

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

REQUEST: September 19, 2011  
CASE #: [REDACTED]  
CENTER #: HCSP  
FH #: 5903620P

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In the Matter of the Appeal of  
[REDACTED]  
from a determination by the New York City  
Department of Social Services

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**DECISION  
AFTER  
FAIR  
HEARING**

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**JURISDICTION**

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on October 13, 2011, in New York City, before Robert Swiderski, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[REDACTED], Appellant

For the Social Services Agency

Michael Bartholomew, Representative  
Theresa Sandoval, Representative

**ISSUE**

Was the Agency's determination to discontinue the Appellant's Personal Care Services 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, who is 69 years old, has been in receipt of Medical Assistance, including Personal Care Services.

2. By notice dated September 12, 2011, the Agency sent the Appellant a notice informing the Appellant that Appellant's Personal Care Services was being discontinued.

3. On September 19, 2011, this hearing was requested.

### **APPLICABLE LAW**

Official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the agency. §306(4), State Administrative Procedure Act.

At a fair hearing concerning the denial of an application for or the adequacy of Public Assistance, Medical Assistance, HEAP, Food Stamp benefits or services, the appellant must establish that the agency's denial of assistance or benefits was not correct or that the appellant is eligible for a greater amount of assistance or benefits. Except where otherwise established by law or regulation, in fair hearings concerning the discontinuance, reduction or suspension of Public Assistance, Medical Assistance, Food Stamp benefits or services, the social services agency must establish that its actions were correct. 18 NYCRR 358-5.9(a).

In general, a recipient of Public Assistance, Medical Assistance or Services (including child care and supportive services) has a right to a timely and adequate notice when the Agency proposes to discontinue, suspend, reduce or change the manner of payment of such benefits. An adequate, though not timely, notice is required where the Agency has accepted or denied an application for Public Assistance, Medical Assistance or Services; or has increased the Public Assistance grant; or has determined to change the amount of one of the items used in the calculation of a Public Assistance grant or Medical Assistance spenddown; or has determined that an individual is not eligible for an exemption from work requirements. 18 NYCRR 358-3.3(a). In addition, pursuant to 18 NYCRR 358-3.3(d), an adequate, though not timely, notice is required for a Public Assistance or Medical Assistance recipient when, for example, the Agency has factual information confirming the death of the recipient; the Agency has received a clear written statement from the recipient that he or she no longer wishes to receive Public Assistance or Medical Assistance; the Agency has reliable information that the recipient has been admitted to an institution or prison; the recipient's whereabouts are unknown and mail has been returned to the Agency; or the recipient has been accepted for Public Assistance or Medical Assistance in another district.

A timely notice means a notice which is mailed at least 10 days before the date upon which the proposed action is to become effective. 18 NYCRR 358-2.23.

The social services district must send a notice of discontinuance on a State-prescribed form to a Medical Assistance recipient if it determines that the recipient has become ineligible for Medical Assistance. 18 NYCRR 360-2.7(b). Recipient means a person who is, or has been, receiving a covered program or service. 18 NYCRR 358-2.18.

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:

for reductions, the previous and new amounts of assistance or benefits provided;

the effective date of the action;

the specific reasons for the action;

the specific laws and/or regulations upon which the action is based;

the recipient's right to request an agency conference and fair hearing;

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;

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;

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;

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;

a statement that a fair hearing must be requested separately from a conference;

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;

a statement that participation in an agency conference does not affect the right to request a fair hearing;

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;

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;

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;

the right to present written and oral evidence at the hearing;

the liability, if any, to repay continued or reinstated assistance and benefits, if the recipient loses the fair hearing;

information concerning the availability of community legal services to assist a recipient at the conference and fair hearing; and

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**

By notice dated September 12, 2011, the Agency sent the Appellant a notice informing the Appellant that Appellant's Personal Care Services was being discontinued.

