
In the Matter of the Appeal of :
 :
 K S :
 : DECISION
 : AFTER
 : FAIR
 from a determination by the Monroe County : HEARING
 Department of Social Services :
 :
 :

JURISDICTION

This appeal is from a determination by the local Social Services Agency relating to the discontinuance of the Appellant's home relief, medical assistance, and food stamps.

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 September 10 and 11, 1990, in Monroe County, before George W. Howard, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Lorna James-Glenn, Appellant's representative; K S Appellant

For the Local Social Services Agency

Dona Young, Agency's representative

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 is in receipt of home relief, medical assistance, and food stamps.
2. By notice dated March 26, 1990, the Agency advised the Appellant that it intended to discontinue the Appellant's home relief, medical assistance, and food stamps, effective April 30, 1990, on the following grounds: "Failure to pursue an available resource by not sending a medical report as requested." No regulation was cited in the notice.
3. On April 17, 1990, the Appellant requested this hearing to review the Agency's determination.

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ISSUE

Was the Agency's determination to discontinue the Appellant's home relief, medical assistance, and food stamps, correct?

APPLICABLE LAW

Section 358-2.2 of the Department's regulations, concerning Adequate notice, provides that:

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, 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. Otherwise the notice shall state that there will be a separate notice for other affected assistance, benefits or services. In addition, in the case of:
 - (b) except in the case of a denial, the effective date of the action;
 - (c) except in the case of an acceptance of an application for a covered program or service, the specific reasons for the action;
 - (d) the specific laws and/or regulations upon which the action is based;

DISCUSSION

By letter dated December 28, 1989, the Agency advised the Appellant to forward certain verification to the Agency, including a medical report. (At the hearing, it was not clear why the Agency requested a medical report to be completed by a physician and returned to the Agency.) The letter also advised the Appellant to apply for SSI. The Appellant received the letter, but failed to submit the medical report requested. The Appellant did apply for SSI, but she failed to submit a medical report to the Social Security Administration as requested, and her application for SSI was denied on that basis. The Appellant has since had her SSI application reopened, and if she is awarded SSI, it was to be awarded retroactive to the date of application in December 1989.

The Appellant's representative cross examined the Agency's representative concerning the reason for the discontinuance, and the Agency's representative was unable to clarify the reason. This failure to clarify was due to the language contained in the notice which stated: "Failure to pursue an available resource by no sending a medical report as requested". The Appellant was requested by SSI to submit a medical report, and the Appellant was requested by the Agency to submit a medical report. We don't know which medical report the Agency is referring to in the notice of discontinuance. The background facts do not illuminate the matter.

It is unclear whether the discontinuance was based upon a failure to

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submit verification necessary to determine the Appellant's on-going eligibility for assistance, or whether the discontinuance was based upon a failure to submit a medical form to the Social Security Administration.

It is also noted that contrary to the Department's regulations, the notice did not cite the regulatory authority for the Agency's action.

Upon all of the above, the Agency's notice was not adequate, and the determination will be reversed.

DECISION AND ORDER

The Agency's determination to discontinue the Appellant's home relief, medical assistance, and food stamps, was not correct and will be reversed.

1. The Agency is directed to continue the Appellant's assistance pursuant to verified degree of need.

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

CESAR A. PERALES
COMMISSIONER

SEP 13 1990

By 

Commissioner's Designee