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In the Matter of the Appeal of :  
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 J C :  
 : DECISION  
 : AFTER  
 : FAIR  
 from a determination by the New York City :  
 Department of Social Services : HEARING  
 :  
 :  
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JURISDICTION

This appeal is from a determination by the local Social Services Agency relating to the discontinuance of a Medical Assistance Authorization.

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 July 27, 1989, in New York City, before Michael A. Vass, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

J C Appellant

For the Local Social Services Agency

L. Allen, Representative

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 was in receipt of a Medical Assistance Authorization for a household of one person.

2. By "Notice of Denial" dated March 23, 1989, the Agency informed the Appellant of its determination to "deny" his "Medical Assistance application" on the grounds that he is not categorically eligible. Said Notice did not set forth a proposed date of discontinuance and does not contain information about the circumstances under which Medical Assistance, will be continued or reinstated until the fair hearing decision is issued.

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3. On May 11, 1989, the Appellant requested this hearing to review the Agency's determination.

ISSUE

Was the Agency's determination, to discontinue the Appellant's Medical Assistance Authorization by a Notice of Denial dated March 23, 1989, correct?

APPLICABLE LAW

Department Regulations at 18 NYCRR 358-3.3(a)(1)(i) provide that a recipient has a right to timely and adequate notice when a social services agency:

- (i) proposes to take any action to discontinue, suspend, or reduce a Public Assistance grant, Medical Assistance Authorization or services

Section 358-2.2 of the Regulations provides, in pertinent part:

An adequate notice means a notice of action, or an adverse action notice or an action taken notice which sets forth all of the following:

- (a) the action the social services agency proposes to take or is taking...

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- (h) when the agency action or proposed action is a reduction, discontinuance, restriction or suspension of public assistance, medical assistance, food stamp benefits or services, the circumstances under which public assistance, medical assistance, food stamp benefits or services will be continued or reinstated until the fair hearing decision is issued; that a fair hearing must be requested separately from a conference; and a statement that when only an agency conference is requested and there is no specific request for a fair hearing, there is no right to continued public assistance, medical assistance, food stamp benefits or services; and that participation in an agency conference does not affect the right to request a fair hearing and;

Section 358-2.23 of the Regulations provides:

Timely notice means a notice which is mailed at least 10 days before the date upon which the proposed action is to become effective.

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DISCUSSION

In this case the evidence establishes that the Appellant was in receipt of a Medical Assistance Authorization for a household of one person. On March 23, 1989, the Agency sent a Notice of Denial to the Appellant. The Agency's Notice does not contain a date upon which the proposed action is to become effective and the Agency failed to establish that it was mailed at least 10 days before the date upon which the proposed action was to become effective. It is therefore not timely as defined in the Regulations. In addition, it does not contain information about the action the social services agency proposes to take or is taking, nor the circumstances under which Medical Assistance will be continued or reinstated until the fair hearing decision is issued. Therefore, it is not adequate as defined in the Regulations. Furthermore, since the Appellant was receiving a Medical Assistance Authorization, the Agency was required to send a Notice of Intent to discontinue his Medical Assistance Authorization.

The Agency's failure to give timely and adequate notice of its proposed actions violates Department Regulations. Therefore, the Agency's determination cannot be sustained.

DECISION AND ORDER

The Agency's determination was not correct and is reversed.

1. The Agency is directed to restore the Appellant's Medical Assistance Authorization retroactive to the date the Appellant's Medical Assistance benefits were discontinued.

Should the Agency in the future determine to implement its previous action, it is directed to issue a timely and adequate Notice of Intent.

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

AUG 11 1989

CESAR A. PERALES  
COMMISSIONER

By



Commissioner's Designee