The Agency's September 12, 2011, notice is void. A notice must allow for the preparation of an adequate defense. Perry v. Wing, 242 A.D.2d 964, 665 N.Y.S.2d 947 (4<sup>th</sup> Dept. 1997); Mecca v. Dowling, 210 A.D.2d 821, 620 N.Y.S.2d 584 (3d Dept. 1994). The Agency's notice in this case, among other things, contained blank spaces where information was to be written, provided a citation for its action that lacks even a minimum of detail such that it is meaningless, provided no phone number for record access, and contained a statement that a conference could be requested by phone and then did not provide a phone number to request a conference. In addition, the Agency's basis for its action was a vague statement that the Appellant refused to perform an act, but did not mention what act the Appellant refused to perform; and in this regard, as demonstrating that the Agency's notice does not allow for the preparation of an adequate defense, the Agency's evidence at the hearing does not demonstrate that the Appellant refused to do anything.

FH# 5903620P

**DECISION AND ORDER**

The Agency's determination to discontinue the Appellant's Personal Care Services is not correct and is reversed.

1. The Agency is directed to restore, subject to other Agency actions or hearing decisions, the Personal Care Services lost by the Appellant as a direct result of the September 12, 2011, notice.

As required by 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York  
11/23/2011

NEW YORK STATE  
DEPARTMENT OF HEALTH

By

Handwritten signature of Kenneth Luciano in black ink.

Commissioner's Designee

AS1

**NOTICE OF INTENT  
 TO INCREASE, REDUCE OR DISCONTINUE PERSONAL CARE SERVICES**

NOTICE DATE: 09/12/2011		EFFECTIVE DATE: 09/26/2011		NAME AND ADDRESS OF AGENCY/CENTER OR DISTRICT OFFICE	
CASE NUMBER [REDACTED]		CIN / RID NUMBER [REDACTED]		NEW YORK CITY HUMAN RESOURCES ADMINISTRATION MEDICAL AND COMMUNITY SERVICES ADMINISTRATION HOME CARE SERVICES PROGRAM Bronx CASA 530 West 135 <sup>th</sup> Street New York New York 10031	
CASE NAME (And C/O Name if Present) AND ADDRESS					
[REDACTED]				GENERAL TELEPHONE NO. FOR QUESTIONS OR HELP (718)510-0151	
				Margarita Arroyo-Nieves	
OFFICE NO. BRONX	UNIT NO. B06	WORKER NO. H4	UNIT OR WORKER NAME GLORIA BUTTER	TELEPHONE NO. 718-510-0144	

This is to advise you that effective 09/26/2011, this agency intends to:

**INCREASE YOUR PERSONAL CARE SERVICES**

Your personal care services have been increased from:  
 \_\_\_\_\_ hours per day, \_\_\_\_\_ days per week to:  
 \_\_\_\_\_ hours per day, \_\_\_\_\_ days per week.

The personal care services have been determined to be:

- Level I (Environmental and Nutritional Functions)
- Level II (Personal Care, Environmental and Nutritional Functions)

Your authorization period is from \_\_\_\_\_ to \_\_\_\_\_.

We intend to take this action because: \_\_\_\_\_

**REDUCE YOUR PERSONAL CARE SERVICES**

Your personal care services have been reduced from:  
 \_\_\_\_\_ hours per day, \_\_\_\_\_ days per week to:  
 \_\_\_\_\_ hours per day, \_\_\_\_\_ days per week.

The personal care services have been determined to be:

- Level I (Environmental and Nutritional Functions)
- Level II (Personal Care, Environmental and Nutritional Functions)

Your authorization period is from \_\_\_\_\_ to \_\_\_\_\_.

We intend to take this action because: \_\_\_\_\_

**DISCONTINUE YOUR PERSONAL CARE SERVICES**

We intend to take this action because: The client refuse to cooperate with the required assesment of services:  
 By not providing with valid M11q to extend HCS

The law and/or regulation(s) which allow us to do this are 18 NYCRR 505.14.

