
In the Matter of the Appeal of
[REDACTED]

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 May 10, 2016, 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

P. Dunbar, Fair Hearing Representative

ISSUE

Was the Appellant's request for a fair hearing to review the Agency's determination dated December 19, 2015, to discontinue the Appellant's Medical Assistance benefits timely?

Assuming the request was timely, was the Agency's determination dated December 19, 2015, to discontinue the Appellant's Medical Assistance benefits 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 30, had been in receipt of Medical Assistance benefits for himself only.

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2. By notice dated October 3, 2015, the Appellant was required to recertify eligibility for Medical Assistance by returning a completed recertification form to the Agency by December 10, 2015.

3. The Appellant did not return the Medical Assistance recertification form to the Agency.

4. By notice dated December 19, 2015, the Agency determined to discontinue the Appellant's Medical Assistance benefits due to Appellant's failure to return a Medical Assistance recertification form to the Agency.

5. On April 15, 2016, this fair hearing was requested. At the hearing, the issue was clarified or amended, without objection by the parties, to review the correctness of the Agency's determination dated December 19, 2015.

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.

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 and which may have changed.

DISCUSSION

The evidence establishes that by notice dated October 3, 2015, the Appellant was required to recertify eligibility for Medical Assistance by returning a completed recertification form to the Agency by December 10, 2015. The evidence also establishes that the Appellant did not return the Medical Assistance recertification form to the Agency. The evidence further

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establishes that by notice dated December 19, 2015, the Agency determined to discontinue the Appellant's Medical Assistance benefits due to Appellant's failure to return a Medical Assistance recertification form to the Agency.

At the hearing, the Appellant's witness (Appellant's brother and Temporary Guardian of the Appellant's Person and Property) did not deny the Appellant's receipt of the mail-in recertification form dated October 3, 2015. The Appellant's witness further testified that the Appellant's mail-in recertification form was not returned to the Agency by the deadline date of December 10, 2015. It must be noted that the Appellant's Representative established that an Order to Show Cause was filed on February 24, 2016, and the Appellant's brother was appointed to be the Appellant's Temporary Guardian on April 1, 2016, which was after the Agency's notice of intent dated December 19, 2015, in issue herein. However, the Appellant's Representative established through the submission of substantial credible evidence that, in the relevant period prior to these Guardianship proceedings, that the Appellant was unable to complete the recertification process by himself as well as responded to the Agency's notice of intent by requesting a Fair Hearing. This establishes a sufficient basis for tolling the sixty-day statute of limitations. Therefore, the Appellant's request for a hearing was timely.

The evidence has been considered. The credible evidence establishes that the Appellant had good cause or extenuating circumstances for not submitting the Medical Assistance recertification form to the Agency in a timely manner, but that this was not previously explained to the Agency at the time of its original determination. The Agency's determination was correct when made. However, the new evidence presented at the hearing requires a different result.

DECISION AND ORDER

The Agency's determination dated December 19, 2015, to discontinue Appellant's Medical Assistance benefits was correct when made. However, the Agency is directed:

1. to restore any lost Medical Assistance benefits retroactive to the date of the discontinuance of Appellant's benefits.
2. to continue the Appellant's Medical Assistance benefits 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's Representative and the Appellant's Guardian promptly in writing as to what documentation is needed. If such information is required, the Appellant's Representative or the Appellant's Guardian 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
05/12/2016

NEW YORK STATE
DEPARTMENT OF HEALTH

By

A handwritten signature in black ink, appearing to read "Paul R. Prentiss". The signature is written in a cursive style with a large, sweeping initial "P".

Commissioner's Designee