STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: August 23, 2002
CASE #: **********
CENTER #: HCSP
FH #: 3768271Z

In the Matter of the Appeal of

****

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

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 March 7, 2006, in **********, before Peter Zaret, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

***********, Appellant; ****************, Esq., Representative; ***************, Witness

For the Social Services Agency

Glynis Jerome, Fair Hearing Representative

ISSUES

Was the Agency's determination dated August 20, 2002, effective August 31, 2002, to discontinue the Appellant's Personal Care Services authorization because the Appellant was not Medicaid eligible in that the Appellant's "Medicaid surplus amount [was] more than the cost of [the Appellant's] services" correct?

Was the Agency's determination to discontinue the Appellant's Medical Assistance benefits effective September 3, 2002, without written notice 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, age 83, was in receipt of Medical Assistance benefits and a Personal Care Services authorization in the amount of 8 weekly.

2. By notice dated August 20, 2002, effective August 31, 2002, the Agency determined to discontinue the Appellant's Personal Care Services authorization because the Appellant was not Medicaid eligible in that the Appellant's "Medicaid surplus amount [was] more than the cost of [the Appellant's] services."

3. The Agency's notice dated August 20, 2002, failed to include a budget or the its basis of computation.

4. Effective September 3, 2002, the Agency discontinued the Appellant's Medical Assistance benefits without written notice.

5. On August 23, 2002, this fair hearing was requested. At the hearing, the issue was amended, without objection by the parties, to review the correctness of the Agency's determination dated August 20, 2002, effective August 31, 2002, to discontinue the Appellant's Personal Care Services authorization because the Appellant was not Medicaid eligible in that the Appellant's "Medicaid surplus amount [was] more than the cost of [the Appellant's] services", and to review the correctness of the Agency's determination to discontinue the Appellant's Medical Assistance benefits effective September 3, 2002, without written notice. At the hearing, the Appellant's Representative withdrew on the requested third issue of the correctness of the Agency's calculation of the amount of the Appellant's monthly excess income spenddown at the time of the Agency's determination dated August 20, 2002.

APPLICABLE LAW

Regulations at 18 NYCRR 358-2.2 provide that adequate notice must be sent, including 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.

Regulations at 18 NYCRR 358-3.3(a) provide that a recipient of Public Assistance, Medical Assistance or services has a right to notice when the agency:

(i) proposes to take any action to discontinue, suspend, or reduce a Public Assistance grant, Medical Assistance authorization or services…

DISCUSSION

The credible evidence establishes that the Appellant was in receipt of Medical Assistance benefits and a Personal Care Services authorization in the amount of 8 weekly.

The credible evidence further establishes that by notice dated August 20, 2002, effective August 31, 2002, the Agency determined to discontinue the Appellant's Personal Care Services authorization because the Appellant was not Medicaid eligible in that the Appellant's "Medicaid surplus amount [was] more than the cost of [the Appellant's] services." The Agency's notice dated August 20, 2002, failed to include a budget or the its basis of computation. It is therefore void.

The credible evidence establishes that the Appellant was in receipt of Medical Assistance benefits through September 3, 2002, and that effective September 3, 2002, the Agency discontinued the Appellant's Medical Assistance benefits without written notice. The Agency's failure to give proper written notice of its action violated the above cited regulations.

DECISION AND ORDER

The Agency's determination dated August 20, 2002, effective August 31, 2002, to discontinue the Appellant's Personal Care Services authorization because the Appellant was not Medicaid eligible in that the Appellant's "Medicaid surplus amount [was] more than the cost of [the Appellant's] services" is not correct and is reversed.

1. The Agency is directed to restore Appellant's Personal Care Services authorization in the amount of 8 hours weekly.

The Agency's determination to discontinue the Appellant's Medical Assistance benefits effective September 3, 2002, without written notice is not correct and is reversed.

1. The Agency is directed to restore the Appellant's Medical Assistance benefits for the period beginning the date of discontinuance, September 3, 2002.

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

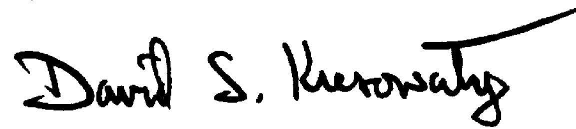
As required by 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

FH# 3768271Z

DATED: Albany, New York
03/09/2006

NEW YORK STATE
DEPARTMENT OF HEALTH

By



Commissioner's Designee

(3)

HCSP - 3000G (Face)
Rev. 6/97

HUMAN RESOURCES ADMINISTRATION
MEDICAL ASSISTANCE PROGRAMS
HOME CARE SERVICES PROGRAM

Bronx, CASA (I/XI)
1775 Grand Concourse, 7th Floor
Bronx, New York 10453

NOTICE OF INTENT TO DISCONTINUE HOME CARE SERVICES

NOTICE DATE: 8-20-02

EFFECTIVE DATE: 8-31-02

MEDICAID CASE NUMBER:

MEDICAID SURPLUS: 508.79

SOCIAL SECURITY:

CLIENT IDENTIFICATION NUMBER (CIN):

BASED ON A REVIEW OF YOUR CURRENT CASE SITUATION THE HOME CARE SERVICES PROGRAM INTENDS TO DISCONTINUE YOUR HOME CARE SERVICES BY THE EFFECTIVE DATE ABOVE FOR ONE OR MORE OF THE FOLLOWING REASONS:

- ☐ **According to our assessment of the Medical Request for Home Care, Form M-11q, you do not need personal care or chore services.**
- ☑ **You are not Medicaid eligible. In order to receive home care services you must be eligible for Medicaid.**
- ☐ **You have failed to provide documents necessary to reauthorize/recertify your eligibility for Medicaid /Home Care (See the list of documents below).**
- ☐ **You have stated that you do not want the services.**
- ☐ **You are currently in a hospital or other institution and you have no expected discharge date.**
- ☐ **A relative, friend or another agency has assumed responsibility for your care.**
- ☑ **Other:** The medicaid surplus amount is more than the cost of your services

YOU <u>WILL NOT</u> RECEIVE ANY FURTHER NOTICE PRIOR TO THE DISCONTINUANCE OF YOUR SERVICE!

