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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**  
:  
:

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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 July 20, 2007, in [REDACTED], before Irving J. Weitzman, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[REDACTED], Appellant; [REDACTED], Appellant's Companion

For the Social Services Agency

A. Feinlieb, Fair Hearing Representative

**ISSUES**

Was the Appellant's request for a hearing to review the Agency's April 18, 2007 determination to sanction her and reduce her household's Public Assistance benefits and discontinue her individual Medical Assistance benefits timely?

Assuming the Appellant's hearing request was timely, has the Agency acted correctly with respect to its April 18, 2007 determination to sanction the Appellant and reduce her household's Public Assistance benefits and discontinue her individual Medical Assistance 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 has been in receipt of Public Assistance and Medical Assistance

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benefits as part of the assistance household headed by her companion [REDACTED].

2. By a notice dated April 18, 2007 addressed to [REDACTED], the Agency informed the Appellant that it had determined to sanction her and reduce her household's Public Assistance benefits and discontinue her individual Medical Assistance benefits because she had allegedly failed to take part in or complete an alcohol/substance abuse assessment requirement.

3. The Appellant requested this hearing to appeal the Agency's determination.

### **APPLICABLE LAW**

Section 22 of the Social Services Law provides that applicants for and recipients of Public Assistance, Emergency Assistance to Needy Families with Children, Emergency Assistance for Aged, Blind and Disabled Persons, Veteran Assistance, Medical Assistance and for any services authorized or required to be made available in the geographic area where the person resides must request a fair hearing within sixty days after the date of the action or failure to act complained of. In addition, any person aggrieved by the decision of a social services official to remove a child from an institution or family home may request a hearing within sixty days.

A recipient of Public Assistance, Medical Assistance or Services has a right to an adequate notice when the Agency proposes to discontinue, suspend, reduce or change the manner of payment of such benefits. 18 NYCRR 358-3.3(a).

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. The notice must contain the specific reasons for the action. 18 NYCRR 358-2.2

### **DISCUSSION**

The Appellant requested this fair hearing on June 21, 2007 to review the Agency's April 18, 2007 determination to sanction her and reduce her household's Public Assistance benefits and discontinue her individual Medical Assistance benefits because she had allegedly failed to take part in or complete an alcohol/substance abuse assessment requirement. The Agency argued that inasmuch as the Appellant requested the hearing more than 60 days after the Agency determined to sanction her, her request is time barred by the statute of limitations.

Ordinarily, a person has 60 days from the date of the Agency's notice of the action affecting her/his Public Assistance and Medical Assistance benefits to request a fair hearing or s/he may be barred from having such a hearing. However, where the Agency fails to provide a recipient with adequate notice of its intended action, then the limitation may be tolled. Such a situation occurred here.

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When a social services agency proposes to reduce and/or discontinue assistance benefits, it is required to provide a recipient with timely and adequate notice. 18 NYCRR 358-3.3(a)(i). Adequate notice must contain the specific reasons for the Agency's action. 18 NYCRR 358-2.2(a)(3). This requirement serves the purpose of informing the recipient of the charges against her/him so that s/he can prepare her/his defense(s).

In this case, in addition to the April 18, 2007 notice stating that the Agency intended to sanction the Appellant due to her alleged failure to take part in or complete an alcohol/substance abuse assessment requirement. However, the said notice did not inform the Appellant of any time period in which said failure allegedly occurred. Such information is required to inform the Appellant of the basis for the Agency's determination. Simply stating that the Appellant will be sanctioned for failing to take part in or complete an alcohol/substance abuse assessment requirement is patently insufficient to meet the requirement that the Appellant be provided with enough details of the grounds for such action in order to permit her to prepare her case/defense. And such information is required to include a date on which the alleged infraction occurred. Accordingly, the Agency's April 18, 2007 notice cannot be considered adequate and such a defect tolls the statute of limitations. Therefore, the Appellant's request for this hearing must be considered timely.