SIGNATURE OF WORKER

*[Handwritten Signature]*

YOU HAVE THE RIGHT TO APPEAL THIS DECISION  
BE SURE TO READ THE BACK OF THIS NOTICE ON HOW TO APPEAL THIS DECISION

### CONFERENCE AND FAIR HEARING INFORMATION

**CONFERENCE:** (Informal meeting with us): If you think our decision was wrong or if you do not understand our decision, please call or write to us at Medical Assistance Programs, Conference Unit, 1775 Grand Concourse, 7<sup>th</sup> Floor, Bronx, NY 10453, attention Marg arrange a meeting. Sometimes this is the fastest way to solve any problems you may have. We encourage you to do this even without a hearing. This is not the way to request a fair hearing. If you ask for a conference, you are still entitled to a fair hearing. If you want your decision to continue unchanged (aid continuing) until you get a fair hearing decision, you must request a fair hearing in the way described below.

**STATE FAIR HEARING - Deadline for Request:** If you want the State to review our decision about your Medical Assistance you must request a fair hearing within 60 days from the date of this notice.

**How to Request a Fair Hearing:** You can ask for a fair hearing in writing, by telephone, in person, or over the Internet.

**Write:** Send a copy of this notice *completed*, to the Office of Administrative Hearings, New York State Office of Temporary and Disability Assistance, P.O. Box 1930, Albany, New York 12201. Please keep a copy for yourself.

**Telephone:** (800) 342-3334 (PLEASE HAVE THIS NOTICE WITH YOU WHEN YOU CALL)

**Fax:** Send a copy of this notice to fax number (518) 473-6735.

**Walk-In:** Bring a copy of this notice to the New York State Office of Temporary and Disability Assistance at:  
♦ 14 Boerum Place, 1<sup>st</sup> Floor, Brooklyn, or  
♦ 330 West 34<sup>th</sup> Street, 3<sup>rd</sup> Floor, Manhattan

**On-Line:** Complete and send the online request form at: <http://www.otda.state.ny.us/oaah/forms.asp>

If you cannot reach the State by phone or the Internet, please write to request a fair hearing before the deadline for requesting a fair hearing.

### REQUEST FOR A FAIR HEARING

I want a fair hearing. This agency's action was wrong because: \_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_ Case Number: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

Signature of Client: \_\_\_\_\_ Date: \_\_\_\_\_

### YOU HAVE 60 DAYS FROM THE DATE OF THIS NOTICE TO REQUEST A FAIR HEARING

If you request a fair hearing, the State will send you a notice informing you of the time and place of the hearing. You have the right to hire legal counsel, a relative, a friend or other person, or to represent yourself. At the hearing you, your attorney or other representative will have the opportunity to present written and oral evidence to demonstrate why the action should not be taken, as well as an opportunity to question witnesses who appear at the hearing. Also, you have a right to bring witnesses to speak in your favor. You should bring to the hearing any documents, pay stubs, receipts, medical bills, hearing bills, medical verification, letters, etc. that may be helpful in presenting your case. If you need an interpreter, please advise the State when you request the hearing.

**CONTINUING YOUR BENEFITS:** If you request a fair hearing before the effective date stated in this notice, you will continue to receive your benefits unchanged until the fair hearing decision is issued. However, if you lose the fair hearing, we may recover the cost of any Medical Assistance you should not have received. If you want to avoid this possibility, check the box below to indicate that you do not want your aid continuing until the hearing decision. If you do check the box, the action described above will be taken on the effective date listed above.

I agree to have the action taken on my Medical Assistance benefits, as described in this notice, prior to the issuance of a fair hearing decision.

**LEGAL ASSISTANCE:** If you need free legal assistance, you may be able to obtain such assistance by contacting your local Legal Services legal advocate group, or by checking your Yellow Pages under "Lawyers."

**ACCESS TO YOUR FILE AND COPIES OF DOCUMENTS:** To help you get ready for the hearing, you have a right to look at your case file. If you write to us, we will provide you with free copies of the documents from your file which we will give to the hearing officer at the fair hearing. If you call or write to us, we will provide you with free copies of other documents from your file which you think you may need to prepare for your hearing. For documents or to find out how to look at your file, call us at the Record Access telephone number listed at the top of the front page. If you write us at the address printed at the top of the front page of this notice.

If you want copies of documents from your case file, you should ask for them ahead of time. They will be provided to you within a reasonable time of the hearing. Documents will be mailed to you only if you specifically ask that they be mailed.