
In the Matter of the Appeal of

F B

from a determination by the New York City
Department of Social Services

DECISION
: WITHOUT
EVIDENTIARY
HEARING
:

By letter dated November 21, 1988, the Appellant's representative, Eugene Doyle, requested that a decision without an evidentiary hearing be issued pursuant to 18 NYCRR 358.19 on an October 28, 1988 notice issued to the Appellant by the Agency. Pursuant to 18 NYCRR 358.19, by letter dated December 6, 1988, copies of the Appellant's request and supporting documents were sent to the Agency with a request for answering papers within ten working days. The Agency submitted an answer to the Appellant's request by letter dated December 16, 1988. The Appellant responded to the Agency's answer by letter dated December 30, 1988.

FACT FINDINGS

An opportunity to be heard having been afforded to all interested parties and evidence having been submitted and due deliberation having been had, it is hereby found that:

1. The Appellant is in receipt of Medical Assistance authorization.
2. By notice dated October 28, 1988, the Agency determined to deny the Appellant's request for full reimbursement of medical expenses submitted on the grounds that monies expended in traveling to pharmacies were not medical treatment and were therefore not reimbursable.
3. By letter dated November 21, 1988, the Appellant's representative requested that a decision without evidentiary hearing be issued to review the propriety of the Agency's notice of October 28, 1988 on the grounds that such notice a) failed to cite the legal authority for the Agency's action; b) failed to inform the Appellant of his right to request a fair hearing concerning the Agency's determination and of the method for obtaining such hearing; c) failed to inform the Appellant of the availability of community legal services available to assist him with a conference or fair hearing; and d) did not set forth a valid reason for denying the Appellant's request for Medical Assistance reimbursement for the cost of traveling to pharmacies.
4. By letter dated December 16, 1988, the Agency responded to the Appellant's request. This letter stated that the Agency "...contends that its notice dated October 28, 1988, to the Appellant is legally sufficient. Appellant had actual notice of his right to a fair hearing as evidenced by

1309299J

his request for one...." Such letter further indicated that, should the Commissioner determine that the notice of October 28, 1988 was legally insufficient, certain factual issues pertaining to the Appellant's eligibility for the requested reimbursement would have to be resolved by means of an evidentiary hearing.

5. By letter dated December 30, 1988, the Appellant's representative responded to the Agency's answer. In this response, it is argued a) that the Agency's answer did not offer any legal authority in support of its conclusion that the notice in question was legally sufficient; and b) that the Agency did not raise any material and unresolved issue of fact concerning the "threshold questions of law" raised by the Appellant's request; i.e., those questions raised by the Appellant's representative's original request.

ISSUE

Was the Agency's notice of October 28, 1988 advising the Appellant of its determination to deny his request for full reimbursement of medical expenses submitted on the grounds that monies expended in traveling to pharmacies were not medical treatment and were therefore not reimbursable a proper notice?

APPLICABLE LAW

Federal Regulations at 42 CFR 431.206(c) require that the agency must provide the information required in paragraph (b) of this section--

- (1) At the time that the individual applies for Medicaid; and
- (2) At the time of any action affecting his claim.

Federal Regulations at 42 CFR 431.206(b) require that the agency must, at the time specified in paragraph (c) of this section [above], inform every applicant or recipient in writing--

- (1) Of his right to a hearing;
- (2) Of the method by which he may obtain a hearing; and
- (3) That he may represent himself or use legal counsel, a relative, a friend or other spokesman.

Federal Regulations at 42 CFR 431.210 provide that a notice required under Section 431.206(c) (2) of this subpart [above] must contain--

- (a) A statement of what action the agency intends to take;
- (b) The reasons for the intended action;
- (c) The specific regulations that support, or the change in Federal or State law that requires, the action;

1309299J

- (d) An explanation of—
- (1) The individual's right to request an evidentiary hearing if one is available, or a State agency hearing; or
 - (2) In cases of an action based on a change in law, the circumstances under which a hearing will be granted; and
- (e) An explanation of the circumstances under which Medicaid is continued if a hearing is requested.

