

STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: July 17, 2019

AGENCY: MAP

FH #: 7996190L

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 January 6, 2020, 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

Michael Johnson, Fair Hearing Representative, New York Medical Assistance Program

Interested Party

Debora Ferguson, Centers Plan for Healthy Living Managed Long Term Care Plan

ISSUE

Was the Agency's May 21, 2019 determination to discontinue the Appellant's participation in the Medicaid program effective June 3, 2019 because he failed to recertify for such benefits correct?

FINDINGS OF FACT

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, [REDACTED], has received Medical Assistance benefits for a household of one person.

2. On March 2, 2019, the Agency prepared Medicaid/Managed Long Term Care/Medicare Savings Program Renewal Form that was to be completed and returned to the Agency before May 10, 2019 “or your coverage may end.”

3. The Agency did not receive a completed renewal form from the Appellant by May 10, 2019.

4. By Notice of Intent dated May 21, 2019, the Agency informed the Appellant of its intention to discontinue the Appellant's Medical Assistance effective June 3, 2019 because “you or your representative did not return the recertification form by May 10, 2019.”

5. On July 17, 2019, the Appellant requested this fair hearing. The Appellant did not receive aid continuing.

6. A fair hearing was scheduled on September 12, 2019. The Appellant did not attend this fair hearing.

7. In accordance with the terms of the preliminary injunction in the case of *Fishman v. Daines*, the Office of Administrative Hearings sent a letter to the Appellant’s address of record asking if the fair hearing request had been abandoned and advising that if the Appellant requested that such hearing be reopened, the Appellant would be required to provide a good cause reason for defaulting the hearing that was scheduled for September 12, 2019.

8. Thereafter, the Office of Administrative Hearings received a response from the Appellant, within ten days of such letter, requesting that the hearing be rescheduled. The Appellant provided the Office of Administration with medical verification that the Appellant had good cause for missing the September 12, 2019 fair hearing and the Office rescheduled this fair hearing as a telephone hearing based upon the original request date of July 17, 2019.

9. As of the date of this fair hearing on January 6, 2020, the Agency has accepted the Appellant’s recertification application submitted on or around September 9, 2019 and determined that the Appellant was eligible for continued Medical Assistance effective July 1, 2019.

APPLICABLE LAW

Social Services districts must redetermine an MA 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. MA recipients who are not eligible for ADC, HR, SSI, title IV-E, or the adoption assistance benefits described in 18 NYCRR 360-3.3(a)(6) must apply for recertification on a State-prescribed form each time MA eligibility is redetermined. MA recipients who are eligible for ADC, HR, SSI, title IV-E, or the adoption assistance benefits described in 18 NYCRR 360-3.3(a)(6) will continue to be eligible for MA as long as they are eligible under the other program. No application for recertification is required when MA eligibility is redetermined. 18 NYCRR 360-2.2(e).

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.

Pursuant to the terms of a preliminary injunction in the federal class action entitled *Fishman v. Daines* (EDNY, 09CV5248, Bianco, J., March 6, 2016), if an applicant for or recipient of Medical Assistance requests a fair hearing to contest the adequacy, denial, reduction, restriction or termination of Medicaid benefits and fails to appear, either in person or by representative, at a fair hearing defaulted on or after April 11, 2016, the Office of Administrative Hearings will issue a “default letter” to the applicant or recipient’s address of record asking if the fair hearing request has been abandoned. This letter advises the applicant or recipient that if he or she is requesting a rescheduled hearing date, he or she must provide a good cause reason for defaulting the hearing. The default letter also advises the applicant or recipient that if the Office of Administrative Hearings does not receive a response to such letter postmarked within ten days of the mailing date, the hearing request will be deemed abandoned.

The order further provides that, if the Office of Administrative Hearings receives a response from the applicant or recipient within ten days of the mailing date of the default letter and postmarked within ten days of the mailing date of such letter, requesting a rescheduled hearing date, the hearing will be rescheduled. At the rescheduled hearing, the good cause explanation for the failure to appear on the original hearing date will be addressed by the administrative law judge and, if necessary, the merits of the subject hearing request will thereafter be addressed by the administrative law judge.

DISCUSSION

As a threshold matter, it is noted that the Agency representative requested a time bar on the Appellant’s request for this fair hearing regarding its May 21, 2019 notice discontinuing the Appellant’s Medicaid effective June 3, 2019. A careful examination of the procedural record shows that the Appellant failed to appear at a previously scheduled fair hearing on September 12, 2019. The Appellant was mailed a letter in accordance with the preliminary injunction in *Fishman v. Daines*, asking if the fair hearing request had been abandoned and advising that if the Appellant requested that such hearing be reopened, the Appellant would be required to provide a good cause reason for defaulting the hearing that was scheduled for September 12, 2019.

The Appellant explained at the fair hearing that at the time of the September 12, 2019 hearing, he was too ill to leave the house to attend the hearing and was medically homebound due to his medical condition. The Appellant’s testimony was detailed as to his medical symptoms and consistent with clinical verification timely submitted to the Office of Administrative Hearings and therefore credible. The Office of Administrative Hearings received a timely response from the Appellant requesting that the hearing be rescheduled. The Appellant

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provided the Office of Administration with medical verification that the Appellant had good cause for missing the September 12, 2019 fair hearing due to being medically unable to travel to the hearing on that date. The medical verification was signed by a provider affiliated with a medical clinic that visits home bound patients and stated that the Appellant became home-bound beginning in late August 2019. As the Appellant established good cause for missing the September 12, 2019 fair hearing, the Office rescheduled this fair hearing as a telephone hearing based upon the original request date of July 17, 2019. As the original fair hearing request was made within the applicable 60 day statute of limitations, the Agency's request for a time bar is denied.

The Agency's May 21, 2019 determination to discontinue the Appellant's participation in the Medicaid Excess Program effective June 3, 2019 because he failed to recertify eligibility will not be sustained.

Review of the evidence establishes that on or about March 2, 2019, the Agency prepared a Medicaid/Managed Long Term Care/Medicare Savings Program Renewal Form that was to be completed by the Appellant and returned to the Agency by May 10, 2019. The Agency did not receive the completed renewal form and by Client System Notification dated May 21, 2019 advised the Appellant his Medicaid coverage would be discontinued effective June 3, 2019 due to a failure to recertify eligibility.

The uncontroverted record establishes that during the pendency of this fair hearing, the Appellant completed the recertification application in September 2019 and was determined eligible for Medicaid effective July 1, 2019.

At the fair hearing, the Appellant denied receipt of the March 2, 2019 renewal form but admitted to receiving the May 21, 2019 Notice of Intent.

In response, the Agency submitted a document entitled "[REDACTED] PRB/Affidavit of Mailing (DAB/MSP/MLTC Renewal Forms)." Materially, this document contained copies of affidavits by [REDACTED] subscribed on August 24, 2017, and [REDACTED] subscribed on May 4, 2017. They purport to describe the mailing processes of the Medicaid, Medicare Savings Program and Managed Long Term Care renewal notifications. The document also contained an undated "Memorandum of Law in Support of a Presumption of Receipt of the Agency's Medicaid Renewal Notification and Reminder Booklet" signed by [REDACTED].

The Agency's representative testified that mailing procedures had not changed since the signing of these 2017 affidavits. However, he acknowledged that he was not personally involved in the mailing of the Medicaid renewal document or the processes involved in such mailing. Rather, the Agency's representative explained that as a matter of regular policy, fair hearing representatives for the Agency had been generally instructed by their supervisors to testify that the mailing procedures had not changed since these 2017 affidavits were executed.

Although the Agency submitted affidavits describing mailing procedures, the Agency failed to establish that the Appellant's renewal had been mailed in accordance with the described mailing systems. The attestations are stale, both having been subscribed nearly two years prior to the March 2, 2019 dating of the Medicaid/Managed Long Term Care/Medicare Savings Program Renewal Form. The Agency's witness acknowledged that he did not have personal involvement with the mailing, which raises questions regarding the reliability of his testimony stating that mailing procedures have not changed since 2017.

Based on the foregoing, the Agency has not established that the renewal form was mailed to the Appellant with adequate time for him to respond by the May 10, 2019 recertification deadline. Good cause is shown for the Appellant's failure to timely recertify; therefore, the Agency's determination is not sustained.

DECISION AND ORDER

The Agency's May 21, 2019 determination to discontinue the Appellant's participation in the Medicaid program effective June 3, 2019 because he failed to recertify for such benefits cannot be sustained and is reversed.

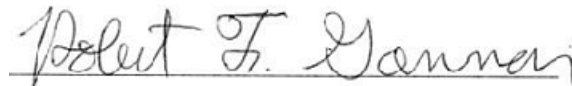
1. The Agency is directed to restore the Appellant's participation in the Medicaid program retroactive to June 3, 2019, the date of the discontinuance.

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

DATED: Albany, New York
01/23/2020

NEW YORK STATE
DEPARTMENT OF HEALTH

By

A handwritten signature in cursive script, appearing to read "Robert F. Gannon", written over a horizontal line.

Commissioner's Designee