With regard to the substance of the Agency's April 18, 2007 determination to sanction the Appellant, the same defect discussed above voids the Agency's April 18, 2007 notice and determination. Therefore, the Agency's April 18, 2007 determination to sanction the Appellant and reduce her household's Public Assistance benefits and discontinue her individual Medical Assistance benefits cannot be sustained.

It should be noted that the Appellant presented a letter from her drug treatment program at the hearing – the status of the Appellant's participation in such a treatment program being the underlying reason for the Agency's determination to sanction the Appellant – verifying that she is regularly attending the program.)

### **DECISION AND ORDER**

The Agency's April 18, 2007 determination to sanction the Appellant and reduce her household's Public Assistance benefits and discontinue her individual Medical Assistance benefits was not correct and is reversed.

1. The Agency is directed to continue to provide Public Assistance and Medical Assistance benefits to and on behalf of the Appellant.
2. The Agency is directed to restore the Public Assistance and Medical Assistance benefits not provided to and/or received by the Appellant as a result of the Agency's April 18, 2007 determination to sanction her retroactive to the date of the Agency action sanctioning her.
3. In the event that the Agency determines to implement its previously contemplated action, it is directed to provide the Appellant with a proper and adequate notice.

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

DATED: Albany, New York  
08/06/2007

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink that reads "Michael Zefrentz". The signature is written in a cursive style with a large, prominent 'Z' at the end.

Commissioner's Designee

UNION SQUARE JOB CENTER 039  
109 EAST 16TH STREET 11TH FLOOR  
NEW YORK, NY 10003

NOTICE OF DECISION ON YOUR  
PUBLIC ASSISTANCE, FOOD STAMPS AND  
MEDICAL ASSISTANCE.

SI USTED DESEA RECIBIR NOTIFICACIONES FUTURAS  
EN ESPANOL, POR FAVOR PONGASE EN CONTACTO  
CON SU TRABAJADOR(A).

PROGRAM CODE = 037

NOTICE NUMBER: [REDACTED]		DATE: April 18, 2007	CASE NUMBER: [REDACTED]
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OFFICE 039	UNIT	WORKER 00035	UNIT OR WORKER NAME	TELEPHONE NO. 212-835-8300
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<p><b>AGENCY TELEPHONE NUMBERS</b></p> <p>GENERAL TELEPHONE NO. FOR QUESTIONS OR HELP <u>212-835-8300</u></p> <p>OR Agency Conference <u>212-835-7073</u></p> <p>Fair Hearing information and assistance <u>212-835-7073</u></p> <p>Record Access <u>212-835-7361</u></p> <p>Child/Teen Health Plan <u>888-692-8662</u></p>	<p><b>CASE NAME / AND ADDRESS</b></p> <p>[REDACTED]</p>
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IF YOU DO NOT AGREE WITH ANY DECISION EXPLAINED IN THIS NOTICE, YOU HAVE A RIGHT TO ASK US FOR A CONFERENCE AND/OR ASK THE STATE FOR A FAIR HEARING. READ THE CONFERENCE AND/OR FAIR HEARING SECTION TO SEE HOW TO ASK FOR A CONFERENCE AND/OR A FAIR HEARING.

**PUBLIC ASSISTANCE**

Beginning April 29, 2007, your public assistance benefits will be CHANGED. Your old benefit amount was \$346.00; your new benefit amount is \$201.00. If the benefit amount is the same, you should compare the New Amount and Old Amount columns to see the change(s).

Your monthly public assistance benefit of \$201.00 will be distributed as follows:

	<u>New Amount</u>	<u>Old Amount</u>
o Monthly cash grant: .....	\$201.00	\$346.00

The payment for your residential stay will be sent to the facility.

If you have any changes in your household such as increased rent or someone else moving in, tell your worker right away. A change in your household could mean a change in your benefit amount.

Please see the budget calculation section of this notice for an explanation of how we figured your benefit amount.

This decision is based on Regulation 18 NYCRR 352.29.

Your public assistance will be CHANGED because:

- o Your household has had a change in the number of people.  
This decision is based on Regulation 18 NYCRR 352.1.
- o Your household has had a change in number of members who are temporarily absent.

