

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST February 3, 2005
CASE # P
CENTER # Nassau
FH # 4275160R

In the Matter of the Appeal of :

R M

: **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 22, 2005, in Nassau County, before Irene Biggs, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

R M, Appellant
Herb Harris, Esq., Appellant's Representative

For the Social Services Agency

William D. Denson, Jr., Fair Hearing Representative

ISSUE

Was the Agency's failure to act on the Appellant's August 2004 application correct?

Was the Agency's January 15, 2005, determination as to the denial of the Appellant's August 2004 application for Public Assistance and Medical Assistance correct?

Was the Agency's February 26, 2005, determination as to the denial of the Appellant's Public Assistance and Medical Assistance 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. In August 2004, the Appellant, age 50, applied for Public Assistance, Medical Assistance, and Food Stamp benefits.

2. By notice dated January 15, 2005, the Agency advised the Appellant of its determination to deny his August 2004 application for Public Assistance, Medical Assistance, and Food Stamp benefits.

3. The Agency provided the Appellant with a Medical Assistance authorization for at least November and December 2004.

4. In February 2005, the Agency issued the Appellant's Public Assistance basic needs for September 2004 through in or about February 2005.

5. By notice dated February 26, 2005, the Agency advised the Appellant of its determination to deny his August 2004 application for Public Assistance, Medical Assistance, and Food Stamp benefits.

6. On February 3, 2005, the Appellant requested this fair hearing.

APPLICABLE LAW

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;

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- 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;
- 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

At the hearing, the Agency agreed to withdraw its notice dated January 15, 2005, which had advised the Appellant that his August 2004 application had been denied. Based on the Agency's agreements made at the hearing, no issue remains to be decided regarding the January 15, 2005, notice.

At the current hearing, the February 26, 2005, notice was also added as an issue. The Appellant's representative argued that the notice was void. One of the Appellant's representative's arguments was that, as the Agency had provided the Appellant with at least five months of Public Assistance benefits, as well as a Medical Assistance authorization for at least a few months, the Agency's determination to deny the Appellant's Public Assistance

and Medical Assistance application was not correct as it misstated the action the Agency was proposing to take.

The Agency's notice was not correct because although Public Assistance and Medical Assistance benefits were provided, the Agency issued a denial notice. Such a notice failed to provide the Appellant with proper notice of the Agency's action, was not timely, and failed to afford the Appellant an opportunity to obtain an aide-to-continue directive from the Department. The above-noted defects in the Agency's notice render such notice void. Therefore, the Agency's February 26, 2005, determination to discontinue the Appellant's Public Assistance and Medical Assistance benefits cannot be sustained.

The issue regarding the Agency's failure to act on the Appellant's August 2004 Public Assistance and Medical Assistance application is moot as the Agency subsequently acted on said application.

DECISION AND ORDER

In accordance with the Agency's agreements made at the hearing, the Agency is directed to take the following action if it has not already done so:

1. withdraw the January 15, 2005, notice and take no action on said notice.

The Agency's February 26, 2005, determination to discontinue the Appellant's Public Assistance and Medical Assistance benefits is not correct and is reversed.

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

2. In the event that the Agency determines to implement its previously contemplated action, the Agency is directed to provide the Appellant with a notice that meets the requirements set forth in 18 NYCRR 358-2.2.

There is no issue to review regarding the Agency's failure to act on the Appellant's August 2004 application.

Should the Agency need additional information from the Appellant in order to comply with the above directives, it is directed to notify the Appellant promptly in writing as to what documentation is needed. If such information is required, the Appellant must provide it to the Agency promptly to facilitate such compliance.

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

DATED: Albany, New York
April 28, 2005

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

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Commissioner's Designee