
In the Matter of the Appeal of
[REDACTED]
[REDACTED]
[REDACTED]

:
: **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 December 9, 2010, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[REDACTED]

For the Social Services Agency

Paula Porter, Fair Hearing Representative

ISSUES

Was the Appellant's request for a hearing to review the Agency's determination to discontinue the Appellant's Medical Assistance Authorization on the ground that the Appellant failed to return the mail-in recertification form, timely?

Assuming the Appellant's request for a hearing was timely, was the Agency's determination to discontinue the Appellant's Medical Assistance Authorization on the ground that the Appellant failed to return the mail-in recertification form, 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 68, has been in receipt of a Medical Assistance Authorization.

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2. The Agency prepared for mailing to the Appellant a Notice of Recertification with the request that the Appellant or her representative return the aforesaid Recertification Notice to the Agency by April 10, 2010, to establish the Appellant's continuing Medical Assistance eligibility.

3. By Notice of Intent dated April 21, 2010, the Agency mailed to the Appellant a Notice of Decision by which the Agency's determined to discontinue the Appellant's Medical Assistance Authorization effective May 4, 2010, because the Appellant or her representative failed to return the Recertification Statement.

4. On July 26, 2010, the Appellant requested this hearing to review the Agency's determination to discontinue Appellant's Medical Assistance Authorization.

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 360-2.3 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.

Under section 366-a(5) of the Social Services Law, continuing eligibility for assistance must be reconsidered from time to time, or as frequently as required by the regulations of the New York State Department of Health. Effective April 1, 2003, a personal interview may not be required as part of the redetermination of eligibility. Instead, the recipient must be provided with a renewal form developed by the Department of Health, which requests information which is necessary to determine continued eligibility for Medical Assistance or Family Health Plus and which may have changed.

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Pursuant to section 369-ee(5) of the Social Services Law, recertification of eligibility for Family Health Plus must occur no more than once per year and shall not require a personal interview.

DISCUSSION

The record in this case establishes that by Notice of Intent dated April 21, 2010 mailed to the Appellant a Notice of Decision by which the Agency's determined to discontinue the Appellant's Medical Assistance Authorization effective May 4, 2010, because the Appellant or her representative failed to return the Recertification Statement. The record also establishes that the aforesaid Notice of Intent stated that a fair hearing must be requested within sixty days of the Agency's action concerning the Appellant's Medical Assistance benefits.

The record shows that the Appellant delayed until July 26, 2010 prior to requesting this hearing, a delay of far more than sixty days. At the hearing, however, Appellant testified that she does not read English; that she was raised in Alabama by people other than her natural family who did not send her to school. The Appellant also testified that she relies heavily on her granddaughter, 33 years old, who works, to come over to the Appellant's house whenever she has the time and read any correspondence the Appellant has meantime received. The Appellant further testified that her granddaughter eventually came to her house read the Agency's Discontinuance Notice of April 21, 2010 and requested a fair hearing on the Appellant's behalf. Appellant's testimony regarding her inability to read English was found to be credible and persuasive based on the Appellant's total demeanor at the hearing. Based on the foregoing, and taking into consideration the Appellant's disability – Appellant's inability to read English- and also considering the applicable rules and regulations such as CPLR 208 where certain disabilities result in tolling the statutory period involved, the record in this case establishes that the Appellant had a good cause for her delay; and thus, the statute of limitations does not apply in this case.

Furthermore, the record in this case establishes that on February 7, 2010, the Agency prepared for mailing to the Appellant a "Recertification Statement" to complete and return to the Agency by April 4, 2010. The Appellant testified that she had not received the recertification statement.

At the hearing, the Agency supplied an affidavit of mailing procedure from Meyer Elbaz, (Assistant Deputy Commissioner for the New York City Human Resources Administration (the "Agency") dated March 11, 2010, and also an affidavit of mailing procedure from Monica Johnson (Director of Distribution Services for the New York City Department of Social Services (the "Agency") dated March 11, 2010, meant to demonstrate the existence of a system of preparation and of mailing of mail-in recertification statements. The affidavits are not, however, adequate to establish that the particular mail-in recertification statement to the Appellant dated February 7, 2010 was in fact mailed to the Appellant.

The Appellant's testimony that she had not received the recertification form was found to be credible because it was clear and consistent.

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In summary, the hearing record establishes that the Appellant had good cause for the failure to timely return the Medical Assistance recertification statement to the Agency. Therefore, the Agency's determination is not sustained.

DECISION AND ORDER

The Agency's determination dated April 21, 2010 to discontinue the Appellant's Medical Assistance Authorization effective May 21, 2010, was not correct and is reversed.

1. The Agency is directed to take no further action on its Notice of Discontinuance dated April 21, 2010.
2. The Agency is directed to restore the Appellant's Medical Assistance benefits.
3. The Agency is directed to continue the Appellant's Medical Assistance Authorization unchanged.

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 required, 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.

DATED: Albany, New York
12/31/2010

NEW YORK STATE
DEPARTMENT OF HEALTH

By

A handwritten signature in black ink, appearing to read "D.A. Traumm". The signature is written in a cursive, flowing style.

Commissioner's Designee