STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: March 30, 2006
CASE #: *************
CENTER #: MAP
FH #: 4522481Y

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 June 28, 2006, in *********, before Scott Nuchow, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

****************, Appellant's Mother/Guardian
***************, Appellant's Sister

For the Social Services Agency

Sharon Guy, Fair Hearing Representative

ISSUE

Was the Agency's determination dated February 10, 2006 to reduce the Appellant's Medical Assistance effective February 9, 2006 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 38 and disabled, is in receipt of a Medical Assistance authorization for a household of one consisting of the Appellant.

2. The Appellant's mother, the representative herein, was appointed guardian of the person over the Appellant by the Surrogate's Court, ******** County on April 30, 1986, because the Appellant, then age 18, was determined to be a mentally retarded person.

3. By notice dated February 10, 2006, the Agency informed the Appellant of its determination to retroactively reduce the Appellant's household's Medical Assistance Authorization effective February 9, 2006 by increasing the Appellant's household's monthly spenddown of excess income from $453.00 to $494.00 in order to receive Medical Assistance.

4. The Appellant's Social Security number is ***********.

5. The Appellant is in receipt of a gross monthly Social Security Survivor's benefit of $1,294.50 before a deduction for the monthly Medicare Part B premium of $88.50 under Claim Number *****************

6. The Agency calculated the Appellant's eligibility for Medical Assistance using SSI methodology as follows:

Gross Monthly Unearned Income	$1,294.50	
Subtract		
$20 Disregard	-$20.00	
Health Insurance Premiums	-$88.50	
Net Monthly Unearned Income		$1,186.00
Total Net Income		$1,186.00
Subtract		
Medical Assistance Standard of Need		-$692.00
Available Monthly Excess Income		$494.00

7. On March 30, 2006, the Appellant requested this fair hearing.

APPLICABLE LAW

Regulations at 18 NYCRR 358-3.3(a)(1)(i) provide that a recipient has a right to timely and adequate notice when a social services agency:

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

Section 358-2.2 of the Regulations provides, in pertinent part:

> An adequate notice means a notice of action, or an adverse action notice or an action taken notice which sets forth all of the following:
>
> the action the social services agency proposes to take or is taking...

> when the agency action or proposed action is a reduction, discontinuance, restriction or suspension of public assistance, medical assistance, food stamp benefits or services, the circumstances under which public assistance, medical assistance, food stamp benefits or services will be continued or reinstated until the fair hearing decision is issued; that a fair hearing must be requested separately from a conference; and 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, food stamp benefits or services; and that participation in an agency conference does not affect the right to request a fair hearing...

Section 358-2.23 of the Regulations provides:

> Timely notice means a notice which is mailed at least 10 days before the date upon which the proposed action is to become effective.

Section 366.1(a) of the Social Services Law provides that Medical Assistance benefits shall be given to a person who is eligible for Public Assistance or Supplemental Security Income (SSI) benefits. That section also provides that Medical Assistance shall be given to persons who do not have sufficient income and resources to pay for their medical care if such persons are either under the age of twenty-one or would be eligible, but for their income or resources, for Aid to Dependent Children or SSI.

To determine eligibility, an applicant's or recipient's net income must be calculated. In addition, resources are compared to the applicable resource level. Net income is derived from gross income by deducting exempt income and allowable deductions. The result - net income - is compared to the statutory "standard of need" set forth in Social Services Law Section 366.2(a)(8) and 18 NYCRR Subpart 360-4. If an applicant's or recipient's net income is less than or equal to the applicable monthly standard of need, and resources are less than or equal to the applicable standard, full Medical Assistance coverage is available.

The amount by which net income exceeds the standard of need is considered "excess income". If the applicant or recipient has any excess income, he/she must incur bills for medical care and services equal to or greater than that excess income to become eligible for Medical Assistance. In such instances Medical Assistance coverage may be available for the medical costs which are greater than the excess income. If a person has expenses for in-patient hospital care, the excess income for a period of six months shall be considered available for payment. For other medical care and services the excess income for the month or months in which care or services are given shall be considered available for payment of such care and services. 18 NYCRR 360-4.1, 360-4.8.

Section 360-4.6 of the Regulations sets forth allowable exemptions, disregards and deductions from income. In determining net income, $20.00 per month is disregarded. In

addition certain deductions and exclusions from income are allowable.

Section 6 of Public Law 99-643, the Employment Opportunities for Disabled Americans Act, amended Section 1634(c) of the Social Security Act (Act) to provide for a new group of categorically eligible individuals under the Medical Assistance program. An individual who would be eligible for Medical Assistance (MA) in this group is one who is at least 18 years old; was eligible for Supplemental Security Income (SSI) benefits on the basis of blindness or a disability; became disabled or blind before he or she reached the age of 22; and lost SSI eligibility as a result of becoming entitled to child's insurance benefits on or after July 1, 1987, under Section 202(d) of the Act, or because of an increase in those benefits effective on or after July 1, 1987.