AD

This decision is based on Regulation 18 NYCRR 352.30.

- o Your household has had a change in an amount for restaurant allowance.

This decision is based on Regulation 18 NYCRR 352.7.

[REDACTED]'s share of your household's public assistance benefit cannot be included.

This is because adults who apply for public assistance must agree to be screened for an alcohol or substance abuse problem. They must also agree to be assessed for an alcohol or substance abuse problem, which may include drug testing, by a counselor certified by the Office of Alcoholism and Substance Abuse Services. This assessment would be required if it is indicated through the screening process or if the adult exhibits signs of an alcohol/substance abuse problem, or he/she is already participating in an alcohol or substance abuse treatment program. In addition, an adult who is required to be in treatment for an alcohol or substance abuse problem must sign, and not revoke, a consent to disclose treatment information to the local social services district.

[REDACTED] did not take part in or complete the alcohol/substance abuse assessment requirement.

[REDACTED] cannot receive public assistance until he/she agrees to do so.

This decision is based on Regulation 18 NYCRR 351.2(i).

#### How we figured your Public Assistance Benefits:

Check the information below and let us know if something is wrong. If there is a mistake, it could mean that this decision we made about your benefit is not correct.

- o There is 1 person in your Public Assistance case.
- o There is 1 person in your Public Assistance suffix.
- o Your household does not include a pregnant woman, or child under age 18, or an 18-year-old child attending full time secondary school.
- o Your household pays \$0.01 for housing.
- o According to our records, your type of housing is known as Homeless Shelter.
- o We allow \$0.01 for housing.
- o Your heat is included in your rent.
- o No one in your suffix is at least four months pregnant.
- o \$64.00 is included for Restaurant Allowances.

#### FOOD STAMPS

Beginning April 29, 2007, your food stamp benefits will be CHANGED from \$161.00 to \$231.00. This is because:

- o Your household has had a change in shelter costs.

This decision is based on Regulation 18 NYCRR 387.12(f).

#### How we figured your Food Stamp Benefits:

Check the information below and let us know if something is wrong. If there is a mistake, it could mean that this decision we made about your benefit is not correct.

- o You will get \$231.00 for the month of May, 2007.
- o There are 2 people in your Food Stamp household.
- o You pay \$215.00 for housing.

- o According to our records, your type of housing is known as Homeless Shelter.
- o Because you have phone costs, we allow the standard of \$33.00.
- o There is no one 60 or older or disabled in your Food Stamp household.
- o You have no allowable medical expenses.
- o ~~You have no individuals in your household that are enrolled in a Medicare approved Prescription Drug Discount Card program.~~
- o No one in your household pays legally-obligated child support.
- o We allow expenses for child care or dependent care while you are employed or seeking employment through job search, or are in training. You do not pay for child care or dependent care.
- o We count the following monthly income:

<u>Person with income</u>	<u>Type of Income</u>	<u>Monthly Amount</u>
	Public Assistance	\$416.00
	Total Income:	<u>\$0.00</u>
	Countable Income:	<u>\$175.00</u>

**MEDICAL ASSISTANCE**

The following individual(s) cannot be included in your Medical Assistance case for the same reason that the individual(s) cannot be included in your Public Assistance case. This person must comply with this requirement in order to be included in the Medical Assistance case.

<u>Name</u>	<u>Client ID #</u>
[REDACTED]	[REDACTED]

