STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: December 16, 2008
CASE #: MxxExxxxx
AGENCY: Suffolk
FH #: 5179668R

In the Matter of the Appeal of

DC

from a determination by the Suffolk County 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 6, 2009, in Suffolk County, before Richard S. Levchuck, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

DC, Appellant; Robin Sparks, Esq., Appellant's Representative

For the Social Services Agency

Elinor Fibel, Fair Hearing Representative

ISSUES

Was the Appellant's request for a fair hearing to review the Agency determination to deny the Appellant's application for Medical Assistance benefits on the grounds that the Appellant was in possession of excess resources in the amount of $18,720.70 for May, 2008 and $18,667.71 for June, 2008 which is over the Medicaid Resource level of $13,050.00 timely?

Assuming the request was timely, was the Agency's determination to deny the Appellant's application for Medical Assistance benefits on the grounds that the Appellant was in possession of excess resources in the amount of $18,720.70 for May, 2008 and $18,667.71 for June, 2008 which is over the Medicaid Resource level of $13,050.00 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. On June 17, 2008, the Appellant, who is 56 years of age, applied for Medical Assistance benefits for himself only.

2. By notice dated July 30, 2008, the Agency advised the Appellant of its determination to deny the Appellant's application for Medical Assistance benefits on the grounds that the Appellant was in possession of excess resources in the amount of $18,720.70 for May, 2008 and $18,667.71 for June, 2008 which is over the Medicaid Resource level of $13,050.00.

3. The notice advised the Appellant that a fair hearing must be requested within sixty days of the date of the Agency's action.

4. The Agency mailed the notice to the Appellant's address as contained in the Appellant's case record.

5. The Appellant received the Agency's Notice of Denial dated July 30, 2008.

6. The Appellant suffered a stroke in May, 2008 and had lesions on his brain. At that time, the Appellant also underwent surgery for a left craniotomy with debridement of ischemic, left cerebellar hemisphere. In November, 2008, the Appellant underwent triple artery coronary bypass surgery as well as shunt placement.

7. As of May 1, 2008, the Appellant was in possession of the following non-exempt resources:

Account	**Balance**
Chase Account number xxxx	$8.20
Chase Account number xxxx	$12,485.66
Wachovia Account number xxxx	$19,266.64
Total	$31,760.50
less resource limitation	$13,050.00
Excess Resources	$18,710.50

8. As of June 1, 2008, the Appellant was in possession of the following non-exempt resources:

Account	**Balance**
Chase Account number xxxx	$311.38

Chase Account number xxxx	$12,067.16
Wachovia Account number xxxx	$19,339.17
Total	$31,717.71
less resource limitation	$13,050.00
Excess Resources	$18,667.71

9. On December 16, 2008, the Appellant's representative requested this fair hearing.

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. Persons may request a fair hearing on any action of the social services district relating to food stamp benefits or the loss of food stamp benefits which occurred in the ninety days preceding the request for a hearing. Such action may include a denial of a request for restoration of any benefits lost more than ninety days but less than one year prior to the request. In addition, at any time within the period for which a person is certified to receive food stamp benefits, such person may request a fair hearing to dispute the current level of benefits.

Section 366(1)(a) of the Social Services Law, describes the eligibility requirements for the Medical Assistance ("Medicaid") program, and authorizes such assistance for individuals who meet all categorical and financial eligibility requirements. An adult who is at least 21 years of age but who is under the age of 65 and who has no dependent children, is not pregnant and is not certified blind or certified disabled is considered eligible for Medicaid if he or she meets the financial eligibility requirements of the Safety Net Assistance Program.

A person not receiving public assistance may qualify for Medicaid if he or she does not have sufficient income and resources (inclusive of support from responsible relatives) to meet the costs of medical care and services as defined under the Social Services Law.

A person who is sixty-five years of age or older, blind or disabled who is not in receipt of Public Assistance and has income or resources which exceed the standards of the Federal Supplemental Security Income Program (SSI) but who otherwise is eligible for SSI may be eligible for Medical Assistance, provided that such person meets certain financial and other eligibility requirements under the Medical Assistance Program. Social Services Law Section 366.1(a)(5).

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)(7) 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.

If the applicant's or recipient's resources exceed the resource standards, the applicant or recipient will be ineligible for Medical Assistance until he/she incurs medical expenses equal to or greater than the excess resource standards. 18 NYCRR 360-4.1. The applicant or recipient will be given 10 days from the date he or she is advised of the excess resource amount to reduce the excess resources by establishing a burial fund. In addition, they will be advised that they may spend excess resources on exempt burial space items during this 10 day period. 91 ADM-17.

Administrative Directive 91 ADM-17 advises local districts of procedures for the treatment of Medical Assistance applications in cases where an applicant/recipient has resources in excess of the applicable resource standard. Potential MA eligibility for all applicant/recipients who have resources above the applicable resource standard must be investigated when applicant/recipients have outstanding medical bills. Eligibility determinations must include a snapshot comparison of excess resources as of the first of the month to viable bills. This comparison must be done for each month in which eligibility is sought, including each of the retroactive months. The client is not eligible until the amount of viable bills is equal to or greater than the amount of excess resources remaining after the purchase of burial-related items. Eligibility will be authorized after excess resources and any excess income are fully offset by viable bills. Excess resources must be offset by viable bills before such bills are used to offset excess income. Said Directive further provides that whenever a notice is sent to an applicant accepting the applicant with a spenddown requirement or denying an application because of excess resources, the Agency is required to include a copy of the "Explanation of the Excess Resource Program" along with the Notice.

