

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

REQUEST June 27, 1996
CASE#
CENTER# Schenectady
PH# 2501446J

In the Matter of the Appeal of :

C L

DECISION
: AFTER
FAIR
HEARING

from a determination by the Schenectady 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 the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on August 1, 1996, in Schenectady County, before Anne Binseel, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

C L , Appellant; Lewis Steele, Staff Attorney, Legal Aid Society of Northeastern New York

For the Social Services Agency

M. Mercoglan, Fair Hearing Representative

ISSUES

Was the Agency's determination to discontinue the Appellant's Public Assistance and Medical Assistance benefits based on its Notice of Intent dated July 3, 1996 correct?

Was the Agency's determination to discontinue the Appellant's Public Assistance and Medical Assistance benefits for failure to provide documentation necessary to determine the Appellant's continuing 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:

FH# 2501446J

1. The Appellant has been in receipt of Home Relief and Medical Assistance benefits since his most recent application in April 1994.
2. By letter dated June 17, 1996, the Appellant was advised by the Agency to come to the Agency to sign a reimbursement form due to his receipt of Social Security Disability payments (SSD), and that his July assistance payment was contingent upon his doing so.
3. The Appellant visited the Agency on July 3, 1996, at which time the Agency requested that he sign a form entitled "Authorization and Agreement of Reimbursement".
4. The Appellant refused to sign the "Authorization and Agreement of Reimbursement" form on July 3, 1996.
5. On July 10, 1996, the Appellant went to the Agency to recertify for Public Assistance, and was requested to sign a form entitled "Agreement to Repay Any Home Relief Overpayments Still Owed After Case is Closed" and a form entitled "Assignment of Wages, Salary, Commissions, or Other Compensation for Services".
6. The Appellant signed the "Agreement to Repay Any Home Relief Overpayments Still Owed After Case is Closed" at his July 10, 1996, recertification interview, but dated the form as July 10, 1997. The Appellant also signed the "Assignment of Wages, Salary, Commissions, or Other Compensation for Services" form on July 10, 1996.
7. The Agency did not correct the date on the "Agreement" form nor did the Agency request that the Appellant correct the form.
8. By notice dated July 3, 1996, the Agency advised the Appellant of its determination to discontinue the Appellant's Medical Assistance benefits on the grounds that the Appellant failed to sign a repayment agreement.
9. The Agency's July 3, 1996 notice was incomplete, in that it did not notify the Appellant of the action that the Agency proposed to take or was taking with respect to the Appellant's Public Assistance benefits; the notice only noted that the Appellant had failed to sign a repayment agreement.
10. On June 27, 1996, 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 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 351.21(a) of Department Regulations provides that 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.

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 the Department's 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.

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 Department 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.).

Applicants for Home Relief are now required, as a condition of eligibility for Home Relief, to sign an "Agreement to Repay any Home Relief Overpayments Still Owed After Case is Closed" (Attachment C). They must also sign an "Assignment of Wages, Salary, Commissions or Other Compensation for Services" (Attachment D) to allow the district to secure the repayment of any money that is determined to be owed because of overpayments. State mandated Repayment/Assignment Forms have been developed (Attachments C and D). The assignment of future earnings and its enforcement must comply with all requirements of Article 3-A of the Personal Property Law. Only overpayments of Home Relief and Veteran's Assistance (not PG-ADC), incurred after applications made beginning July 1, 1995, are covered under this provision. See, 96 ADM-5 page 3.

Moreover, the requirement that Applicants for Home Relief must sign these forms is not a Medical Assistance requirement. Any individual who has been denied or discontinued from public assistance as a result of this provision must be given a separate Medical Assistance determination. In determining Medical Assistance eligibility, money that is recouped from an applicant's/recipient's earnings due to a Home Relief overpayment is counted as income. See, 96 ADM-5 page 6.

A recipient of Public Assistance, Medical Assistance or Services has a right to an adequate notice when the Agency proposes to discontinue, suspend, reduce or change the manner of payment of such benefits. 18 NYCRR 358-3.3(a). In addition, in most circumstances, a Food Stamp recipient has a right to an adequate adverse action notice when the Agency proposes to

take any action to discontinue, suspend or reduce the recipient's Food Stamp benefits during the certification period. 18 NYCRR 358-2.3; 18 NYCRR 358-3.3(b). However, pursuant to 18 NYCRR 358-3.3(e), there is no right to an adverse action notice when, for example, the change is the result of a mass change, the Agency determines that all members of the household have died or the household has moved from the district or when the household has failed to reapply at the end of the certification period.