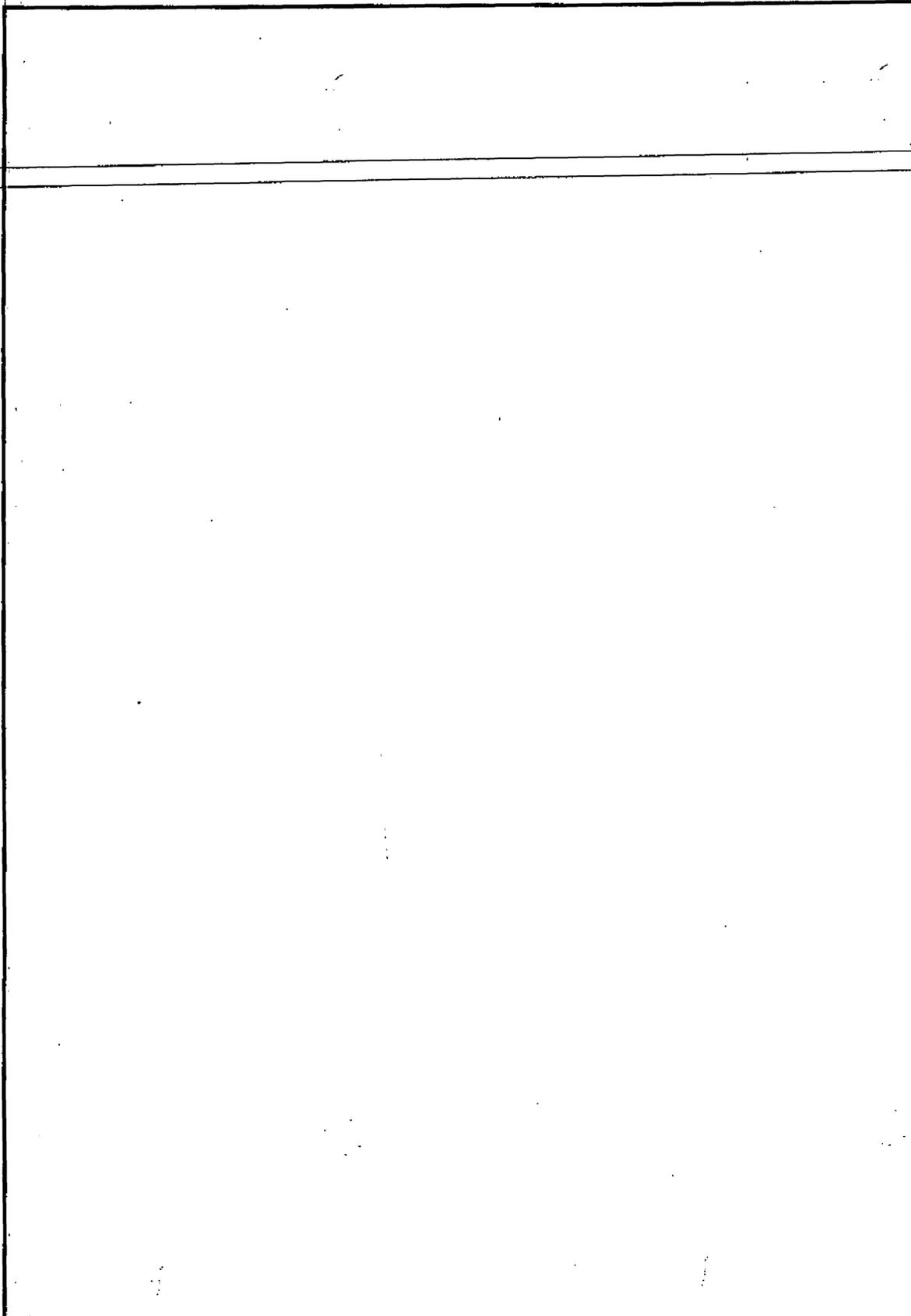
This decision is based on Social Services Law 366(1)(a)(1).

We will continue Medical Assistance coverage unchanged for:

<u>Name</u>	<u>Client I.D. #</u>
[REDACTED]	[REDACTED]

These persons will continue to be entitled to full services under the Medical Assistance Program.

This decision is based on Regulation 18 NYCRR 360-2.6.



**CONFERENCE AND FAIR HEARING SECTION**

**DO YOU THINK WE ARE WRONG?**

If you think our decision was wrong, you can request a review of our decision. If we made a mistake, we will correct it. You can do both of the following:

1. Ask for a meeting (conference) with one of our supervisors; and
2. Ask for a State fair hearing with a State hearing officer.

