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In the Matter of the Appeal of :  
M T DECISION  
: AFTER  
FAIR  
HEARING  
from a determination by the Nassau County  
Department of Social Services :

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JURISDICTION

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 October 12, 1993, in Nassau County, before Jonathan M. Kastoff, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

M T , Appellant  
Herbert Harris, Representative

For the Social Services Agency

No Appearance, Fair Hearing Representative

ISSUE

Was the Agency's determination to discontinue the Appellant's Public Assistance and Medical Assistance benefits for failure to provide documentation necessary to determine the Appellant's continuing eligibility for such benefits correct?

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 has been in receipt of Public Assistance and Medical Assistance benefits as payee for a minor grandchild.
2. The Appellant was advised by the Agency on or about May 21, 1993 to submit the following documentation to the Agency by June 1, 1993:

Completed eligibility questionnaire.

3. Appellant failed to submit the requested questionnaire.

4. On July 20, 1993, the Agency sent a Notice of Intent setting forth its determination to discontinue the Appellant's Public Assistance and Medical Assistance benefits because the Appellant had failed to return to the Agency with certain documentation necessary to determine Appellant's continuing eligibility for Public Assistance and Medical Assistance benefits.

5. On August 19, 1993, the Appellant requested this fair hearing.

#### APPLICABLE LAW

Department Regulations at 18 NYCRR 351.1 and 351.2 require that to demonstrate eligibility, applicants for and recipients of Public Assistance must present appropriate documentation of such factors as identity, residence, family composition, rent payment or cost of shelter, income, savings or other resources and, for aliens, of lawful residence in the United States. Section 351.5 of the Regulations provides that if the applicant or recipient has previously verified necessary information which is not subject to change and the Agency possesses documentation of such verification in its files, the applicant or recipient is not required to resubmit verification of such information. Section 351.6 of the Regulations provides that verification of data is an essential element of the eligibility investigation process. The applicant or recipient is the primary source of the required information. However, when the applicant or recipient is unable to provide the required verification, the Agency must assist the applicant or recipient in obtaining the verification or make collateral investigation. 18 NYCRR 351.5 and 351.6. If a third party seeks to impose a charge or fee for providing required information to the applicant or recipient, the Agency must pay such fee or must assist the applicant or recipient in obtaining the information by other means. 18 NYCRR 351.5. The applicant's or recipient's failure or refusal to cooperate in providing necessary information is a ground for denying or discontinuing Public Assistance.

Section 351.21(a) of Department Regulations provides that contacts with recipients and collateral sources shall include face-to-face contacts, correspondence, reports on resources, eligibility mailouts and other documentation. Contacts with or concerning recipients shall be made as frequently as individual need, change in circumstances or the proper administration of assistance or care may require.

Section 360-2.2(f) of the Regulations requires that a personal interview be conducted with all applicants for Medical Assistance. Such personal interview shall be conducted before a decision on Medical Assistance eligibility is authorized or reauthorized. Section 360-2.3 of the Regulations provides that the Medical Assistance applicant and recipient has a continuing obligation to provide accurate and complete information on income, resources and other factors which affect eligibility. An applicant or recipient is the primary source of eligibility information. However, the Agency must make collateral investigation when the recipient is unable to provide verification. The applicant's or recipient's failure or refusal to cooperate in providing necessary information is a ground for denying an

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application for a Medical Assistance Authorization or for discontinuing such benefits.

Department 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.

#### DISCUSSION

The record establishes that the Agency determined to discontinue Appellant's Public Assistance and Medical Assistance on the grounds that Appellant failed to return a completed eligibility questionnaire. The Agency did not send a representative to appear for it at the hearing, nor did it request a waiver of the requirement that it appear. Therefore, its written submission has not been accepted as evidence.

Appellant contended that she failed to receive the questionnaire from the Agency and that she experiences occasional mail delivery problems at her address. Appellant's testimony was credible in that it was uncontroverted, plausible and persuasive. Appellant presented sufficient evidence to establish good cause for her failure to return the requested questionnaire. Therefore, the Agency's determination to discontinue Appellant's Public Assistance and Medical Assistance cannot be sustained.

#### DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Public Assistance and Medical Assistance benefits is not correct and is reversed.

1. The Agency is directed to continue the Appellant's Public Assistance and Medical Assistance benefits and to restore lost benefits retroactively to July 30, 1993, the date of discontinuance.

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

DATED: Albany, New York

NEW YORK STATE DEPARTMENT  
OF SOCIAL SERVICES

OCT 21 1993

By

*Susan M. Grimes*

Commissioner's Designee