
In the Matter of the Appeal of
M R
from a determination by the New York City
Department of Social Services

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**DECISION
AFTER
FAIR
HEARING**

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 August 30, 2011, before Robert Swiderski, Administrative Law Judge, and on March 6, 2012, in New York City, before Raymond Tucker, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Eugene Doyle, Representative

For the Social Services Agency

Mark Miller, Fair Hearing Representative

ISSUE

Was the Agency's determination of February 17, 2010, to discontinue Appellant's Medical Assistance benefits correct?

Is Appellant's representative entitled to reimbursement for the cost of mailing documents to the Office of Administrative Hearings?

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. Appellant has been in receipt of an authorization for Medical Assistance benefits.

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2. On February 17, 2010, the Agency sent a Notice of Intent to the Appellant setting forth its intention to discontinue Appellant's Medical Assistance benefits because he did not complete and return the information requested in an earlier notice.

3. During the course of the August 30, 2011, fair hearing session, the Administrative Law Judge directed Appellant's representative to mail his voluminous set of evidentiary documents to the Office of Administrative Hearings in Albany. Appellant's representative incurred \$7.65 in mailing costs in complying with the directive.

4. On February 28, 2010, Appellant requested this fair hearing.

APPLICABLE LAW

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)

When a fair hearing decision indicates that a social services agency has misapplied provisions of law, regulations, or such agency's own State-approved policy, OAH's letter transmitting such decision to such agency may contain a direction to the agency to review other cases with similar facts for conformity with the principles and findings in the decision. 18 NYCRR 358-6.3.

DISCUSSION

The evidence establishes that the Agency sent a Notice of Intent to Appellant on February 17, 2010 advising him that it had determined to discontinue his Medical Assistance benefits because he did not complete and return the information requested in an earlier notice. At the hearing the Agency agreed to withdraw its Notice of Intent of February 17, 2010 to discontinue Appellant's Medical Assistance benefits. The Agency also agreed to restore any assistance and benefits lost by Appellant based on such action retroactive to the date of the Agency's action and to continue to provide assistance and benefits to Appellant.

The record further establishes that the Appellant's representative incurred necessary expenditures related to the fair hearing, in that he was directed by an administrative law judge to mail documents to the Office of Administrative Hearings in Albany. At the hearing, Mr. Doyle established that he incurred costs of \$7.65. The Regulations authorize reimbursement for this necessary cost associated with the fair hearing.

Appellant's representative contended that this decision should include a direction relative to similar cases, as provided in 18 NYCRR 358-6.3. He contended that he discovered a computer error that resulted in a "batch" of CNS notices that were mailed in an untimely manner to up to 300 Medical Assistance recipients in or about February 2010. However, his contention

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is speculative as it relates to persons other than his client and insufficient proof was presented at the hearing regarding other notices. Furthermore, the Regulation provides for the Office to optionally, not mandatorily, transmit such directive in appropriate cases. This case is not an appropriate case for the exercise of such discretion.

DECISION AND ORDER

In accordance with its agreement at the hearing, the Agency is directed to take the following actions if it has not already done so:

1. Withdraw its Notice of Intent dated February 17, 2010.
2. Take no further action on its Notice of Intent dated February 17, 2010.
3. Restore any Medical Assistance benefits lost as a result of the Agency's action in accordance with the provisions of 18 NYCRR 360-7.5(a).
4. If the Agency determines to implement its previously contemplated action, issue a new timely and adequate Notice of Intent.

Appellant's representative is entitled to reimbursement for the cost of mailing documents to the Office of Administrative Hearings.

1. The Agency is directed to reimburse Appellant's representative \$7.65 for mailing costs incurred.

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

DATED: Albany, New York
03/19/2012

NEW YORK STATE
DEPARTMENT OF HEALTH

By



Commissioner's Designee