

STATE OF NEW YORK  
DEPARTMENT OF SOCIAL SERVICES

CASE No.  
CENTER No. NASS  
FH No. 09537530

In the Matter of the Appeal of

A S

from determinations by the Nassau County  
Department of Social Services

and the New York State Department of  
Health, Office of Health Systems Management

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:  
: DECISION  
: AFTER  
: FAIR  
: HEARING  
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:  
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JURISDICTION

This appeal is from a determination by the Office of Health Systems Management(OHSM) and the local Social Services Agency relating to the adequacy of a Medical Assistance authorization. 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 December 11, 1986, in Nassau county, before Jeffrey Armon, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

J S , Appellant's sister; Robert Gallo, Representative

For the Local Social Services Agency

Dr. Anthony Granata, OHSM; Marvin Rachlin, esq. Nassau Co. Social Services Department Attorney

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, aged 46, is in receipt of a Medical Assistance authorization for himself only.
2. The Appellant suffers from Cerebral Palsy, organic brain syndrome and multiple physical handicaps. He is currently a resident in the Health Care Center located in Connecticut.

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3. At a Fair Hearing held on March 6, 1985, the OSHM stipulated to approve the placement of the Appellant in such out-of-state facility.

4. By a notice dated September 15, 1986, the OSHM determined to discontinue the approval of the Appellant in the out-of-State facility. The agency determined that the Appellant was not obtaining any benefit at that level of care and recommended placement in a New York State psychiatric facility.

5. The Appellant was a resident in the State Psychiatric Hospital in New York for many years prior to his transfer to the Health Care Center in March, 1985. This Connecticut facility is an approved skilled nursing facility which addresses the needs of younger handicapped persons, as well as those of geriatric patients, and offers a specialized psycho-social program.

6. The Appellant's witness incurred airplane and rental car expenses in travelling to attend this hearing.

7. On September 23, 1986, the Appellant's representative requested this hearing to review the Agency's determination to discontinue the approval of the Appellant's out-of-State placement.

#### ISSUE

1. Was the determination of the OSHM to discontinue the approval of the Appellant's out-of-State placement in the skilled nursing facility correct?

2. Is the Appellant's witness entitled to reimbursement for her transportation expenses incurred in attending this hearing?

#### APPLICABLE LAW

Section 363-a of the Social Services Law provides in part:

2. "Medical Assistance" shall mean payment of part or all of the cost of care, services and supplies which are necessary to prevent, diagnose, correct or cure conditions in the person that cause acute suffering, endanger life, result in illness or infirmity, interfere with his capacity for normal activity, or threaten some significant handicap and which are furnished an eligible person in accordance with this title, and the regulations of the department.

Section 364.2 of the Social Services Law provides in part, as follows:

The department of health shall be responsible for . . .

- (b) establishing and maintaining standards for all non-institutional health care and services rendered pursuant to this title, . . .

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Section 358.15 of the Regulations of the Department of Social Services provides that witnesses of the Appellant may be present at a hearing. Section 358.10 states that if requested, necessary transportation for the appellant and his representative and witnesses, child care and other costs and expenditures reasonably related to the hearing shall be provided by the social services official.

#### DISCUSSION

The OHSM based its determination to discontinue the approval of the out-of-State placement on a DMS-1 form completed in August, 1986. He was described as in need of assistance with all daily activities and at risk to harm himself. However, it was concluded that skilled nursing was the appropriate level of care. OHSM concluded from its review of the DMS-1 that the Appellant was obtaining no benefit from the specialized program offered at the Connecticut facility. This conclusion is contradicted by the physicians directly involved in his treatment program. In their professional judgments, expressed in statements prepared in October, 1986, subsequent to OHSM's determination, the Appellant had experienced some improvement and treatment in a psychiatric hospital was not recommended. Several reports from the institution itself, which were in the records considered, also indicated that the appellant was showing improvement. It is also noted that no representative of the OHSM personally evaluated the condition and needs of the Appellant. Based upon the evidence provided in the record, the determination of the agency to discontinue placement because the appellant was not obtaining benefits at that level of care cannot be supported. While it should continue to monitor the progress and needs of the Appellant, the determination to discontinue the approval of the out-of-State placement in the skilled nursing facility at the time in question was not correct and is reversed.

The Appellant's sister provided relevant and necessary testimony at this hearing concerning the condition and needs of the Appellant. At the hearing the agency contended only that there is no authority by which the agency may pay for the expenses of witnesses, and that in any event, the determination under review was that of OHSM. Although the determination under review is one made by OHSM, it is a medical determination made on behalf of the Nassau agency in the administration of appellant's case, and there is no provision to require OHSM to provide for expenses incident to a Fair Hearing. The Nassau agency is charged with the responsibility for the administration of the Medical Assistance authorization for the Appellant, which in this case includes reimbursement of transportation expenses incurred by a necessary witness for the purpose of appearing at a fair hearing relating to that authorization. The Nassau County agency's failure to comply with the request for such expenses was not correct.

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DECISION AND ORDER

The determination by the OHSM to discontinue the approval of the out-of-State placement in the skilled nursing facility was not correct and is reversed.

The OHSM is directed to continue the appellant's authorization for as long as such placement is medically necessary. Should the OHSM again determine to discontinue to authorization, a new notice of intent would be required.

The Nassau agency is directed to reevaluate the appellant's sister's request for transportation expenses to this hearing and to reimburse her for those expenses determined to be reasonable and necessary for her attendance at this hearing, within the meaning of 18 NYCRR 358.10

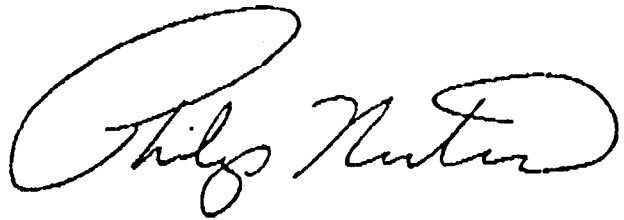
As required by Department Regulations at 18 NYCRR 358.22, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York

MAR 13 1988

CESAR A. PERALES  
COMMISSIONER

By

A handwritten signature in cursive script, appearing to read "Philip Nutter". The signature is written in dark ink and is positioned to the right of the word "By".

Commissioner's Designee