Social Services Law Section 366(2)(a)(4) provides that savings in amounts equal to one hundred fifty percent of the income amount permitted under Social Services Law Section 366(2)(a)(7) are exempt in determining eligibility for Medicaid. However, the amount of savings for one and two person households shall not be less than the amounts permitted to be retained by one and two person households in order to qualify for benefits under the SSI program.

Pursuant to GIS 08 MA/013, the resource levels for SSI-related budgeting effective April 1, 2008 are as follows:

Family Size	**Resource Level**
1	$13,050

Pursuant to GIS 08 MA/035, the resource levels for SSI-related budgeting effective January 1, 2009 are as follows:

Family Size	Resource Level
1	$13,800

Resources are defined in 18 NYCRR 360-4.4(a). It means property of all kinds, including real property and personal property. It includes both tangible and intangible property.

An applicant's/recipient's available resources include:

(1) all resources in the control of the applicant/recipient. It also includes any resources in the control of anyone acting on the applicant's/recipient's behalf such as a guardian, conservator, representative, or committee;

(2) certain resources transferred for less than fair market value as explained in subdivision (c) of section 360-4.4 of 18 NYCRR;

(3) all or part of the equity value of certain income-producing property, as explained in 18 NYCRR 360-4.4(d); and

(4) certain resources of legally responsible relatives, as explained in 18 NYCRR 360-4.3(f); and

(5) certain resources of an MA-qualifying trust, as explained in 18 NYCRR 360-4.5.

Section 360-5.2(b) of the Regulations defines "disability" as the inability of an individual to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. Section 360-5.3 of the Regulations provides that the medical criteria to be used in determining disability for medical assistance eligibility shall be the same medical criteria set forth in Federal regulations for determining disability for social security and SSI purposes.

Title 20 of the Code of Federal Regulations, Sections 404.1520 and 416.920 set forth the sequence for the Agency to follow in evaluating disability claims. The procedure is summarized as follows:

First, the Agency must consider whether the applicant is currently engaged in substantial gainful activity. The Federal Regulations provide that if the applicant is not so engaged, the Agency must next consider whether the applicant has a severe impairment which significantly limits his or her physical or mental ability to do basic work activities. This inquiry concerns whether, based solely on medical evidence, the applicant has an impairment which is listed in Appendix 1, Subpart P, Part 404. If the applicant has such an impairment, the Agency must determine the applicant to be disabled without considering vocational factors, such as age, education and work experience. If the applicant does not have a listed impairment, the Agency

must determine if the applicant has the residual functional capacity to perform his or her past work. Finally, if the applicant is unable to perform his or her past work, the Agency must consider the applicant's residual functional capacity, age, education and work experience and determine if there is any other work which the applicant could perform, utilizing the rules listed in Appendix 2, Subpart P, Part 404 as a guideline.

Regulations at 18 NYCRR 360-2.4(c) provide that an initial authorization for Medical Assistance will be made effective back to the first day of the first month for which eligibility is established. A retroactive authorization may be issued for medical expenses incurred during the three month period preceding the month of application for Medical Assistance, if the applicant was eligible for Medical Assistance in the month such care or services were received.

DISCUSSION

On July 30, 2008, the Agency notified the Appellant that it had determined to deny the Appellant's application for Medical Assistance benefits on the grounds that the Appellant was in possession of excess resources in the amount of $18,720.70 for May, 2008 and $18,667.71 for June, 2008 which is over the Medicaid Resource level of $13,050.00.

Although the Agency's notice advised the Appellant that a fair hearing must be requested within sixty days of its action, this fair hearing was not requested until December 16, 2008, which was more than sixty days after the Agency's determination. The hearing was requested on behalf of the Appellant by his representative.

At the hearing, the Appellant and his representative presented documentation which established that the Appellant suffered a stroke in May, 2008 and that he had lesions on his brain. It was noted that the Appellant underwent a left craniotomy with debridement of ischemic, left cerebellar hemisphere, which was described by the Appellant's representative as brain surgery. The Appellant also underwent triple artery coronary bypass surgery and shunt placement. To support their position that the statute of limitations should be tolled, the Appellant and his representative presented a letter from the Appellant's physician which stated that he saw the Appellant on November 6, 2008. The Appellant's physician added that the Appellant's mental capacity was still impaired.

In this case, a valid basis for a delay of over four months from the date of the Agency's Denial Notice to the date that a fair hearing was requested was established due to the Appellant's mental condition. As such, the record establishes that there is a sufficient basis for tolling the statute of limitations.

The Appellant's representative also contended that the Appellant's impaired mental capacity prevented him from properly completing his application for Medical Assistance and indicating that he was disabled. The Appellant's representative noted that if the Appellant were to be found eligible for Medical Assistance as a disabled person, he could spend his resources down below the applicable resource limitation with the application of his medical bills for the period in question.

The contention of the Appellant's representative is valid. While the Agency's determination to deny the Appellant's application for Medical Assistance was correct when made, the Agency should re-evaluate the Appellant's application for Medical Assistance as a disabled person and advise the Appellant in writing of his eligibility for Medical Assistance.

DECISION AND ORDER

The Agency's determination that the Appellant is not eligible for a Medical Assistance Authorization was correct when made.

1. The Agency is directed to provide the Appellant with an opportunity to submit a completed disability form DSS-486 and other supportive medical documentation necessary to establish disability status at the time of application.

2. The Agency is directed to make a determination regarding the Appellant's claim of disability.

3. Thereafter, the Agency is directed to render a new determination regarding the Appellant's application for a Medical Assistance Authorization and to advise the Appellant in writing of its determination.

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
May 22, 2009

NEW YORK STATE
DEPARTMENT OF HEALTH

By

[[Signature]]

Commissioner's Designee