
In the Matter of the Appeal of :
M R. H : **DECISION**
 : **AFTER**
 : **FAIR**
 : **HEARING**
from a determination by the New York City :
Department of Social Services :
:

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 commenced on February 2, 2005 and, after several hearing dates was concluded on March 9, 2006, in Nassau County, before Jonathan Kastoff, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

M R. H , Appellant;
Eugene Doyle, Representative

For the Social Services Agency

Diana Adams,
Raman Taheri, Fair Hearing Representatives;
Nadine Lopez-Flores, Witness

ISSUE

Was the Agency's determination to discontinue the Appellant's Medical Assistance for failure to appear at a face-to-face recertification interview correct?

Was the Agency's determination to deny Appellant's representative reimbursement for the cost of mailing documents to the Agency correct?

FINDINGS OF FACT

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 has been in receipt of Medical Assistance for a household of one person.
2. The Agency notified the Appellant to complete and return a renewal (recertification) application by November 10, 2003.
3. The Appellant did not complete or return the renewal application.
4. By Notice of Intent dated November 27, 2003, the Agency determined to discontinue the Appellant's Medical Assistance effective December 10, 2003, on the grounds that the Appellant failed to appear for the face-to-face recertification interview.
5. During the course of this hearing, the Administrative Law Judge set a briefing schedule for the parties so that written arguments would be completed prior to the last hearing session. Appellant's representative incurred \$48.40 in mailing costs to submit briefs to the Agency and requested reimbursement from the Agency.
6. The Agency determined to deny Appellant's representative's request for reimbursement.
7. On May 21, 2004, the Appellant requested this fair hearing.

APPLICABLE LAW

Section 22 of the Social Services Law provides that applicants for and recipients of Public Assistance, Emergency Assistance to Needy Families with Children, Emergency Assistance for Aged, Blind and Disabled Persons, Veteran Assistance, Medical Assistance and for any services authorized or required to be made available in the geographic area where the person resides must request a fair hearing within sixty days after the date of the action or failure to act complained of. In addition, any person aggrieved by the decision of a social services official to remove a child from an institution or family home may request a hearing within sixty days. Persons may request a fair hearing on any action of the social services district relating to food stamp benefits or the loss of food stamp benefits which occurred in the ninety days preceding the request for a hearing. Such action may include a denial of a request for restoration of any benefits lost more than ninety days but less than one year prior to the request. In addition, at any time within the period for which a person is certified to receive food stamp benefits, such person may request a fair hearing to dispute the current level of benefits.

Section 360-2.2(f) of the Regulations requires that a personal interview be conducted with all applicants. Such personal interview shall be conducted before a decision on Medical Assistance eligibility is authorized or reauthorized. The State may grant a waiver of the personal

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interview requirement for recertification of aged, certified blind or certified disabled recipients when the Agency demonstrates that alternative procedures have been established to verify that recipients continue to meet all eligibility requirements for Medical Assistance. Effective April 1, 2003, a personal interview is no longer required as part of the redetermination of eligibility for Medical Assistance. Social Services Law 366-a(5).

Section 360-2.3 of the Regulations provides the Agency has a continuing obligation to collect, verify, record and evaluate factual information concerning a recipient's eligibility for Medical Assistance. Section 360-2.2(e) of the Regulations require social services districts to redetermine a recipient's eligibility at least once every 12 months and whenever there is a change in the recipient's circumstances that may affect eligibility. The district may redetermine eligibility more frequently. In addition, Section 360-2.3 provides that the requirements set forth in 18 NYCRR Part 351 are applicable to the investigation of continuing eligibility for Medical Assistance.

Section 360-1.2 of 18 NYCRR provides that all regulations relating to Public Assistance and care shall apply to Medical Assistance, except those which are inconsistent with specific State law and regulations dealing with the Medical Assistance Program.

Regulations at 18 NYCRR 360-7.5(a)(1) provide that payment for services or care under the Medical Assistance Program may be made to a recipient or the recipient's representative at the Medical Assistance rate or fee in effect at the time such care or services were provided when an erroneous determination by the Agency of ineligibility is reversed. Such erroneous decision must have caused the recipient or the recipient's representative to pay for medical services which should have been paid for under the Medical Assistance Program. Note: the policy contained in the regulation limiting corrective payment to the Medical Assistance rate or fee at the time such care or services were provided has been enjoined by Greenstein et al. v. Dowling et al. (S.D.N.Y.) with respect to Medical Assistance recipients in the City of New York. In a stipulation of settlement of this case, no reimbursement under this section of the regulations may be paid to the extent such expenditures exceed a reasonable amount. Any payment that does not exceed 110% of the Medical Assistance rate shall be deemed reasonable. When actual expenditures exceed 110%, the New York City Agency shall determine whether the expenditure is reasonable. In making this determination, the Agency may consider the prevailing private pay rates in the community at the time the services were rendered and special circumstances of the recipient.

