STATE OF NEW YORK REQUEST: May 2, 2007 OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE CASE #: ********* **CENTER #:** MAP **FH #:** 4780396M : In the Matter of the Appeal of 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 Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on October 30, 2007 and December 24, 2007, in ***********, before Lewis Herman, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

For the Social Services Agency

James Weagant, Fair Hearing Representative (10/30/07) Philomena Offurum, Fair Hearing Representative (12/24/07)

ISSUE

Was the Agency's determination dated April 28, 2007, to discontinue the Appellant's Medical Assistance benefits effective May12, 2007, correct?

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, age 52 and not disabled, his wife, age 54 and not disabled, and his three children, ages 13, 17 and 20, have been in receipt of an authorization for Medical Assistance benefits.

2. The Medical Assistance of the three children is not at issue.

3. By notice dated April 28, 2007, the Agency advised the Appellant of its determination to discontinue the Appellant's and his spouse's Medical Assistance benefits on the grounds that the Appellant failed to submit paid or unpaid medical bills that were in excess of the Appellant's excess income amount, without mentioning the amount or how it was calculated..

4. The Agency's Notice of Intent dated April 28, 2007 did not include a copy of the Agency's budget or the basis for the computation of the Appellant's benefits.

5. The Appellant requested this fair hearing to review the Agency's determination to discontinue the Appellant's Medical Assistance benefits.

APPLICABLE LAW

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). In addition, in most circumstances, a Food Stamp recipient has a right to an adequate adverse action notice when the Agency proposes to take any action to discontinue, suspend or reduce the recipient's Food Stamp benefits during the certification period. 18 NYCRR 358-2.3; 18 NYCRR 358-3.3(b).

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, where the social service agency's determination is based upon a budget computation, the notice must contain, among other items, a copy of the budget or the basis for the computation. 18 NYCRR 358-2.2

DISCUSSION

The Appellant requested this hearing to review the Agency's determination to discontinue the Medical Assistance benefits of the Appellant and his spouse based on its Notice of Intent dated April 28, 2007.

Although the Agency's determination is based upon a computation of the Appellant's budget, the Agency's notice did not set forth or include a copy of the budget or the basis for such computation as required by 18 NYCRR 358-2.2, above.

The above-noted defect in the Agency's notice renders such notice void. Therefore, the Agency's determination to discontinue Medical Assistance benefits of the Appellant and his spouse cannot be sustained.

DECISION AND ORDER

The Agency's determination to discontinue Medical Assistance benefits of the Appellant and his spouse is not correct and is reversed.

1. The Agency is directed to restore Medical Assistance benefits of the Appellant and his spouse retroactive to the 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 with a notice that meets the requirements set forth in 18 NYCRR 358-2.2.

Should the Agency need additional information from the Appellant in order to comply with the above directives, it is directed to notify the Appellant promptly in writing as to what documentation is needed. If such information is requested, the Appellant must provide it to the Agency promptly to facilitate such compliance.

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

DATED: Albany, New York 03/11/2008

NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

By

Jusan M. grimes

Commissioner's Designee

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MEDICAL ASSISTANCE PROGRAMS RECERT/RENEWAL GPO BOX 2623 340A W. 34TH ST 1ST FL. (IN PERSON) NEW YORK, NY 10117 NOTICE OF DECISION ON YOUR MEDICAL ASSISTANCE.

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CONFERENCE AND FAIR HEARING SECTION

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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.

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CONFERENCE (Informal meeting with us)

If you think our decision was wrong or if you do not understand our decision, please call us at 212-630-0996, write to us at Medical Assistance Programs, Conference Unit, 330 W. 34th Street, 3rd Floor, New York, NY 10001 to arrange a meeting. Sometimes this is the fastest way to solve any problems you may have. We encourage you to do this even when you ask for a fair hearing. This is not the way to request a fair hearing. If you ask for a conference, you are still entitled to a fair hearing.

If you <u>only</u> 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 medical assistance, you must ask for a fair hearing by dune 27, 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 medical assistance if you ask for a fair hearing about the action we are taking on your medical assistance before the effective date stated in this notice.

If you lose the hearing you may have to pay back any medical 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

then you call, please tell the worker the number of this notice which is

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

(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.)

Name Address :

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District/Office No: 66/548 Notice No. : Case Number: Telephone 1

I do not want to "keep my benefits the same" until the Fair Hearing decision is issued. 1_1 ONLY USE THIS TRAR-OFF TO REQUEST A HEARING ABOUT THIS NOTICE.

