and evidence provided and make a determination of whether the information and evidence supports a finding of good cause. 18 NYCRR 351.26.

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

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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 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 his brother-in-law collected the mail and misplaced the notice to contact the worker. Appellant testified that he contacted his case worker, became aware of special investigations, and attempted unsuccessfully to contact the Agency worker responsible for the home visit in a timely manner. Appellant's brother-in-law testified that he misplaced Appellant's notice and that Appellant made several telephone calls the next day in order to find out what the notice required Appellant to do. Both Appellant and Appellant's brother-in-law testified that a second request from the Agency worker was not received by them in the mail. Appellant's testimony was consistent as to detail, corroborated in part, and persuasive. Appellant presented sufficient evidence to establish a good faith effort at compliance with the Agency's Special Investigation Unit. Therefore, the Agency's determination to deny Appellant's application for Public Assistance and Medical Assistance cannot be sustained.

#### DECISION AND ORDER

The Agency's determination to deny Appellant's application for Public Assistance and Medical Assistance benefits because the Appellant failed to cooperate with the Agency's Special Investigation Unit is not correct and is reversed.

1. The Agency is directed to continue processing the Appellant's

application and to determine Appellant's eligibility to receive Public Assistance and Medical Assistance benefits.

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  
April 30, 2001

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee