

In the Matter of the Appeal of

A L

from a determination by the New York City
of Social Services (hereinafter called the agency)

Department

:
DECISION
: AFTER
FAIR
HEARING
:

Whereas, pursuant to the provisions of Section 358.19 of the Regulations of the State Department of Social Services, a decision without a hearing having been requested by the appellant to review a determination by the agency relating to the reduction of the appellant's Medical Assistance benefits, and documents having been submitted by both parties, and due deliberation having been had, it is hereby found:

1. The appellant is a recipient of Medical Assistance benefits. By notice dated June 24, 1983, the agency advised the appellant that as a result of the July 1, 1983 increase in income exemption levels, that the appellant's monthly surplus income was reduced to \$104.00 per month.

2. By letter dated August 17, 1983, the agency advised the appellant that the Medical Assistance benefit would be reduced as a result of her recertification statement in that the amount of surplus income was increased to \$132.00 a month. This notice did not specify an effective date and did not specify that^{if} the appellant requested a fair hearing prior to the effective date that the agency would be required to provide Medical Assistance benefits using the amount of surplus income in effect prior to the agency determination.

3. The appellant's representative, by letter dated August 28, 1983, requested a decision without an evidentiary hearing. The agency, by letter dated October 3, 1983, submitted a response to the appellant's memorandum in support of a decision without a hearing. A copy of this response was submitted to the appellant's representative and the appellant's representative, by letter dated November 17, 1983, submitted a rebuttal.

Part 358 of the Department's Regulation implements federal requirements pertaining to a reduction of Medical Assistance benefits. Section 358.8 of the Department's Regulations require timely and adequate notice in cases of any proposed agency action to reduce Medical Assistance benefits. An agency determination that a recipient has an increase in the amount of income for which medical expenses must be incurred is clearly a reduction in the amount of benefits.

The August 17, 1983 notice was defective in that it contained no effective date. Furthermore, the notice fails to explain the appellant's right to a hearing and the circumstances under which assistance payments is continued if a fair hearing is requested.

A subsequent agency notice, dated September 7, 1983, but effective September 1, 1983, does not cure the initial defective notice. The agency's response correctly points out that it is this Department's responsibility to direct an agency to continue assistance unchanged until a hearing decision is rendered. However, Section 358.8(a)(2) of the Department's Regulations clearly provides that the agency must specify in the notice of intended action "the circumstances under which assistance payments or reduced assistance authorization is continued if a fair hearing is requested."

The appellant's representative has requested a directive pursuant to Section 358.21 of the Department's Regulations that they correct its policy and review other cases. The request is denied since it does not appear from the record that the agency has a practice of not injecting an effective date in the notice of reduction. Furthermore, the agency's response indicated that the notice is being revised to correct the other defects noted above.

Accordingly, the agency determination to reduce the appellant's Medical Assistance benefits by increasing the amount of monthly surplus income to initially \$132.00 and the \$129.00 is not correct. The agency is directed to maintain the appellant's monthly

spend down requirement at \$104.00 unless and until a timely and adequate notice of reduction is sent.

DECISION: The determination of the agency is not correct and is reversed. The agency must immediately comply with the directives set forth above as required by Section 358.22 of the Department's Regulations.

DATED: Albany, New York

CESAR A. PERALES,
COMMISSIONER

DEC 1 1983

BY *Patricia Tisdall O'Brien*
Commissioner's Designee