
In the Matter of the Appeal of :
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F B :
: DECISION
: AFTER
: FAIR
from a determination by the New York City :
Department of Social Services : HEARING
:
:
:

JURISDICTION

This appeal is from a determination by the local Social Services Agency relating to the discontinuance of a Medical Assistance Authorization.

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 July 27, 1989, in New York City, before Michael A. Vass, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

F B Tilly Vola, Appellant's Representatives

For the Local Social Services Agency

W. Ciampa, Representative

FACT FINDINGS

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 was in receipt of a Medical Assistance Authorization under case number 9 8. She resides with her husband.
2. On April 17, 1989, the Agency sent a Notice of Acceptance to the Appellant informing her that it had determined to accept her Medicaid application for full medical coverage for the period from November 1, 1988, through July 31, 1989 under case number 9 1.

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3. The Agency did not implement its determination.

4. By "Notice of Denial" dated April 17, 1989, the Agency informed the Appellant of its determination to "deny" her "Medical Assistance application" under case number 9 8 on the grounds that she was receiving Medical Assistance under more than one case number. Said Notice did not set forth a proposed date of discontinuance and does not contain information about the circumstances under which Medical Assistance, will be continued or reinstated until the fair hearing decision is issued.

5. On June 26, 1989, the Appellant requested this hearing to review the Agency's determination.

ISSUES

Was the Appellant's request on June 26, 1989, for a fair hearing to review the Agency's determination, timely?

Assuming the request was timely, was the Agency's determination, to discontinue the Appellant's Medical Assistance Authorization by a Notice of Denial dated April 17, 1989, correct?

APPLICABLE LAW

Federal regulations at 42 CFR 431.221(d) governing requirements for fair hearings for applicant/recipients of Medical Assistance provide that an appellant must be provided with a reasonable time not to exceed 90 days from the date the notice of action is mailed in which to appeal such action. In New York State, "a reasonable time" has been determined to be 60 days as set forth in Section 22 of the Social Services Law which provides that a request by such an applicant/recipient for a fair hearing to review an Agency's determination must be made within sixty days of the date of the Agency's action or failure to act.

Department Regulations at 18 NYCRR 358-3.3(a)(1)(i) provide that a recipient has a right to timely and adequate notice when a social services agency:

- (i) proposes to take any action to discontinue, suspend, or reduce a Public Assistance grant, Medical Assistance Authorization or services

Section 358-2.2 of the Regulations provides, in pertinent part:

An adequate notice means a notice of action, or an adverse action notice or an action taken notice which sets forth all of the following:

- (a) the action the social services agency proposes to take or is taking...

- (h) when the agency action or proposed action is a reduction, discontinuance, restriction or suspension of public assistance, medical assistance, food stamp benefits or services, 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; that a fair hearing must be requested separately from a conference; and 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; and that participation in an agency conference does not affect the right to request a fair hearing and;

Section 358-2.23 of the Regulations provides:

Timely notice means a notice which is mailed at least 10 days before the date upon which the proposed action is to become effective.

DISCUSSION

In this case the evidence establishes that the Appellant was in receipt of a Medical Assistance Authorization under case number 9 8, and that she resides with her husband.

The evidence also establishes that on April 17, 1989, the Agency sent a Notice of Acceptance to the Appellant informing her that it had determined to accept her Medicaid application for full medical coverage for the period from November 1, 1988, through July 31, 1989 under case number 9 1; however, the record fails to establish that the Agency implemented its determination.

The evidence further establishes that by "Notice of Denial" dated April 17, 1989, the Agency informed the Appellant of its determination to "deny" her "Medical Assistance application" under case number 9 8 on the grounds that she was receiving Medical Assistance under more than one case number.

In this case the fact that the Agency sent a Notice of Acceptance and a Notice of Denial to the same person on the same date, and the fact that the Appellant delayed her request for a hearing in an attempt to resolve this matter in a local conference with the Agency establish a sufficient basis to toll the Statute of Limitations and the Appellant's request for a fair hearing was timely.

Furthermore, the Agency's Notice does not contain a date upon which the proposed action is to become effective and the Agency failed to establish that it was mailed at least 10 days before the date upon which the proposed action was to become effective. It is therefore not timely as defined in the Regulations. In addition, it does not contain information about the

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action the social services agency proposes to take or is taking, nor the circumstances under which Medical Assistance will be continued or reinstated until the fair hearing decision is issued. Therefore, it is not adequate as defined in the Regulations. Furthermore, since the Appellant was receiving a Medical Assistance Authorization, the Agency was required to send a Notice of Intent to discontinue his Medical Assistance Authorization.

The Agency's failure to give timely and adequate notice of its proposed actions violates Department Regulations. Therefore, the Agency's determination cannot be sustained.

DECISION AND ORDER

The Agency's determination was not correct and is reversed.

1. The Agency is directed to restore the Appellant's Medical Assistance Authorization under case number 9 8 retroactive to May 5, 1989, the date the Appellant's Medical Assistance benefits were discontinued and to continue to provide a Medical Assistance Authorization to the Appellant.

Should the Agency in the future determine to implement its previous action, it is directed to issue a timely and adequate Notice of Intent.

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

AUG 11 1989

CESAR A. PERALES
COMMISSIONER

By



Commissioner's Designee