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In the Matter of the Appeal of

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DECISION

: AFTER

FAIR

HEARING

from a determination by the New York City  
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 the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on July 18, 1995, in New York City, before Theodore Vassilakis, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Eugene Doyle, Appellant's Representative

For the Social Services Agency

Robert Kraft, Esq. and Frank East, Fair Hearing Representatives

ISSUE

Was the Agency's determination to discontinue Appellant's Medical Assistance Authorization without notice or reason correct?

FACT FINDINGS

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, age 22, was in receipt of a Medical Assistance as part of the authorization received by his mother.
2. Effective July 4, 1994, the Agency discontinued Medical Assistance for the Appellant without written notice.

3. On March 28, 1995, the Appellant requested this hearing to appeal the Agency's determination.

APPLICABLE LAW

Department regulations at 18 NYCRR 358-3.3(a) provide that except as set forth in subdivision (d) a recipient has a right to timely and adequate notice when a social services agency:

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

Subdivision (d) of the above regulation provides:

A recipient of Public Assistance, Medical Assistance or Services has a right to an adequate notice sent no later than the effective date of the proposed action when:

(iii) the social services agency has received a clear written statement from you indicating that you no longer wish to receive public assistance or medical assistance.

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:

- 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;
- 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.

DISCUSSION

In this case the uncontroverted evidence establishes that on July 4, 1994, the Agency, without sending any notice, discontinued Medical Assistance for the Appellant.

At the hearing the Agency's representatives contended that the Appellant was not entitled to an adverse action notice because at the time of the recertification for Medical Assistance which took place on June 1, 1994, the Appellant's mother stated that the Appellant did not need Medical Assistance benefits. However, at the hearing the Appellant's representative presented undisputed documentary evidence that the Appellant's mother, at past recertifications, had misunderstood and wrongly answered the relevant question in the recertification forms. Moreover, the Appellant's representative pointed out that the Appellant's mother's misunderstanding and error in the past did not prevent the Agency from recertifying and providing the Appellant with Medical Assistance benefits.

The Agency representatives' argument that the Appellant's mother's statement in the recertification form of June 1, 1994 had a greater significance from those in the past as the Appellant at the latest recertification was approaching the age of 21 and therefore was not entitled to be included in his mother's Medical Assistance household is not persuasive.

Furthermore, regardless of the significance of the Appellant's statement in the recertification form of June 1, 1994, the Department's Regulations at 18 NYCRR 358-3.3(d) provide that a recipient has a right to an adequate notice even when the social services agency has received a clear written statement from the recipient indicating that he no longer wishes to receive medical assistance. Based on the foregoing, and inasmuch the Appellant did not receive an adequate notice regarding the discontinuance of his Medical Assistance benefits, the Agency's determination cannot be sustained.

DECISION AND ORDER

The determination of the Agency to discontinue Medical Assistance for the Appellant is not correct and is reversed.

1. The Agency is directed to restore the Appellant's Medical Assistance Authorization retroactive to July 4, 1994, the date Appellant's Medical Assistance benefits were discontinued.
2. The Agency is directed to provide to the Appellant any benefits lost due to its action.

FH# 2254077Z

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  
July 24, 1995

NEW YORK STATE DEPARTMENT  
OF SOCIAL SERVICES

By

  
Commissioner's Designee