DISCUSSION

By notice dated October 28, 1988, the Agency determined to deny the Appellant's request for full reimbursement of medical expenses submitted on the grounds that monies expended in traveling to pharmacies were not medical treatment and were therefore not reimbursable.

By letter dated November 21, 1988, the Appellant's representative requested that a decision without evidentiary hearing be issued to review the propriety of the Agency's notice of October 28, 1988 on the grounds that such notice a) failed to cite the legal authority for the Agency's action; b) failed to inform the Appellant of his right to request a fair hearing concerning the Agency's determination and of the method for obtaining such hearing; c) failed to inform the Appellant of the availability of community legal services available to assist him with a conference or fair hearing; and d) did not set forth a valid reason for denying the Appellant's request for Medical Assistance reimbursement for the cost of traveling to pharmacies.

By letter dated December 16, 1988, the Agency responded to the Appellant's request. This letter stated that the Agency

"...contends that its notice dated October 28, 1988, to the Appellant is legally sufficient. Appellant had actual notice of his right to a fair hearing as evidenced by his request for one...."

Such letter further indicated that, should the Commissioner determine that the notice of October 28, 1988 was legally insufficient, certain factual issues pertaining to the Appellant's eligibility for the requested reimbursement would have to be resolved by means of an evidentiary hearing.

By letter dated December 30, 1988, the Appellant's representative responded to the Agency's answer. In this response, it is argued a) that the Agency's answer did not offer any legal authority in support of its conclusion that the notice in question was legally sufficient; and b) that the Agency did not raise any material and unresolved issue of fact concerning the "threshold questions of law" raised by the Appellant's request; i.e., those questions raised by the Appellant's representative's original request.

1309299J

With regard to the Agency's contention that the notice was legally sufficient in that the Appellant had "actual notice" of his right to a hearing, the response of the Appellant's representative accurately points out that the Agency offered no legal authority in support of its contention. Further, the Agency merely asserts that the notice "is legally sufficient" and does not address the Appellant's contention that such notice lacks the regulatory basis for the Agency's action and lacks information concerning the Appellant's right to a hearing. Such information is required by the above-cited provisions of 42 CFR 430.206 and 430.210.

Finally, the Agency contends that if it is determined that the notice in question is legally insufficient, an evidentiary hearing is required to determine

- "1) which transportation expenses were incurred less than ninety days prior to the request for reimbursement;
- 2) whether Appellant actually incurred all of the expenses for which reimbursement is claimed;
- 3) whether the locations to which Appellant claims to have gone are within walking distance of Appellant's residence and whether Appellant's medical condition permits him to walk to those locations."

While it is true that an evidentiary hearing would be required to definitively determine whether the Appellant is eligible for the reimbursement in issue, by this appeal, the Appellant seeks review only of the legal sufficiency of the notice used in informing him of the Agency's determination not to provide the requested reimbursement. Inasmuch as it has been determined that such notice does not conform with applicable regulatory authorities, the Agency's determination must be reversed on these grounds and the question of the Appellant's actual entitlement to the requested benefits need not be reached.

DECISION AND ORDER

The notice used by the Agency to deny the Appellant's request for full reimbursement of medical expenses submitted was not a proper notice.

1. The Agency is directed to review the Appellant's request for reimbursement of transportation expenses incurred in traveling to pharmacies and to make a new determination concerning such request.
2. The Agency is further directed, upon completion of such review, either to reimburse the Appellant for such transportation expenses or to send the Appellant a new notice of denial which meets all of the appropriate requirements relating to the adequacy of a notice pursuant to the provisions of 42 CFR 430.206 and 430.210.

1309299J

As required by Department Regulations at 18 NYCRR 358.22, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York

JAN 13 1989

CESAR A. PERALES
COMMISSIONER

By 

Commissioner's Designee