

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

REQUEST October 30, 1996
CASE# 00004604023E
CENTER# 61
FH# 2574399K

In the Matter of the Appeal of
J M

:
: AMENDED
: DECISION
: AFTER
: FAIR
: HEARING

from a determination by the New York City
Department of Social Services

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 December 20, 1996, in New York City, before Betsy J. Segal, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

J M Appellant (by speakerphone); John Castellano, Esq., MFY Legal Services; Eugene Doyle, POOR; Dr. Khazaeli, psychiatrist, Kings County Hospital; Zandra Stitt, social worker, Kings County hospital; Christopher Gunderson, clerk, MFY Legal Services

For the Social Services Agency

Linda Kolker, Fair Hearing Representative; Adrienne Walker, Fair Hearing Representative

ISSUES

Was the Appellant's request for a fair hearing to review the Agency determination to discontinue the Appellant's Public Assistance, Medical Assistance and Food Stamp benefits timely?

Assuming the request was timely, has the Agency acted correctly with respect to its determination to discontinue the Appellant's Public Assistance, Medical Assistance and Food Stamp benefits?

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 was in receipt of Public Assistance, Medical Assistance and Food Stamp benefits.

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2. The Agency notified the Appellant to appear for a face-to-face recertification interview on December 13, 1995, to establish continuing eligibility for Public Assistance.

3. The Agency's appointment notice advised the Appellant that the face-to-face recertification interview was also for the purpose of recertifying the Appellant's eligibility for Medical Assistance.

4. On December 18, 1995, the Agency sent a Notice of Intent to the Appellant setting forth its intention to discontinue Appellant's Public Assistance, Medical Assistance and Food Stamp benefits because the Appellant failed to report for her recertification interview.

5. The notice advised the Appellant that a fair hearing must be requested within sixty days of the Agency's action.

6. The Agency mailed the notice to the Appellant's address as contained in the Appellant's case record.

7. The Appellant has been hospitalized at Kings County Hospital for psychiatric treatment since August 1996.

8. The Appellant has applied for SSI disability payments.

9. On October 30, 1996, the Appellant requested a hearing to review the Agency's determination.

10. On November 6, 1996, which was more than five business days before the hearing, the Appellant requested that the Agency provide copies of documents which it intended to present at the fair hearing in support of its determination.

11. The Agency did not provide such documents to the Appellant.

12. A Decision After Fair Hearing was issued previously in this case on January 6, 1997. In response to an inquiry from the appellant's representative concerning compliance with the previous decision, that decision was reviewed, and it was found that the directives contained in that decision were incorrect as a matter of law. This amended decision revises the directives to include reference to SSL §157 and 18 NYCRR §387.1 (v) (4) (vi), and an additional directive regarding the evaluation of the appellant's need for assistance to meet immediate needs. This amended decision supercedes the decision of January 10, 1997.

APPLICABLE LAW

Department Regulations at 18 NYCRR 351.20 provide that continuing eligibility for Public Assistance must be established through the process of face-to-face recertification interviews. From time to time recipients of Public Assistance are required personally to appear at the recertification interviews and to present appropriate documentation to demonstrate their continuing eligibility for such assistance.

Section 351.22 of the Regulations provides that if a recipient fails to appear at a scheduled interview without good cause, the Agency must send a

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notice of proposed discontinuance to the recipient informing him/her that unless he/she responds to the notice within ten days, his/her case will be closed and any request for assistance made after the closure of the case will be considered a new application for assistance.

If the recipient responds to the notice of proposed discontinuance or appears at the Agency during the ten day period, an interview must be scheduled. If the recipient is found to be eligible as a result of such interview, the ten day notice of proposed discontinuance must be cancelled and the recipient's Public Assistance must be continued.

An applicant for or recipient of public assistance is exempt from complying with any requirement concerning eligibility for public assistance if the applicant or recipient establishes that good cause exists for failing to comply with the requirement. Except where otherwise specifically set forth in the Department's regulations, good cause exists when the applicant or recipient has a physical or mental condition which prevents compliance; the applicant's or recipient's failure to comply is directly attributable to Agency error; or other extenuating circumstances, beyond the control of the applicant or recipient, exist which prevent the applicant or recipient from being reasonably expected to comply with an eligibility requirement. The applicant or recipient is responsible for notifying the Agency of the reasons for failing to comply with an eligibility requirement and for furnishing evidence to support any claim of good cause. The Agency must review the information and evidence provided and make a determination of whether the information and evidence supports a finding of good cause. 18 NYCRR 351.26.