IF YOUR CIRCUMSTANCES AND/OR ELIGIBILITY STATUS CHANGE, YOU MAY RE-APPLY FOR SERVICES.

This action is being taken pursuant to State Regulation 18 NYCRR 505. 14.

[signature]	BII J2	716-0652
SERVICE TEAM SUPERVISOR'S SIGNATURE	CSLD	TELEPHONE

YOU HAVE THE RIGHT TO APPEAL THIS DECISION

We will review this decision with you if you call us and ask for a LOCAL CONFERENCE. You will also have the right to ask for a STATE FAIR HEARING. You must request a STATE FAIR HEARING within 60 days of the date on the top of this notice. You must meet this deadline to request a STATE FAIR HEARING even if you ask for a LOCAL CONFERENCE first. If you want your eligibility to continue unchanged until you receive a Fair Hearing decision, you must request a Fair Hearing prior to the effective date of this notice.

BE SURE TO READ THE NOTICE ON THE REVERSE SIDE ON HOW TO APPEAL THIS DECISION.

NOTICE OF INTENT TO DISCONTINUE HOME CARE SERVICES

THESE ARE THE WAYS TO ASK FOR AN APPEAL

RIGHT TO A LOCAL CONFERENCE: You may have a conference to review these actions. If you want a conference, you should ask for one as soon as possible. At the conference, if we discover that we made a wrong decision or if because of information you provided we determine to change our decision, we will take corrective action and give you a new notice. You may ask for a conference by calling us at (718) 716-0805 or by sending a written request to: Eurania Cruz, CASA I//XI, 1775 Grand Concourse, 7th Floor, Bronx, New York 10453.

This number is used only for asking for a conference. It is not the way you request a fair hearing. If you ask for a conference you are still entitled to a fair hearing. Read below for fair hearing information.

If you want to have your benefits continue unchanged (aid continuing) until you get a fair hearing decision, you must request a fair hearing in the way described below. A request for a conference alone will not result in continuation of benefits.

RIGHT TO A FAIR HEARING: If you believe that our decision is wrong, you may request a State Fair Hearing by:

(1) Telephoning: 1-212-344-0055 (PLEASE HAVE THIS NOTICE WITH YOU WHEN YOU CALL)

OR

(2) Writing: By sending a completed copy of this notice to: Office of Administrative Hearings, Home Care Section, NewYork State Department of Social Services, P.O.Box 1930, Albany, New York 12201. Please keep a copy for yourself.

☐ I want a fair hearing: the Agency's action is wrong because:

____

____

Signature of Client ______________________ Date ___/___/___

PRINT HERE:
NAME: ______________________ CASE NUMBER: __________

ADDRESS: ______________________

YOU HAVE 60 DAYS FROM THE DATE OF THIS NOTICE TO REQUEST A FAIR HEARING

If you request a fair hearing, the State will send you a notice informing you of the time and place of the hearing. You have the right to be represented by legal counsel, a relative, a friend, or other person, or to represent yourself. At the hearing, your attorney or other representative will have the opportunity to present written and oral evidence to demonstrate why the action should not be taken, as well as an opportunity to question any persons who appear at the hearing. Also you have a right to bring witnesses to speak in your favor. You should bring to the hearing any documents such as this notice, paystubs, receipts, medical bills, heating bills, medical verification, letters, etc., that may be helpful in presenting your case.

CONTINUE YOUR BENEFITS: If you request a fair hearing before the effective date stated in this notice and your benefits are being decreased, you will continue to receive your benefits unchanged until the fair hearing decision is issued. However, if you lose the fair hearing we may recover the cost of any Medical Assistance benefits that you should not have received. If you want to avoid this possibility, check the box below to indicate that you do not want your aid continued, and send this page along with your hearing request. If you do check the box, the action described above will be taken on the effective date listed on the first page of this notice.

☐ I agree to have action taken on my Medical Assistance benefits, as described in this notice prior to the issuance of the fair hearing decision.

LEGAL ASSISTANCE: If you need free legal assistance, you may be able to obtain such assistance by contacting your local Legal Aid Society or other legal advocate group. You may locate the nearest Legal Aid Society or advocate group by checking your Yellow Pages under "Lawyers".

ACCESS TO YOUR FILE AND COPIES OF DOCUMENTS: To help you get ready for the hearing, you have a right to look at your case file. If you call or write to us, we will send you free copies of the documents from your file which we will give to the hearing officer at the fair hearing. Also, if you call or write to us, we will send you free copies of other documents from your file 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 us at: (718) 716-0800, or write to: Director's office, CASA I/XI, Director's office, 1775 Grand Concourse, 7th Floor, Bronx, New York 10453.

If you want copies of documents from your case file, you should ask for them ahead of time. Usually, they will be sent to you within three working days of when you asked for them. If your hearing is within three working days of when you asked for them, your case file documents may be given to you at your hearing.

INFORMATION: If you want more information about your case, how to ask for a fair hearing, how to see your file, or how to get additional copies of documents, call us at (718) 716-0805 or write to: Eurania Cruz, CASA I/X, 1775 Grand Concourse, 7th Floor, Bronx, New York 10453.