**CONFERENCE (Informal meeting with us)**

If you think our decision was wrong or if you do not understand our decision, or need additional information about the reason for our decision, please call us to arrange a meeting. To do this, call the conference telephone number listed at the top of page 1 of this notice or write to us at the address printed at the top of page 1 of this notice. Sometimes this is the fastest way to solve any problems you may have. We encourage you to do this even when you have asked for a fair hearing.

If you only ask for a meeting with us, we will not keep your benefits the same while you appeal. Your benefits will stay the same only if you ask for a State fair hearing. (See Keeping your Benefits the Same)

**STATE FAIR HEARING**

**Deadline for Requesting a Fair Hearing**

If you want the State to review our decision about your public assistance, you must ask for a fair hearing by June 17, 2007. This is the deadline even if you asked for a meeting (conference) with us.

If you want the State to review our decision about your medical assistance, you must ask for a fair hearing by June 17, 2007. This is the deadline even if you asked for a meeting (conference) with us.

If you want the State to review our decision about your food stamps, you must ask for a fair hearing by July 17, 2007. This is the deadline even if you asked for a meeting (conference) with us.

**Keeping your Benefits the Same**

We will not change your public assistance if you ask for a fair hearing about the action we are taking on your public assistance before April 28, 2007.

If you lose the hearing you will have to pay back any public assistance which you got, but should not have gotten, while you were waiting for the decision.

If you do not want your benefits to stay the same until the decision is issued, you must tell the State when you write or call for a fair hearing.

**How to Request a Fair Hearing**

You can ask for a fair hearing in writing, by telephone, by fax, electronically or in person.

**WRITE:** Complete the "tear-off" Request for a Fair Hearing at the bottom of this page and send it to the address on the bottom of the next page.

**OR CALL:** (800) 342-3334

When you call, please tell the worker the number of this notice which is [REDACTED]

(Read the next page for more of your Rights)

**REQUEST FOR A FAIR HEARING**

I want a fair hearing. I do not agree with the agency's action. (You may explain why you disagree below, but you do not have to include a written explanation.)

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Name : [REDACTED]  
Address : [REDACTED]

District/Office No: 66/039  
Notice No. : [REDACTED]  
Case Number: [REDACTED]  
Telephone : [REDACTED]

/\_/ I do not want to "keep my benefits the same" until the Fair Hearing decision is issued.  
**ONLY USE THIS TEAR-OFF TO REQUEST A HEARING ABOUT THIS NOTICE.**



- OR FAX:** Send a copy of this notice to fax no. (518) 473-6735.
- OR ONLINE:** Complete the online request form at:  
<http://www.otda.state.ny.us/oah/forms.asp>
- OR WALK-IN:** Bring a copy of this notice to the New York State Office of Temporary and Disability Assistance at 14 Boerum Place, Brooklyn, NY or 330 West 34th Street, New York City, NY.

~~If you cannot reach the State electronically, by phone or fax, please write to request a fair hearing before the deadline for requesting a fair hearing.~~

#### What to Expect at a Fair Hearing

The State will send you a notice which tells you when and where the fair hearing will be held.

At the hearing, you will have a chance to explain why you think our decision is wrong. You can bring a lawyer, a relative or a friend or someone else to help you do this. If you cannot come yourself, you can send someone to represent you. If you are sending someone who is not a lawyer to the hearing instead of you, you must give this person a letter to show the hearing officer that you want this person to represent you at the hearing.

At the hearing, you and your lawyer or other representative will have a chance to explain why we are wrong and a chance to give the hearing officer written papers which explain why we are wrong.

To help you explain at the hearing why you think our decision is wrong, you should bring any witnesses who can help you. You should also bring any papers you have such as: Pay stubs, Leases, Receipts, Bills, Doctor's Statements.

At the hearing, you and your lawyer or other representative can ask questions of witnesses which we bring or which you bring to help your case.

#### LEGAL ASSISTANCE

If you think you need a lawyer to help you with this problem, you may be able to obtain a lawyer at no cost to you by contacting:



For the names of other lawyers check your Yellow Pages under "LAWYERS".