Prior to discontinuing a Public Assistance household's Food Stamp benefits due to failure to recertify for Public Assistance purposes, the Agency must send a written notice just before or at the beginning of the last month of the household's current Food Stamp certification period. The Agency may not discontinue Food Stamp benefits for failure to report to the Public Assistance recertification interview without first determining whether the household is eligible for Food Stamp benefits as a non-Public Assistance household. If the household fails to recertify by the end of its Food Stamp certification period, its Food Stamp benefits will expire at the end of that period.

An Agency may discontinue Medical Assistance benefits to a recipient who fails without good cause to appear at a Public Assistance recertification interview provided that the recipient specifically has been advised that the Public Assistance recertification interview was scheduled also for the purpose of recertifying the recipient's Medical Assistance eligibility.

Section 22 of the Social Services Law provides that a request for a fair hearing to review an Agency's determination must be made within sixty days of the date of the Agency's action or failure to act.

The Food Stamp Program is a federal program regulated by the United States Department of Agriculture Food and Nutrition Service. Program regulations are set forth in the Code of Federal Regulations (7 CFR). Section 273.15 of 7 CFR requires that a state must provide a fair hearing to any household aggrieved by an action which affects the household's participation in the Food Stamp Program. New York Department of Social

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Services Regulations at 18 NYCRR 358-3.1 set forth the situations in which an applicant or recipient has a right to a fair hearing.

A person is allowed to request a fair hearing on any action of a local social services agency relating to food stamp benefits or loss of food stamp benefits which occurred in the ninety days preceding the request for a hearing. Such action includes a denial of a request for restoration of any benefits lost more than ninety days but less than a 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. Social Services Law Section 22.4(b), 18 NYCRR 358-3.1, 18 NYCRR 358-3.5, 7 CFR 273.15.

Department regulations at 18 NYCRR 358-3.7(b), which summarize an Appellant's rights regarding examination of a case record before the hearing, provide as follows:

- (1) Upon request, you have a right to be provided within three business days of your request, at no charge, with copies of all documents which the social services agency will present at the fair hearing in support of its determination. If the request for copies of documents which the social services agency will present at the hearing is made less than five business days before the hearing, the social services agency must provide you with such copies within three business days of the request or at the time of the hearing, whichever is earlier. If more than five business days prior to the hearing you or your representative request that such documents be mailed, such documents must be mailed within the time periods set forth in this subdivision for the provision of documents;
- (2) Upon request, you have the right to be provided within three business days of your request, at no charge, with copies of any additional documents which you request for purposes of preparing for your fair hearing. If the request for copies of documents is made less than five business days before the hearing, the social services agency must provide you with such copies within three business days of the request or at the time of the hearing, whichever is earlier. If more than five business days prior to the hearing you or your representative request that such documents be mailed, such documents must be mailed within the time periods set forth in this subdivision for the provision of documents;
- (3) Your request for copies of documents pursuant to paragraphs (1) and (2) of this subdivision may at your option be made in writing, or orally, including by telephone.
- (4) At your option, you have the right to have documents which you have requested pursuant to paragraphs (1) and (2) of this subdivision mailed to you within the time periods set forth in such paragraphs.

Pursuant to the judgment entered in the case of Rivera v. Bane and Sabol on December 22, 1995, the New York City Human Resources Administration (HRA) is required to "provide within three business days, at no charge and by first class mail, to all public assistance fair hearing appellants or their authorized representatives, upon request, either by telephone or in writing,

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a copy of the evidence package and copies of any other specifically identified documents from the appellant's case record that are requested to prepare for the fair hearing. If any such request for evidence packages or specifically identified documents is made less than five business days before the scheduled New York State Department of Social Services administrative fair hearing, [HRA must] provide fair hearing appellants or their authorized representatives with such documents within three business days of the request or at the time of the scheduled hearing." The judgment requires that HRA withdraw its notice "whenever it fails to provide any individual or his or her representative, upon request and at no charge, with copies of documents that the HRA will present into evidence at the fair hearing, and any other specifically identified documents from an individual's case record within three business days of the request when the request is made more than five days before the fair hearing."

Social Services Law §157 provides that home relief does not include hospital or institutional care, unless provision has been otherwise provided in the Law. No such provision has been made for persons living in a hospital.

Department Regulations at 18 NYCRR §387.1 (v) (4) (vi) provide that persons who are residents of institutional living arrangements are ineligible to receive food stamp benefits.

Social Services Law §131.2 provides that it is the duty of local social services districts to cooperate with the directors of state department of mental hygiene facilities in order to assist patients discharged or about to be discharged from mental hygiene institutions in their transition to a condition of self-support and self-care in the community.