Section 360-3.3(c)(15) provides as follows that a person age 18 or older who was receiving SSI or State supplementary payments on the basis of blindness or disability which began before he or she reached the age of 22, and who on or after July 1, 1987 lost eligibility for SSI benefits because he or she became entitled to child's insurance benefits under 42 U.S.C. 402(d) (also known as Disabled Adult Child's benefits) or to an increase in the amount of such benefits, remains eligible for MA as long as he or she would be eligible for SSI benefits in the absence of such child's insurance benefits or the increase in such benefits.

Local Commissioners Memorandum, 92 LCM-41, dated February 28, 1992, advised that if the preceding criteria are met, and if the individual would be eligible for SSI benefits were it not for either the increase in, or entitlement to the child's insurance benefits, the individual is "deemed eligible" for MA under Section 1634(c) of the Act. Social services districts need to determine continuing categorical eligibility for MA. If an individual lost SSI eligibility because of the entitlement to child's insurance benefits, the entire amount of such benefits are disregarded. If ineligibility for SSI was due solely to an increase in child's insurance benefits, then only the increased amount is disregarded (i.e., disregard any amount above the amount of the child's insurance benefit the individual was receiving when he or she last was entitled to SSI benefits). If the individual would be eligible for SSI were it not for the child's insurance benefits or the increase in those benefits, he or she remains eligible for MA under the DAC provision.

Subsequent to becoming a "deemed" MA eligible individual under the DAC provision, should there be an increase in either income (other than the child's insurance benefits) or resources that would have resulted in a loss of SSI eligibility, the individual would lose the deemed status for MA and regular budgeting procedures would apply. By budgeting the child's insurance benefits, the individual may be subject to a spenddown requirement. Should the income and/or resources be reduced to the point where the individual would be entitled to SSI benefits except for the increase in, or entitlement to the child's insurance benefits, the individual would again become eligible for MA under the DAC provision. Income must be below the SSI income level, and resources must be at or below the SSI resource level.

When an SSI beneficiary loses eligibility for SSI cash payment, the individual must remain eligible for MA until a separate MA determination is made.

General Information System message 95 GIS MA/010, dated March 21, 1995 introduced Local Commissioners Memorandum, 95 LCM-28, dated March 20, 1995, which set forth requirements for determining eligibility and entitlement in settlement of the case of McMahon v. Dowling.

Local Commissioners Memorandum 01 OMM LCM-2, dated January 24, 2001, advised of a supplemental stipulation and order in the case of McMahon v. Dowling.

Administrative Directive 95 ADM-11 also provides information regarding Medical Assistance eligibility for certain blind and disabled individuals who lose Supplemental Security Income (SSI) eligibility as a result of becoming entitled to Social Security child's insurance benefits as a disabled adult child (DAC) or because of an increase in such benefits.

DISCUSSION

On February 10, 2006, the Agency sent a "Notice of Decision of Your Medical Assistance" to the Appellant setting forth its intention to reduce her Medical Assistance by increasing her monthly excess income from $453.00 to $494.00 effective February 9, 2006. The budget submitted by the Agency, stored February 9, 2006, and the computer printout captioned "All change Actions" establishes that the Agency implemented this budget January 1, 2006. Therefore, as the said Notice dated February 10, 2006 did not set forth a proposed date of reduction of ten days subsequent to the date of the Notice, it is not timely as defined by the Regulations.

It is noted that the Appellant's mother and sister testified that the Appellant is retarded. In support, the Appellant's mother's guardianship paper establishes that the Appellant had been found by the Surrogate's Court, ******** County, to be retarded. Further, the Social Security Award letters dated November 14, 2005 for the 2005 benefit, copy submitted by the Agency, and an undated one for the 2006 benefit, submitted by the Appellant's mother, establish that the Appellant, now age 38, is still receiving benefits as a child where the claim number on both award letters, *************, indicates she is receiving benefits under her deceased father's Social Security number. The Agency's computer printout, "Turnaround Document", establishes that the Appellant's Social Security number is ***********.

The Appellant's mother testified that when the father died, the mother was informed that the Appellant would receive greater benefits through the father's Social Security records, not having previously applied to the Social Security Administration for benefits on behalf of the Appellant while the father was still alive. This uncontested evidence indicates that the Appellant was SSI eligible prior to her 22nd birthday where the Social Security Administration had determined that the Appellant was in receipt of the benefit through a Social Security number other than her own, with the suffix C2 indicating she was the second child in receipt of benefits under the parent's Social Security number. Further, such benefit under claim number **************** has continued to the present, indicating that she was a disabled child at the time the initial award was made. The evidence in the record indicates that the Appellant would have been eligible for SSI but received greater benefits through her father's Social Security upon his death instead. Thus,

the available evidence in the record indicates that the Appellant is a disabled adult child and that the Agency's evaluation of the Appellant's eligibility for Medical Assistance was not correct.

