

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

CASE#
CENTER# Erie
FH# 2067142H

In the Matter of the Appeal of

R S

:
DECISION
: AFTER
FAIR
HEARING

from a determination by the Erie 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 the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on March 16, 1994, in Erie County, before Paul D. Georger, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

R S Appellant; Jane Landry, Attorney, Neighborhood Legal Services

For the Social Services Agency

B Penske, Fair Hearing Representative; M. Booker, Social Welfare Examiner

ISSUE

Was the Agency's determination to discontinue the Appellant's child day care services because the Appellant failed to appear for a recertification interview 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. The Appellant has been in receipt of child day care services for T S and M W, Appellant's sons and T S, Appellant's daughter.

2. On June 15, 1993, the Agency transmitted a letter to the Appellant advising her that she should submit all documentation necessary to establish Appellant's continuing eligibility for such services to the Agency by mail. The letter further advised the Appellant that such verification must be received by the Agency on or before July 16, 1993 and that no further notice would be issued to Appellant.

3. The Agency did not receive any of the requested documentation.

4. On August 1, 1993, the Agency determined to discontinue the Appellant's child care services, without further notice.

5. On December 23, 1993, the Appellant requested this fair hearing.

APPLICABLE LAW

Section 404.1(b) (2) of the Department's Regulations provides that each applicant or recipient of social services programs (including governmentally subsidized day care services) has the continuing responsibility to provide accurate, complete and current information on income and family composition; to provide accurate information relating to service needs, as requested; to notify the district of any changes in such information and to cooperate in the verification and documentation of eligibility whenever required.

Section 404.1(d) (2) (v) of the Regulations provides that programmatic and financial eligibility must be redetermined periodically. At the time of redetermination, current documentation shall be obtained to verify family size, categorical relationship, income and the continuing need for services.

Section 415.4(b) of the Regulations provides that continuing eligibility for child care services must be redetermined as often as case factors indicate, but not less frequently than every six months.

Department regulations at 18 NYCRR 358-3.3(a) provide that a recipient of Public Assistance, Medical Assistance or services has a right to timely and adequate notice when the Agency:

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

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:

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- 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;
- 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;

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- 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

The evidence establishes that the Agency, on June 15, 1993, transmitted a letter to the Appellant advising her of the need for Appellant to recertify her eligibility for the child care services which she had been receiving. The Agency's letter informed Appellant that she must submit all of the requested documentation on or before July 16, 1993, or risk the termination of her child care services. The letter also advised that the Agency would not issue any further correspondence to Appellant regarding her continuing eligibility for child care services, even if the Agency determined to terminate those services. The Agency did not receive the requested verification on or before July 16, 1993 and determined to discontinue Appellant's child care services.

The Agency contends that its termination of the Appellant's child care services was within the regulations governing its program and was therefore proper. The Agency representative stated that its letter of June 15, 1993 was sufficient notice to the Appellant that if she did not comply with the Agency's request for verification, then her child care services would be terminated. The Agency representative argued that services provided by the Agency were not subject to the same notice requirements as Public Assistance and Medical Assistance benefits. The Agency representative contends, first, that the Appellant's child care services were not "discontinued", but were simply not renewed after the expiration of the certification period. The representative asserts that the letter issued to the Appellant on June 15, 1993 was legally sufficient to stop the Appellant's child care services. The Agency contends, finally, that the Appellant failed to submit any of the requested documents to establish her eligibility for child care services, so that those services may not be continued after the expiration of the certification period.

The Appellant contends that the Agency failed to issue a timely and adequate notice to the Appellant before discontinuing her child care services. The Appellant argues that the letter issued to the Appellant on June 15, 1993 was legally insufficient to implement the discontinuance here. In addition, the Appellant contends that she did comply with the Agency's request for documentation to establish her eligibility for child care services. The Appellant testified that she brought the documents to the Agency in person and left them for her caseworker. The Appellant stated

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that she handed the documents to the receptionist at the intake desk for the child care services office. The Appellant could not state precisely on what date she delivered these documents, but was sure it was before July 16, 1993. The Appellant submitted a notarized statement from one R W , corroborating her testimony.

The Agency's determination cannot be sustained. First, the Agency's contention that its letter of June 15, 1993 was sufficient notice to the Appellant regarding the discontinuance of Appellant's child care services cannot be accepted. As the regulations cited herein show, the Appellant is entitled to timely and adequate notice of the Agency's intent to discontinue her child care services. The Agency's correspondence to the Appellant in this case was neither timely nor adequate. It was insufficient in several ways, most importantly because it did not give the Appellant ten days notice of the Agency's intent to discontinue Appellant's services and it did not advise the Appellant of her fair hearing rights. The Agency's notice was not legally sufficient to take the action to discontinue the Appellant's child care services.

Turning to the merits of the matter, the Agency's determination cannot be sustained here, either. The Appellant credibly testified that she submitted the requested documents before the deadline set by the Agency to do so. The Appellant's testimony was corroborated by the notarized statement of Mr. W who had copied the Appellant's verification for her. Thus, the Agency's determination is incorrect and is reversed.

DECISION AND ORDER

The Agency determination to discontinue the Appellant's child day care services because the Appellant failed to appear for a recertification interview is not correct and is reversed.

1. The Agency is directed to continue to provide the Appellant with child day care services and to provide retroactive payment for such services as were provided subsequent to the date of discontinuance, according to Appellant's verified need for such services.

2. The Agency is directed to provide the Appellant with an opportunity to recertify her eligibility, providing the Appellant with the opportunity to submit any necessary verification, and to notify the Appellant in writing of its determination.

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

APR 13 1994

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

By


Commissioner's Designee