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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 (212) 643-3597, or FAX (212) 630-9897 or write to Medicaid Fair Hearing Division, Rivers Liaison, 330 W. 34th Street, Third Floor, New York, New York 10001. If you want copies of your documents from your case file, you should ask for them ahead of time. They 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 XL218C (08/97)

EXPLANATION OF THE EXCESS INCOME PROGRAM

The following is an explanation of how you may become eligible for Medical Assistance and receive help with your medical bills even though your income may be over the limit. Please contact your social services worker if you need help understanding this letter.

If you have applied for Medical Assistance, our written notice to you will tell you if you have income over the Medical Assistance income level and the amount by which your income is over. This amount is also called excess income. If your net income is over (in excess of) the Medical Assistance level for your family size for a period in which you want help with your medical bills, you may receive Medical Assistance coverage only if either A or B is met.

A. Outpatient Care and Service (One Month Eligibility)

You can become eligible for Medical Assistance for outpatient care and services if in any month you have medical bills that are equal to or more than the amount of your excess income.

This is possible under the **Excess Income Program** which provides outpatient coverage on a month-to-month basis for people who become eligible by bringing us their paid or unpaid medical bills which add up to at least the amount of their monthly excess income. You must present these medical bills to the agency when they add up to at least the amount of your excess income.

When you incur (owe) or have paid the amount of your monthly excess income and have submitted these bills and/or receipts to the agency, you may receive Medical Assistance coverage for all other eligible outpatient services for that month.

If you did not provide proof of your resources when we determined your eligibility for Medical Assistance, you will not be eligible for coverage of outpatient long-term care services. In order to be determined eligible for such services, you must supply proof of your current resources. If you need home care for an expected period of less than 30 days, you do not need to supply proof of your resources. However, you must contact your worker immediately.

B. Outpatient and Inpatient/Hospital Care and Services (Six-Month Eligibility)

You can become eligible for Medical Assistance for all appropriate medical care and services (inpatient and outpatient) if you become hospitalized and/or are seeking help with your inpatient hospital bills, and if you incur (owe) or have paid an amount of medical bills equal to your monthly excess income for six months. Once you have medical bills (paid or unpaid), including any other medical bills besides your hospital bill that equal this six months' figure and present them to the agency, you will then receive Medical Assistance coverage each month for these six months for all other covered medical expenses (whether in-hospital or not).

If you did not provide proof of your resources when we determined your eligibility for Medical Assistance, you will not be eligible for coverage of long-term care services. In order to be determined eligible for such services, you must supply proof of your resources.

C. Medicare, Private Insurance and Use of Bill

If a bill or service is covered in full by **Medicare** or private insurance, it cannot count as a medical expense to meet your monthly excess. If only part of a bill is covered by **Medicare** or private insurance, then that portion which remains (not covered by Medicare or private insurance) can count toward reducing or eliminating your monthly excess.

Bills for your care, your spouse's care, or the care of your children who are under the age of 21, may be counted toward your monthly excess within the following guidelines. Medical bills of a child living with you will be considered. Medical bills of a child who is not part of your household may also be considered so long as you are providing medical support for the child. Bills for your parents' care, if you are under 21 and live with your parents, may also be counted toward meeting your monthly excess. Medical bills from prior months may be counted toward meeting your monthly excess. Once medical bills, whether old or current, are credited toward meeting your monthly excess, they cannot be counted again.

After you have enrolled in the Excess Income Program, you must arrange to either bring in or mail in your bills and receipts each month once you have accumulated medical expenses equal to or greater than your excess income.

We suggest that you make any necessary doctors' appointments or fill prescriptions in the early part of each month so that, after you have met your excess amount, you can have the benefit of a Medical Assistance card to use for the payment of other medical expenses for that month. Medical Assistance may also be available for unpaid and certain paid bills for services and supplies received in the three calendar months prior to the month you applied.

D. Payment of Medical Bills

It is important to check to see if your doctor or other medical person accepts Medical Assistance payments. Medical Assistance will only pay bills from a doctor, 1

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druggist or other provider who accepts payments under New York's Medical Assistance Program.

However, even if the doctor or other medical person does not accept Medical Assistance payments, you may still use bills from that person, whether paid or unpaid, to meet your excess income amount to qualify under the Excess Income Program (see below).