#### ACCESS TO YOUR FILES AND COPIES OF DOCUMENTS

To help you get ready for the hearing, you have a right to look at your case files. If you call, write or fax us, we will send you free copies of the documents from your files, which we will give to the hearing officer at the Fair Hearing. Also, if you call, write or fax us, we will send you free copies of specific documents from your files which you think you may need to prepare for your Fair Hearing. To ask for documents or to find out how to look at your file, call (718) 722-5012, or FAX (718) 722-5018 or write to HRA Division of Fair Hearing, 14 Boerum Place, Brooklyn, New York 11201. If you want copies of your documents from your case file, you should ask for them ahead of time. They will be provided to you within a reasonable time before the date of the hearing. Documents will be mailed to you only if you specifically ask that they be mailed.

Send this "Request for a Fair Hearing" to:

The Office of Administrative Hearings  
New York State Office of Temporary and Disability Assistance  
P.O. Box 1930  
Albany, New York 12201



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**HEALTH CARE PROGRAMS FOR NEW YORKERS**

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**Do you need help paying for medical care?**

Medical Assistance (Medicaid) is help for New Yorkers who cannot pay for their medical care. There are several ways you can be eligible for Medicaid. Eligibility depends on your age, income, health, sometimes your resources and other requirements. The Medicaid Programs that are available include:

**Programs for Adults:****If you get Temporary Assistance or SSI, can you get Medicaid?**

Yes, you can get Medicaid and cash assistance. You can also get Medicaid without cash assistance. Citizens and aliens with satisfactory immigration status can get Medicaid. People who get Medicaid can get Family Planning Services.

**If you stop getting cash assistance because you are working and earn too much money, can you continue to get Medicaid?**

Yes, if you have a child(ren) and a job, you might be eligible for 12 months of Medicaid when your income goes up. This program is called **Transitional Medical Assistance (TMA)**.

**If your income and/or resources are too high to get cash assistance, can you still get Medicaid?**

Yes, if you live with a child(ren), are age 65 or older, or are certified blind or certified disabled, you may be eligible for **Medicaid**. If you have too much income and/or resources, you may be eligible after you incur medical bills at least equal to your excess income and/or excess resources. If you are not eligible for Medicaid, you may be eligible for **Family Health Plus (FHPPlus)**. You can qualify for FHPPlus if you live with a child(ren) and have income up to 150% of the Federal Poverty Level (FPL). Your 19 or 20 year old child living with you may also be eligible. If you do not live with a child, or if you are 19 or 20 years old and not living with your parent(s), you can qualify for FHPPlus if you have income up to 100% of the FPL. Citizens and aliens with satisfactory immigration status can get FHPPlus. Even if you are not otherwise eligible for Medicaid or FHPPlus, if you are of child-bearing age and have income up to 200% of the FPL, you may be eligible to have Medicaid, pay for family planning services under the Family Planning Benefit Program.

**If you are pregnant, can you have more income and get Medicaid?**

You can have income up to 200% of the FPL and get Medicaid. Your resources are not counted. Pregnant women do not need to prove citizenship or immigration status.

**The Special Supplemental Nutrition Program for Women, Infants and Children (WIC)**

Are you pregnant? A new mother? Have a baby or young children?

WIC can help you help your family. WIC provides healthy foods, nutrition and health education, breastfeeding support and referrals to health and social services to New York families at no cost.

For the location of the nearest WIC clinic, call 1-800-522-5006.

**What if you do not qualify for Medicaid or Family Health Plus? Is there any other help?**

The **Healthy NY** program is designed to help small business owners provide employees and their families with health insurance. If you are uninsured and your employer does not provide health insurance, you may also purchase coverage directly through the **Healthy NY** program. For more information call 1-866-432-5849.

The New York State Department of Health Cancer Services Program provides breast, cervical, and colorectal cancer screening at no cost to eligible women and men who are uninsured or cannot pay for these services. Screening services are available in every county/borough in NYS. For more information call 1-800-422-6237.