Based on the foregoing reasons, the Agency determination dated February 10, 2006 is not sustained.

DECISION AND ORDER

The Agency's determination dated February 10, 2006 to reduce the Appellant's Medical Assistance effective February 9, 2006 was not correct and is reversed.

1. The Agency is directed to adjust the amount of Appellant's excess income to $453.00 monthly for the period commencing January 1, 2006.

2. The Agency is directed to restore the Appellant's Medical Assistance Authorization retroactive to January 1, 2006, the date of the Agency's reduction.

3. The Agency is directed to determine if the Appellant is entitled to a computation of her Medical Assistance eligibility as a disabled adult child (DAC) pursuant to Section 360-3.3(c)(15) of the Regulations and Local Commissioners Memorandums, 92 LCM-41 (dated February 28, 1992) 95 LCM-28 (dated March 20, 1995), 01 OMM LCM-2 (dated January 24, 2001), and Administrative Directive 95 ADM-11 effective January 1, 2006.

4. The Agency is directed to advise the Appellant's mother in writing of the Agency's determination regarding the Appellant's status as a disabled adult child (DAC) pursuant to Section 360-3.3(c)(15) of the Regulations.

Should the Agency in the future determine to implement its previous action, it is directed to issue a timely and adequate Notice of Intent.

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.

FH# 4522481Y

DATED: Albany, New York
07/26/2006

NEW YORK STATE
DEPARTMENT OF HEALTH

By

Commissioner's Designee

XL0218 (09/97)

NOTICE NUMBER : [redacted] Page: 1 *****

MEDICAL ASSISTANCE PROGRAMS
STATEN ISLAND MEDICAID OFFICE
350 ST. MARK'S PLACE (BASEMENT)
STATEN ISLAND, NY 10301

NOTICE OF DECISION ON YOUR MEDICAL ASSISTANCE.

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

PROGRAM CODE = 531

NOTICE NUMBER:	DATE:	CASE NUMBER:
[redacted]	February 10, 2006	[redacted]

OFFICE	UNIT	WORKER	UNIT OR WORKER NAME	TELEPHONE NO.
531		BAA2Z	STATEN ISLAND OFFICE	888-692-6116

AGENCY TELEPHONE NUMBERS

GENERAL TELEPHONE NO. FOR QUESTIONS OR HELP	877-472-8411
OR Agency Conference	212-630-0996
Fair Hearing information and assistance	212-630-0996
Record Access	212-643-3697
Child/Teen Health Plan	888-692-8662

CASE NAME / AND ADDRESS

[redacted]

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.

MEDICAL ASSISTANCE

Your Medical Assistance case has been renewed.

We will increase the amount of your monthly spenddown requirement from $453.00 to $494.00 effective February 9, 2006. If this date is not the first day of the month, the change in your monthly spenddown will take effect the first day of the next month.

This is because your net income (gross income less Medical Assistance deductions) is over the allowable Medical Assistance income limit. The amount over the limit is called excess income or spenddown. Your monthly excess income amount is $494.00.

Please look at the budget calculation section to see how we figured your excess income.

This means that you will have to submit paid or unpaid medical expenses each month which are equal to or more than your monthly excess income amount of $494.00 in order to be eligible for payment of any additional covered outpatient expenses. You may also pay your excess income amount to this agency for any month you need outpatient coverage.

You can become eligible for Medical Assistance for both inpatient and outpatient coverage if you become hospitalized and have medical expenses (paid or unpaid) that are equal to or more than your six-month excess income amount of $2,964.00, or have other medical expenses (paid or unpaid) that are equal to or more than your six-month excess income amount.

Please read the Sections: "Explanation of the Excess Income Program" and "Optional Pay-In Program."

Since you did not provide proof of resources, you will not be covered for the

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following long-term care services:

- Nursing home care, other than short-term rehabilitation
- Nursing home care provided in a hospital
- Home and community-based waiver services
- Hospice in a nursing home
- Managed long-term care in a nursing home
- Adult day health care
- Assisted living program
- Certified home health care, other than short-term rehabilitation
- Hospice in the community
- Managed long-term care in the community
- Personal care services
- Home and community-based services waiver programs
- Personal emergency response services
- Limited licensed home care
- Private duty nursing
- Consumer directed personal assistance program

This limitation on coverage does not apply to pregnant women during pregnancy and for the two months after the month in which the pregnancy ends, or to children under age 19 who are not disabled or who do not have a spenddown requirement.

If you need long-term care services, call the Unit telephone number listed above immediately. We will then arrange to review your resources to find out if you are eligible for Medical Assistance coverage for these services.

This decision is based on regulations 18 NYCRR 360-2.3, 360-4.1, 360-4.4, 360-4.5, 360-4.7 and 360-4.8 and Section 366-a(2) of Social Services Law.

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