E. Allowable Medical Expenses

You should note that when meeting your excess amount, you can use doctor bills as well as medical expenses such as:

- a Transportation expenses to obtain necessary medical services (in most cases). Medical expenses or payments made to therapists, nurses, personal care attendants and home health aides (as required by a physician). o
- Prescription drug bills. o
- Payments made toward surgical supplies, medical equipment, prosthetic devices, hearing aids and eye glasses (as ordered by a doctor).

You can also use medical expenses that are not covered by the Medical Assistance Program such as:

- Chiropractor's service (and other non-covered services). 0
- o Co-payments you are charged when you receive certain Medical Assistance services.
- Services from non-participating providers (people who provide medica) services o but do not accept Medical Assistance payments).
- Some over-the-counter drugs and medical supplies such as bandages and dressings may be applied toward reduction of your excess income if they have been ordered by a doctor or are medically necessary. Bills for cosmetics and other non-medical items are not acceptable.

Certain of these bills can be counted only if required by a physician. Some of these services and supplies can also be paid for with your Medical Assistance card, but may have some restrictions.

Excess Income Amount

You may also pay your excess income amount directly to the social services agency to obtain Medical Assistance coverage: "Please read the "Optional Pay-In Program" Section.

Should there be a change in your circumstances (financial, household size, etc.), your eligibility in the Excess Income Program could be affected. All changes must be reported to your local social services office.

If you have any questions, please contact your Medical Assistance eligibility examiner for details.

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OPTIONAL PAY-IN PROGRAM FOR INDIVIDUALS WITH EXCESS INCOME

Your income exceeds the Medical Assistance income limit for your family size. The enclosed "EXPLANATION OF THE EXCESS INCOME PROGRAM" explains how you may receive help with medical bills even though your income may be over the income limit. The "Explanation of the Excess Income Program" tells you that if you bring in or send us your medical bills each month which are equal to or more than the amount of your excess income, you may receive coverage for any other outpatient medical expense[s] you incur from a Medical Assistance provider in that month. Explained below is another way you can get Medical Assistance coverage.

Instead of bringing or mailing in your medical bills each month, you can pay to this agency the amount of your income that is over the limit. If you decide to pay this money to us, you will be given outpatient coverage for the month you are paying for, and will not have to wait until you incur a medical bill.

If you pay a total of six months of excess income, you will be given outpatient and inpatient coverage for that six-month period. Once you are given coverage, you can use your Medical Assistance card to obtain services from your doctor or other medical provider. You must be sure the provider accepts payments from the Medical Assistance program before you receive the service.

If you pay your excess income to this agency and then get or pay a bill for medical services that Medical Assistance does not cover (for example, chiropractor's service), we will give you a refund or we will give you a credit toward the next available uncovered month. You must bring in or send to us the paid or unpaid bill in order to get a credit or refund.

Remember, we will not pay for or give credit for any bill or portion of a bill that is covered by Medicare or other health insurance that you have.

If you decide to pay your excess income to the agency, from time to time we will review the amount of all the claims we have paid for you, and compare this amount to the amount you have paid. If you have paid more than you should have, we will decide to give you a refund or give you credit for coverage in another month. We will make this decision based on your circumstances.

You should consider the following before deciding to take part in the PAY-IN PROGRAM.

- 1. Unless you know that you will need medical services during a month, it is not to your benefit to pay in your excess income that month.
- 2. If you pay your excess income and then do not use your Medical Assistance card, it may take at least a year for us to give you a refund or credit. This is because we must wait to see if any claims have been paid for you for that period.
- 3. If you decide you want to pay your excess income to this agency, you may do so every month, or only in those months that you know you will need medical services. If you want, you may pay us for more than one month at a time, up to six consecutive months. However, if you decide to pay your excess income and then do not make a payment to us for three consecutive months, you may receive a notice of our intent to close your case. You may reapply for Medical Assistance if you incur or expect to incur medical expenses at least equal to your excess income and wish to make a payment or submit bills to receive coverage.

If you did not provide proof of your resources when we determined your eligibility for Medical Assistance, you will not be eligible for coverage of long-term care services.

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HEALTH CARE PROGRAMS FOR NEW YORKERS

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 SSL 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 (FHPlus)**. You can qualify for FHPlus 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 your parent(s), you can qualify for FHPlus if you have income up to 100% of the FPL. Citizens and aliens with satisfactory immigration status can get FHPlus. Even if you are not otherwise eligible for Medicaid or FHPLus, 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?

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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?

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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.

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