An adequate notice is a notice of action, an adverse action notice or an action taken notice which sets forth the action that the Agency proposes to take or is taking, and if a single notice is used for all affected assistance, benefits or services, the effect of such action, if any, on a recipient's other assistance, benefits or services. In addition, the notice must contain:

- o for reductions, the previous and new amounts of assistance or benefits provided;
- o the effective date of the action;
- o the specific reasons for the action;
- o the specific laws and/or regulations upon which the action is based;
- o the recipient's right to request an agency conference and fair hearing;
- o the procedure for requesting an agency conference or fair hearing, including an address and telephone number where a request for a fair hearing may be made and the time limits within which the request for a fair hearing must be made;
- o an explanation that a request for a conference is not a request for a fair hearing and that a separate request for a fair hearing must be made;
- o a statement that a request for a conference does not entitle one to aid continuing and that a right to aid continuing only arises pursuant to a request for a fair hearing;
- o the circumstances under which public assistance, medical assistance, food stamp benefits or services will be continued or reinstated until the fair hearing decision is issued;
- o a statement that a fair hearing must be requested separately from a conference;
- o a statement that when only an agency conference is requested and there is no specific request for a fair hearing, there is no right to continued public assistance, medical assistance, food stamp benefits or services;

FH# 2501446J

- o a statement that participation in an agency conference does not affect the right to request a fair hearing;
- o the right of the recipient to review the case record and to obtain copies of documents which the agency will present into evidence at the hearing and other documents necessary for the recipient to prepare for the fair hearing at no cost;
- o an address and telephone number where the recipient can obtain additional information about the recipient's case, how to request a fair hearing, access to the case file, and/or obtaining copies of documents;
- o the right to representation by legal counsel, a relative, friend or other person or to represent oneself, and the right to bring witnesses to the fair hearing and to question witnesses at the hearing;
- o the right to present written and oral evidence at the hearing;
- o the liability, if any, to repay continued or reinstated assistance and benefits, if the recipient loses the fair hearing;
- o information concerning the availability of community legal services to assist a recipient at the conference and fair hearing; and
- o a copy of the budget or the basis for the computation, in instances where the social services agency's determination is based upon a budget computation.

18 NYCRR 358-2.2

DISCUSSION

The Appellant requested this hearing to review the Agency's determination to discontinue the Appellant's Public Assistance and Medical Assistance benefits based on its Notice of Intent dated July 3, 1996.

The testimony and the documentation presented at the hearing establish incontrovertibly that the Agency's July 3, 1996 notice did not set forth the action that the Agency proposed to take or was taking with respect to the Appellant's Public Assistance benefits, nor the effective date of the Agency's action regarding the Appellant's Public Assistance benefits. As such, the Agency's July 3, 1996 notice did not comply with the requirements of 18 NYCRR 358-2.2 as set forth above. Although the copy of the Agency's notice submitted into evidence as part of Exhibit 1 purports to establish that the Agency's July 3, 1996 notice did adequately notify the Appellant of the nature and effective date of the Agency's action regarding the Appellant's Public Assistance, the Appellant's production of the original

PH# 2501446J

carbon copy of the July 3, 1996 notice establishes that the Agency copy was materially altered prior to its submission into evidence at the hearing. Therefore, the Agency's purported discontinuance of the Appellant's Public Assistance benefits based upon his conceded refusal to sign the "Authorization and Agreement of Reimbursement" form on July 3, 1996 must be reversed.

In addition, the Agency's determination to discontinue the Appellant's Medical Assistance benefits is incorrect. As noted above, the requirement that applicants for Home Relief must sign the "Agreement to Repay any Home Relief Overpayments Still Owed After Case is Closed" and the "Assignment of Wages, Salary, Commissions or Other Compensation for Services" is not an eligibility requirement for Medical Assistance, and an Applicant's refusal to sign the documents does not in itself render him ineligible for Medical Assistance benefits.

Lastly, and very significantly, the record does not support the Agency's contention that the Appellant failed to sign the "Agreement" and the "Assignment" on July 3, 1996. Rather, the record states that the Appellant was presented with those forms for signature at his recertification appointment on July 10, 1996, and that he signed them on that date, albeit with the incorrect date. Moreover, although the copies of the blank documents submitted into evidence by the Agency as part of Exhibit 1 purport to establish that the Appellant did not sign the documents, the Agency representative testified that the Appellant signed the documents with the incorrect date, that the Agency did not attempt to correct the date and did not ask the Appellant to correct it, and that since the date was incorrect the Agency was justified in presenting blank documents as evidence of the Appellant's alleged failure to sign the documents. Lastly, the regulatory citations cited by the Agency on its July 3, 1996 notice, intended to justify the Agency's determinations to discontinue the Appellant's Public Assistance and Medical Assistance benefits, do not relate to any of the reimbursement forms presented by the Agency and which the Appellant allegedly refused to sign.

Therefore, the Agency's July 3, 1996 determination to discontinue the Appellant's Public Assistance and Medical Assistance benefits must be reversed.

DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Public Assistance and Medical Assistance benefits based on its Notice of Intent dated July 3, 1996 was not correct and is reversed.

The Agency's determination to discontinue the Appellant's Public Assistance and Medical Assistance benefits for failure to provide documentation necessary to determine the Appellant's continuing eligibility for such benefits was not correct and is reversed.

1. The Agency is directed to continue the Appellant's Public Assistance and Medical Assistance benefits.

FH# 2501446J

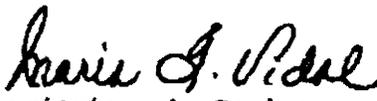
2. The Agency is directed to restore the Appellant's Public Assistance and Medical Assistance benefits retroactive to the date of the Agency's action.

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

DATED: Albany, New York
September 9, 1996

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

By


Commissioner's Designee