Regulations at 18 NYCRR 358-4.3(d) provide that upon request of the appellant, the social services agency must provide necessary transportation and transportation expenses to and from the fair hearing for the appellant and appellant's representatives and witnesses and payment for appellant's necessary child care costs and for any other necessary costs and expenditures related to the fair hearing. 18 NYCRR 358-4.3(d)

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DISCUSSION

The Agency contended that the Commissioner was without jurisdiction to review the matter. Appellant requested this fair hearing on May 24, 2004, which was more than sixty days after the Agency's determination of November 23, 2003. Appellant testified that she did not request this fair hearing earlier because she failed to receive the Agency's notice in the mail. The notice was sent to Appellant at _____ Street in Brooklyn. Appellant testified that she had moved to _____ Street in Brooklyn in February, 2003. Appellant further testified that she notified Kings County Hospital, where she had initially applied for Medical Assistance, of her change of address. Agency records indicated that a change occurred in Appellant's Medical Assistance authorization in April, 2003, the specifics of which could not be determined at the hearing. Appellant's testimony was plausible, documented in part by Agency records, and persuasive. Appellant presented sufficient evidence to establish that she failed to receive the Agency's notice of intent and to establish good cause for Appellant's failure to request this fair hearing within sixty days of the Agency's determination. Therefore, Appellant's request for this fair hearing must be deemed timely made.

Appellant was sent a renewal application. Appellant failed to return the completed renewal application to the Agency and failed to request additional time from the Agency within which to submit the requested form. Therefore, the Agency's determination to discontinue Appellant's Medical Assistance was correct when made on November 23, 2003.

The uncontroverted evidence establishes that the Appellant did not submit a completed renewal application. However, the Appellant presented evidence at the hearing, establishing that the Appellant did not receive the renewal application because it was also sent to her prior address. The Appellant's evidence was the same as that evidence which established the tolling of the statute of limitations, and which was persuasive. Appellant presented sufficient evidence to establish that she failed to receive the Agency's renewal application in the mail. Therefore, the Agency's determination to discontinue Appellant's Medical Assistance cannot be sustained at this time.

Appellant's representative also contended that the Commissioner should direct the Agency to promptly determine Medical Assistance in all similar cases where the agency's notice of intent failed to include a Client Identification Number (CIN) and included a non-working telephone number for the recipient to contact the Agency. In this case, the statute of limitations was tolled and the Agency determination reversed on other grounds. While 18 NYCRR 358-6.3 grants the Office of Administrative Hearings the discretion to issue a direction in similar cases when a fair hearing indicates that a local Agency has misapplied provisions of law or appropriate Regulations, such direction need not be made in this case.

During the course of this hearing, the parties were notified of a briefing schedule so that written submissions could be completed prior to a scheduled hearing date. Appellant incurred mailing costs of \$48.40 and requested reimbursement from the Agency. The Agency determined to deny the request for reimbursement. At the hearing, the Agency contended that the costs were not necessary costs and expenditures related to the fair hearing. However, the costs were

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incurred as the result of the order finalizing the briefing schedule made by the Administrative Law Judge. Appellant is entitled to the expense to mail the documents to the Agency. Therefore, the agency's determination to deny Appellant's representative reimbursement for those mailing expenses cannot be sustained.

DECISION AND ORDER

The Agency's determination to discontinue Appellant's Medical Assistance was correct when made.

1. However, the Agency is directed to continue the Appellant's Medical Assistance benefits unchanged.

2.. The Agency is directed to schedule Appellant to recertify the Appellant's Medical Assistance benefits.

It is noted that the Appellant must cooperate in the recertification process in order to continue to receive assistance and/or benefits.

The Agency's determination to deny Appellant's representative reimbursement for the cost of mailing documents to the Agency was not correct and is reversed.

The Agency is directed to reimburse Appellant's representative \$48.40 for mailing costs incurred.

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.

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DATED: Albany, New York
04/06/2006

NEW YORK STATE
DEPARTMENT OF HEALTH

By

A handwritten signature in black ink, appearing to read "Philip J. Martin". The signature is written in a cursive style with a large, looping initial "P".

Commissioner's Designee