Administrative Directive 94 ADM-20, dated December 29, 1994, requires local districts to provide services and assistance to prevent homelessness and to meet temporary housing and other immediate needs of eligible homeless persons. Districts must ".... (c) ensure that homeless persons or persons in danger of becoming homeless can apply for temporary housing whenever such housing is needed; (d) identify and, where appropriate, meet the immediate food and other immediate health and safety needs of eligible homeless persons; (e) provide Medical Assistance (MA) to otherwise eligible homeless persons; and (f) provide temporary housing assistance as soon as possible to eligible homeless persons who have no other available temporary or permanent housing.

94 ADM-20 further provides that "(a) district must meet emergency needs of eligible persons and determine, based upon the particular circumstances, the most appropriate temporary housing assistance for such persons. Homeless persons do not have the right to choose their own temporary placements. The overriding concern is the district's efforts to locate, secure and pay for housing which meets basic standards of health and safety, as set forth in applicable Department regulations.

DISCUSSION

The evidence establishes that the Agency sent a Notice of Intent to the Appellant, dated December 18, 1995, advising the Appellant that it had

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determined to discontinue the Appellant's Public Assistance, Medical Assistance and Food Stamp benefits because the Appellant failed to report for her recertification interview. The record further establishes that the Agency mailed the notice to the Appellant's proper address, as listed in the Agency's case record.

Although the Agency's notice advised the Appellant that a fair hearing must be requested within sixty days of its action, the Appellant failed to request this hearing until October 30, 1996, which was more than sixty days after the Agency's determination.

The Appellant testified that she did not recall if she had ever received the discontinuance notice. However, because the notice was mailed to the correct address by the Agency in its regular course of business, it is reasonable to believe that the Appellant timely received the notice. It is especially reasonable to assume receipt in this case, because the Appellant also testified as to her receipt of the appointment notice, which the Agency had mailed to the same address.

The Appellant contended that the sixty day statute of limitations should be tolled, based on her psychiatric illness. The record supports the Appellant's contention. The record establishes the Appellant has been hospitalized at Kings County Hospital for psychiatric treatment since August 1996. According to Agency records, she was transferred there from Coney Island Hospital on or about August 29, 1996.

The Appellant's current treating psychiatrist testified that the Appellant suffers from major depression, with psychotic features. He offered his opinion that the Appellant would not have been able to take the actions necessary to continue to receive benefits, upon receipt of the discontinuance notice, because of her illness.

The record also establishes that a psychiatrist evaluated the Appellant in April 1996 in the course of an intervention by Protective Services for Adults (PSA). According to that psychiatric report, the Appellant had "chronic episodes" of "delusional thinking" and needed assistance with entitlements. The record also establishes that the Appellant informed a PSA caseworker in April 1996 that she (the Appellant) was the President and did not need to pay rent. PSA records further establish that the Appellant refused to open the door on several occasions to PSA caseworkers from April 1996 to August 1996. Agency records establish that in November 1989, the Appellant's husband informed the Agency that the Appellant refused to go out.

The Appellant's social worker, Ms. Stitt, testified that during the course of a home visit with the Appellant, the Appellant's mailman inquired after the Appellant's health, and informed Ms. Stitt that the Appellant used to tear up her mail and put garbage in her mailbox.

Based on the Appellant's psychiatric problems, the statute of limitations may be tolled.

On November 6, 1996, which was more than five days prior to the scheduled date of this fair hearing, the Appellant requested, in accordance with the above provisions of Section 358-3.7(b), that the Agency provide

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copies of documents which it intended to present at the fair hearing in support of its determination. The Agency did not provide such documents to the Appellant.

At the hearing, the Agency did not withdraw its Notice of Intent to discontinue Appellant's Public Assistance, Medical Assistance and Food Stamp benefits as required by the judgment in the case of Rivera v. Bane and Sabol. Accordingly, the question of the correctness of the Agency determination to discontinue Appellant's Public Assistance, Medical Assistance and Food Stamp benefits cannot be reached in this case.

At the hearing the Appellant made various other motions, including a request for aid continuing. However, the disposition herein renders the other motions moot.

DECISION AND ORDER

At the hearing, the Agency did not withdraw its Notice of Intent to discontinue Appellant's Public Assistance, Medical Assistance and Food Stamp benefits as required by the judgment in the case of Rivera v. Bane and Sabol. Accordingly, the question of the correctness of the Agency determination to discontinue Appellant's Public Assistance, Medical Assistance and Food Stamp benefits cannot be reached in this case.

1. The Agency is directed to restore the Appellant's Public Assistance, Medical Assistance and Food Stamp benefits retroactive to the date of the discontinuance, to the extent permitted under Social Services Law §157 and 18 NYCRR §387.1 (v) (4) (vi).

2. The Agency is further directed to evaluate the appellant's need for assistance under Social Services Law §131.2 and 94 ADM 20, and to provide appropriate assistance to meet the appellant's immediate needs.

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

DATED: Albany, New York
January 16, 1997

NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES

By



Commissioner's Designee