**If you have a disability and are working and have more income and resources than is allowed for Medicaid, is there any way to get or keep Medicaid health care coverage?**

Yes, if you are between 16 and 64 years old, have a disability as defined by the Social Security Administration, and are working, you can have income up to 250% of the FPL and resources as high as \$10,000 by participating in the Medicaid Buy- In program for Working People with Disabilities (MBI-WPD). A monthly premium may be charged for participants in this program who have countable income between 150% and 250% of the FPL.

**If you receive Medicare, is it possible to get help in paying for your prescription drugs even if you are not eligible for Medicaid or the Medicare Savings Program?**

If you are entitled to Medicare Part A or Medicare Part B, you are eligible to receive prescription drug benefits through Medicare Part D. To get more information about this program, you may call 1-800-Medicare (1-800-633-4227). You may also be eligible to receive extra help in paying the premiums, coinsurance and deductibles for the Medicare Part D prescription drug benefit. To find out more about getting this extra help, you may call 1-800-772-1213.

**If you are currently receiving your prescription drugs through the Medicare prescription drug program and your Medicaid case is being closed, will you lose your Medicare prescription drug benefit?**

If your Medicaid benefit is being discontinued, and you are currently receiving your prescription drugs through Medicare instead of Medicaid, any action to discontinue your Medicaid benefits will have no effect on the prescription drug coverage that you are receiving through Medicare, at least until the end of this calendar year (as long as you continue to be eligible for Medicare Part A or Medicare Part B). If you have any questions about your Medicare prescription drug benefit or to find out how your Medicare prescription drug benefit might change next year, please call 1-800-Medicare (1-800-633-4227). If you are moving out of State, you must notify the Social Security Administration (1-800-Medicare) of your new address, as you will have to enroll in a plan that is offered in your new state of residence.

**Are there special programs for children?**

Yes, **Child Health Plus A** is for children under age 21. Children ages 1 through 5 can have income as high as 133% of the FPL. Children ages 6 through 18 can have income as high as 100% of the FPL. Resources are not counted.

If you are age 19 or 20, you can qualify if you have income and resources below certain levels. If you have too much income and/or resources, you may be eligible after you incur medical bills at least equal to your excess income and/or excess resources. As noted above, you may also be eligible for **FHPlus**.

**Child Health Plus B** is free or low cost health insurance for children under age 19 who are not eligible for Child Health Plus A.

**Can my child get help finding a health care provider and getting regular checkups?**

Yes, there is a Medicaid program for those from birth to age 21 called the Child Teen Health Program (C/THP) which provides check-ups and follow-up if problems are found. Everyone from birth to age 21 who has Child Health Plus A, Medicaid, Medicaid Managed Care, even 19 and 20 year old young adults who have Family Health Plus can take advantage of this benefit.

Children and young people should see a doctor regularly even if they are healthy. The Child/Teen Health Program encourages children to have check ups 10 times before the age of three and about once a year after that. The C/THP helps establish a "medical home". Depending on age, the C/THP exam includes:

Health History	Asthma Assessment, Diagnosis and Treatment
Dental Screening	Hearing and Vision Testing
Complete Physical	Blood Tests (such as sickle cell anemia)
Immunizations for school and college	Developmental Assessment
Blood lead level - 1 and 2 year olds and children between 3 and 6 years old who have not had a blood lead level.	
Advice and Answers to your health questions	

The C/THP is FREE, there are no co-pays. The benefit includes necessary services that might not normally be provided by the child's regular doctor or clinic. The provider will arrange for follow up treatment for problems found and can schedule regular checkups.

If you are enrolled in a managed care plan, the plan includes the C/THP. Speak to your plan representative about these services.

If you are not enrolled in a managed care plan, call the local Department of Social Services or if you are in NYC, call 1-888-692-8662 to help you find doctors, dentists, prenatal care, family planning, other providers that accept Medicaid and help with transportation if necessary.

If you need health care coverage, contact your local Department of Social Services or the Human Resources Administration in New York City.