

In the Matter of the Appeal of

C O

from a determination by the Nassau County Department
of Social Services (hereinafter called the agency)

:
DECISION
: AFTER
FAIR
HEARING
:

A fair hearing was held at Mineola, New York, on December 2, 1981, before James J. Dalton, Administrative Law Judge, at which the appellant, the appellant's representative and a representative of the agency appeared. The appeal is from a determination by the agency relating to the adequacy of a Food Stamp Authorization and of an authorization for Medical Assistance. An opportunity to be heard having been accorded all interested parties and the evidence having been taken and due deliberation having been had, it is hereby found:

1. The appellant, age 38 years, resides with her daughter, T , and son, D C , the children of J C , ages sixteen and fourteen years, respectively, and her son, T O , the child of E O , age seven years. The appellant and her first husband, Mr. C , were divorced on December 15, 1970. She married Mr. O on December 17, 1972, and was divorced from him on March 23, 1976. On February 22, 1977, the appellant's first husband purchased a one-half interest in the appellant's residence for which no consideration was established and started to pay the monthly mortgage directly to the mortgagee in March of 1977, as part of a plan to maintain a stable environment for his children and as co-owner of the premises. Mr. C pays a monthly mortgage of \$284.00.

2. On September 25, 1981, the appellant requested a hearing to review:

- A. the agency's June 4, 1981, and July 28, 1981, determination to reduce her Food Stamp Authorization to \$124.00 per month, unless she verified \$259.00 monthly fuel bills;
- B. the agency's July 29, 1981, determination, in connection with a determination of Medical Assistance eligibility, that the appellant was responsible for \$529.50 in hospital bills incurred from August 12, 1980, to August 15, 1980.

At the hearing, the appellant requested a review of the agency's refusal to reimburse her representative's expenses in traveling to the hearing.

3. The agency's Food Stamp determination was a result of a May 13, 1981, recertification. At the hearing, the appellant withdrew her request for a review of her Food Stamp Authorization. The Food Stamp Authorization is not at issue for this hearing. There is no issue to be decided thereon.

C 0

4. On October 8, 1980, the appellant had applied for Medical Assistance for her hospital stay in August, 1980. The application was denied on January 12, 1981, because the agency found income overage of \$1,938.00, for which appellant was responsible. A hearing was held on May 13, 1981, to review this determination. A June 23, 1981, hearing decision reversed the determination and directed the agency to recompute appellant's financial eligibility without applying the income of the children against the exemption for the whole household. Each of the children had income in excess of their prorated exemption. None of this income was applied or utilized for the appellant.

5. The appellant was hospitalized from August 12, 1980, to August 15, 1980, and the cost of her hospitalization was \$1,726.31. In addition, the appellant claimed paid medical expenses of \$256.80 from July, 1980, to the present.

6. Upon redetermination, the agency computed the appellant's financial eligibility for Medical Assistance as follows:

Income from Alimony (\$25.00 per week)	\$108.33
One-third of C 's mortgage payments per month attributed as in-kind income to the appellant based on appellant and his two children	94.66
Income	<u>\$202.99</u>
Statutory Exemptions (Family of four, prorated by one-quarter)	114.75
Excess Income (on a monthly basis)	\$ 88.24
Excess Income (on a six-month basis)	\$529.44

7. The appellant's monthly Public Assistance needs in August, 1980, are computed as follows:

Basic Needs (Four persons)	\$258.00
Shelter (Maximum)	251.00
Fuel (Twelve months)	<u>42.00</u>
Total Needs	\$551.00
Appellant's Share	\$137.75

8. The appellant's representative, although a member of a legal services organization, appeared as a private party on the appellant's behalf and was not reimbursed for travel expenses by that organization. The agency denied the representative's request for a transportation reimbursement.

Section 360.23(g) of the Regulations of the State Department of Social Services provides that family household means a group of two or more persons living together, wherein at least one member is statutorily charged with, or has assumed, responsibility for the full support of each of the others.

C O

In accordance with Administrative Directive 79 ADM-71, dated October 3, 1979, in effect as of the time of the agency's redetermination, although the minor is not required to use income which exceeds his own needs to meet the needs of his parents or siblings, he is still a member of the family household and the exemption which applies to the particular family household is determined by the number of family members residing in the home, including minors with income. If the minor has income which exceeds his own needs, as determined on the basis of the promulgated standards relating to Medical Assistance, such excess income should not be considered as available to meet the needs of the other members of the family household.

Pursuant to the provisions of Section 366(2) of the Social Services Law, in determining financial eligibility for a family household of four persons, there was exempt from consideration net income of \$459.00 monthly in 1980; or \$114.75 attributable to the appellant, being one-quarter thereof.

Pursuant to the provisions of Administrative Letter 76 ADM-17, an income exemption shall be allowed for households that are related to a federal category of assistance either in the amounts provided in Section 366(2)(a)(8) of the Social Services Law, or in the amount of the household need for a grant of Public Assistance, whichever amount is greater.

In this case, the prorated standard of need of \$137.75 is the greater of the two amounts.

Accordingly, the agency correctly determined to prorate the Medical Assistance exemption at the time (although the amount of the exemption should have been based on the Public Assistance standard of need). However, pursuant to New York State Department of Social Services Administrative Directive 82 ADM-6, issued February 26, 1982, local agencies were advised that where the application for Medical Assistance does not include children with income, their presence in the household shall not be taken into account in determining the exemption level of those for whom the application is made. Therefore, the agency is now directed to recompute appellant's liability for the hospital bills in accordance with the above-cited Directive.

Section 360.5(e)(3) of the Regulations provides that after all appropriate exemptions and disregards have been applied to the applicant's income, in determining the available income of a person or family household, maintenance in kind

C O

contributed by persons other than legally responsible relatives shall not be considered, except when that maintenance is furnished to a person or family household as part of compensation for services rendered.

The record establishes that Mr. C is a legally responsible relative for two of the household members, and that appellant is co-owner of the home. Therefore, the agency correctly counted a portion of the direct mortgage payment as in-kind income. Additionally, it was not established whether or not such mortgage payments constituted consideration for the conveyance of the property.

Section 358.10 of the Regulations provides that, if requested, necessary transportation for the appellant and her representative and witnesses, child care and other costs and expenditures reasonably related to the hearing shall be provided by the social services official.


At the hearing, appellant's representative requested transportation allowance for himself and the appellant. The agency stated that it would provide a transportation allowance for the purpose of attending the hearing to the appellant but declined to provide such an allowance for appellant's representative. The representative testified that he had incurred a transportation expense in attending the hearing. The agency failed to establish that the representative was not entitled to transportation costs.

DECISION: The agency's determination regarding authorization for Medical Assistance is not correct and is reversed. There is no issue to be decided in relation to the Food Stamp Authorization. The determination regarding the transportation costs is not correct and is reversed. The agency must immediately comply with the directives set forth above as required by Section 358.22 of the Department's Regulations.

DATED: Albany, New York

APR 16 1982


Barbara Blum
COMMISSIONER

By 
Peter Mullen
DEPUTY COUNSEL