

STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST May 23, 2002  
CASE# PAxxxxxx  
CENTER# Chemung  
FH# 3725813K

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In the Matter of the Appeal of :  
RM on behalf of her minor : **DECISION**  
dependent child C : **AFTER**  
 : **FAIR**  
 : **HEARING**

from a determination by the Chemung County  
Department of Social Services :

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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 June 19, 2002, in Chemung County, before George W. Howard, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Phillip J. Barton, Esquire, Appellant's representative; RM, Appellant;  
MW, Appellant's friend

For the Social Services Agency

Ruth Evans, Fair Hearing Representative

ISSUE

Was the Agency's failure to open the Appellant's minor dependent child's Family Assistance case until May 16, 2002, 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 and Mr. W are the parents of C, who was born in on
2. The Appellant is in receipt of SSI benefits, and so is Mr. W.
3. The Appellant and Mr. W each has a separate SSI-related MA case. The Appellant and Mr. W are in receipt of non-PA Food Stamps.
4. Upon birth, C was eligible for Social Security Dependents' benefits in the amount of \$42.00 monthly.
5. The Agency has a Medicaid worker stationed at the hospital in . On March 28, 2002, the Medicaid worker took an application for Medicaid-only

from the Appellant on behalf of her newborn while she was at the hospital. The application form was the newly-promulgated form used for Medicaid, Family Health Plus, Child Health Plus, and WIC.

6. The Medicaid worker outstationed at the hospital did not advise the Appellant about the child's potential eligibility for Public Assistance. Accordingly, the Appellant did not apply for Public Assistance benefits for her infant until May 13, 2002.

7. By notice dated May 16, 2002, the Agency advised the Appellant that it had approved the Appellant's application for Family Assistance for her infant, effective May 16, 2002.

8. On May 23, 2002, the Appellant requested a fair hearing to review the opening date of assistance.

#### APPLICABLE LAW

##### The Agency's duty to inform:

Section 360-2.2(f) of the Department's Regulations states in pertinent part:

"(f) Personal interview for application and recipients. (1) \* \* \* At the interview, an applicant/recipient or his/her representative must be told about the following: \* \* \* (vii) the availability of other assistance or services for which the applicant/recipient may be eligible."

##### Opening date for Family Assistance:

Section 351.8(c)(2) of the Office's Regulations states in pertinent part:

"The amount of the initial grant of regularly recurring financial assistance for ADC must be computed starting with the date of establishment of eligibility or the 30th day after the date of application, whichever is earlier."

##### Verification of birth:

Pursuant to the provisions of 18 NYCRR 351.8(c)(5):

(i) A child who is born to a recipient of public assistance is eligible for such assistance from the date of his/her birth provided verification of the birth is received by the appropriate social services official:

- (a) within six months of the birth of the child; or
- (b) by the recipient's first scheduled recertification interview after the birth of the child;

whichever is later.

(ii) The failure to present verification of a child's birth to a social services official in accordance with the provisions of subparagraph (i) of this paragraph will result in such child becoming eligible for public assistance beginning on the date that verification of the birth is provided

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to such official.

DISCUSSION

The Appellant contended that had she been aware of her infant's eligibility for Public Assistance, she would have applied therefor on his behalf at the time she applied for Medicaid for him, and his PA case would have been opened much sooner.

The Agency's representative testified that the Medicaid worker does not routinely offer Public Assistance to applicants of MA-only as in the instant case. The Agency's representative justified it on the basis that the income and resource standards are different, and the worker can not be expected to assess the eligibility of an MA applicant for PA or for FS.

Section 360-2.2(f) of the Department's Regulations states in pertinent part:

"(f) Personal interview for application and recipients. (1) \* \* \* At the interview, an applicant/recipient or his/her representative must be told about the following: \* \* \* (vii) the availability of other assistance or services for which the applicant/recipient may be eligible."

The Medicaid worker need not assess PA eligibility, but could, and should, routinely advise the Medicaid-only applicant of the availability of Public Assistance and Food Stamps, and suggest that the individual immediately apply therefor at the Agency's offices.

The Appellant seeks relief in the form of an earlier opening date. The parties argued as to whether there was enough information in the Agency's files to open the child's PA case effective on the date of the MA-only application, especially with reference to the 4-D requirements. The Commissioner, however, need not make that decision.

Section 351.8(c)(2) of the Office's Regulations states in pertinent part:

"The amount of the initial grant of regularly recurring financial assistance for ADC must be computed starting with the date of establishment of eligibility or the 30th day after the date of application, whichever is earlier."

The Agency will be directed to treat the Appellant's March 28, 2002 application for Medicaid-only as an application for Public Assistance, and to furnish to the Appellant an adequate notice of its determination. In evaluating the opening date, the Agency ought to consider what information was available to the Agency on the date of application and for the 30 days thereafter, in order to ensure that the child's PA case is opened as early as possible.

DECISION AND ORDER

The Agency's failure to open the Appellant's minor dependent child's Family Assistance case until May 16, 2002, was not correct and is reversed.

1. The Agency is directed to treat the Appellant's March 28, 2002

application for Medicaid-only as an application for Public Assistance, and to furnish to the Appellant an adequate notice of its determination.

2. The Agency is further directed to review other cases with similar facts for conformity with the principles and findings in this decision.

Should the Agency need additional information from the Appellant in order to comply with the above directives, it is directed to notify the Appellant promptly in writing as to what documentation is needed. If such information is requested, the Appellant must provide it to the Agency promptly to facilitate such compliance.

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

DATED: Albany, New York  
August 28, 2002

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee