


STATE OF NEW YORK  
DEPARTMENT OF HEALTH

REQUEST: February 16, 2016

AGENCY: Erie  
FH #: 7244567H

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In the Matter of the Appeal of	:
	: <b>DECISION</b>
	<b>AFTER</b>
	: <b>FAIR</b>
	<b>HEARING</b>
from a determination by the Erie 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 Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on March 17, 2016, in Erie County, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant



For the Social Services Agency



Centers Plan for Healthy Living, (a Managed Long Term Care Plan hereinafter referred to as "Agency") appeared on papers only

**ISSUE**

Was the Agency's determination to discontinue the Appellant's Medical Assistance benefits based on its Notice of Intent dated February 2, 2016 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, , has been in receipt of Medical Assistance benefits.
2. On or about January 23, 2015, Appellant was transitioned to a custodial / long term care level of care at , a skilled nursing facility.

3. On June 5, 2015, the Agency authorized payment for Appellant's long term care at [REDACTED] care from January 23, 2015 through July 31, 2015.

4. By Order of the Honorable [REDACTED], Justice of the Supreme Court, granted on [REDACTED] pursuant to section 81 of the Mental Hygiene Law, Legal Services for the Elderly, Disabled or Disadvantaged of Western New York, Inc.(LSED), Karen Nicolson, Chief Executive Officer, Helen Ferraro-Zaffram, Esq., was appointed guardian of the person and property of Appellant.

5. At the time of the appointment of LSED as the Guardian of the person and property of Appellant, she continued to reside at [REDACTED], a Skilled Nursing Facility on a long term basis.

6. The Agency authorized payment for Appellant's skilled nursing facility services at [REDACTED] for the period August 1, 2015 through December 31, 2015.

7. On November 24, 2015 and December 28, 2015, the Agency was informed that the Appellant was legally adjudicated incompetent and that LSED was the Guardian of the person and property for the Appellant.

8. By notice dated February 2, 2016, the Agency advised the Appellant of its determination to discontinue the Appellant's Medical Assistance benefits, including her skilled nursing facility services at [REDACTED] retroactive to January 1, 2016.

9. The Agency did not serve Appellant's Guardian with such Notice.

10. On February 16, 2016, this fair hearing was requested on behalf of Appellant. No aid continuing was authorized.

### **APPLICABLE LAW**

In general, a recipient of Public Assistance, Medical Assistance or Services (including child care and supportive services) has a right to a timely and adequate notice when the Agency proposes to discontinue, suspend, reduce or change the manner of payment of such benefits. An adequate, though not timely, notice is required where the Agency has accepted or denied an application for Public Assistance, Medical Assistance or Services; or has increased the Public Assistance grant; or has determined to change the amount of one of the items used in the calculation of a Public Assistance grant or Medical Assistance spend down; or has determined that an individual is not eligible for an exemption from work requirements. 18 NYCRR 358-3.3(a). In addition, pursuant to 18 NYCRR 358-3.3(d), an adequate, though not timely, notice is required for a Public Assistance or Medical Assistance recipient when, for example, the Agency has factual information confirming the death of the recipient; the Agency has received a clear written statement from the recipient that he or she no longer wishes to receive Public Assistance or Medical Assistance; the Agency has reliable information that the recipient has been admitted

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to an institution or prison; the recipient's whereabouts are unknown and mail has been returned to the Agency; or the recipient has been accepted for Public Assistance or Medical Assistance in another district.

A timely notice means a notice which is mailed at least 10 days before the date upon which the proposed action is to become effective. 18 NYCRR 358-2.23.

An adequate notice is a notice of action, an adverse action notice or an action taken notice which sets forth the action that the Agency proposes to take or is taking, and if a single notice is used for all affected assistance, benefits or services, the effect of such action, if any, on a recipient's other assistance, benefits or services. In addition, the notice must contain:

- o for reductions, the previous and new amounts of assistance or benefits provided;
- o the effective date of the action;
- o the specific reasons for the action;
- o the specific laws and/or regulations upon which the action is based;
- o the recipient's right to request an agency conference and fair hearing;
- o the procedure for requesting an agency conference or fair hearing, including an address and telephone number where a request for a fair hearing may be made and the time limits within which the request for a fair hearing must be made;
- o an explanation that a request for a conference is not a request for a fair hearing and that a separate request for a fair hearing must be made;
- o a statement that a request for a conference does not entitle one to aid continuing and that a right to aid continuing only arises pursuant to a request for a fair hearing;
- o the circumstances under which public assistance, medical assistance, SNAP benefits or services will be continued or reinstated until the fair hearing decision is issued;
- o a statement that a fair hearing must be requested separately from a conference;
- o 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, SNAP benefits or services;
- o a statement that participation in an agency conference does not affect the right to request a fair hearing;

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- o the right of the recipient to review the case record and to obtain copies of documents which the agency will present into evidence at the hearing and other documents necessary for the recipient to prepare for the fair hearing at no cost;
- o an address and telephone number where the recipient can obtain additional information about the recipient's case, how to request a fair hearing, access to the case file, and/or obtaining copies of documents;
- o the right to representation by legal counsel, a relative, friend or other person or to represent oneself, and the right to bring witnesses to the fair hearing and to question witnesses at the hearing;
- o the right to present written and oral evidence at the hearing;
- o the liability, if any, to repay continued or reinstated assistance and benefits, if the recipient loses the fair hearing;
- o information concerning the availability of community legal services to assist a recipient at the conference and fair hearing; and
- o a copy of the budget or the basis for the computation, in instances where the social services agency's determination is based upon a budget computation.

18 NYCRR 358-2.2

### **DISCUSSION**

The Agency's determination to discontinue the Appellant's Medical Assistance benefits cannot be sustained.

The uncontroverted evidence presented at the hearing established that the Appellant, legally adjudicated incompetent, has been in receipt of Medical Assistance coverage through a Managed Long Term Care Plan, (Centers Plan), referred to as "Agency" for the purposes of this decision. The Appellant's Medical Assistance coverage has included skilled nursing facility services, and the Appellant has been residing and continues to reside at a skilled nursing facility (Terrace View) since January 23, 2015 on a permanent basis. By notice dated February 2, 2016, the Agency notified the incompetent Appellant of its intent to "not approve" her Medical Assistance coverage retroactive to January 1, 2016. No notice was provided to the Appellant's legally appointed guardian, and no aid continuing was authorized.

As a recipient of Medical Assistance, the Appellant is entitled to timely and adequate notice. See, 18 NYCRR 358-3.3. The notice under review was neither timely nor adequate.

As set forth in 18 NYCRR 358-2.23, a timely notice must be mailed to the recipient at least 10 days before the date upon which the proposed action is to become effective. The Agency

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notice under review was retroactively effective to January 1, 2016, which did not afford the Appellant timely notice as required by regulation. Furthermore, 18 NYCRR 358-2.2, requires the Agency to set forth the correct action the Agency proposes to take in order to meet the definition of an adequate notice. In this case, the Agency framed its action as a denial with its indication that the Medical Assistance coverage the Appellant had been receiving was suddenly “not approved” retroactive to January 1, 2016. The Agency offered no evidence to show that the Medical Assistance the Appellant has been receiving was ever discontinued previously with a timely and adequate notice. The Agency’s mischaracterization of its action as a denial was not adequate under the regulations. Finally, it was undisputed that the Agency was aware that the Appellant had been legally adjudicated incompetent, and that Legal Services for the Elderly were her Court-appointed Guardian. Notwithstanding, the Agency only advised the Appellant of its determination, which was prejudicial as this particular Appellant was completely unable to evaluate the information contained in it, and further deprived her of the opportunity for aid continuing while this matter is pending. The combination of defects in the February 2nd notice is found to deprive the Appellant of due process, and renders such notice void as a matter of law. Accordingly, the determination under review must be reversed.

### **DECISION AND ORDER**

The Agency's determination to discontinue the Appellant's Medical Assistance benefits cannot be sustained.

1. The Agency is directed to reinstate and restore the Appellant's Medical Assistance benefits retroactive to January 1, 2016 the effective date of the Agency's action.

2. In the event that the Agency determines to implement its previously contemplated action, the Agency is directed to provide the Appellant and the Appellant’s Guardian with a notice that meets the requirements set forth in 18 NYCRR 358-2.2 and 358-2.23.

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

DATED: Albany, New York  
04/08/2016

NEW YORK STATE  
DEPARTMENT OF HEALTH

By



Commissioner's Designee