
In the Matter of the Appeal of
██████████

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

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:
: **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 February 14, 2011, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

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For the Social Services Agency

P. Offurum, Fair Hearing Representative

ISSUE

Was the Agency's determination to increase the Appellant's Medical Assistance monthly spend-down from \$189.30 to \$421.70 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 77, has been in receipt of an authorization for Medical Assistance benefits for herself, subject to monthly spend-down of excess income.
2. The Appellant resides with her husband, age 79.

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3. The Appellant receives \$448.00 per month in Social Security benefits. The Appellant's husband receives \$974.00 per month in Social Security benefits and a pension of \$232.70 per month.

4. By a Notice dated August 7, 2010, the Agency informed the Appellant of its determination to increase the Appellant's monthly spend-down for Medical Assistance from \$189.30 per month to \$421.70.

5. On October 13, 2010, the Appellant requested this fair hearing to review the Agency determination.

APPLICABLE 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.

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.

Regulations at 360-4.6(a) list the income which is disregarded for all applicants for or recipients of Medical Assistance except for those who are being budgeted using Safety Net criteria.

Regulations at 18 NYCRR 360-4.6 provides for additional income disregards for applicants and recipients who are 65 years of age or older, certified blind or certified disabled. These disregards are to be applied in the following order:

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- the first \$20 per month of any unearned income. Only one \$20 disregard is permitted per couple. A certified blind or certified disabled child living with parents is entitled to a separate \$20 disregard from his/her total unearned income. If a person's unearned income is under \$20, the balance will be deducted from earned income;
- health insurance premiums;

Administrative Directive 87 ADM-4 provides detailed instructions regarding the appropriate application of medical bills to offset excess income so that an individual can become eligible for Medical Assistance. This offsetting process is called "spenddown". Said Directive further provides that whenever a spenddown is indicated, the Agency is required to include a copy of the letter "Explanation of the Excess Income Program" along with the Notice to the recipient whenever an acceptance, intended change, denial, or discontinuance indicates a spenddown liability situation. Administrative Directive 87 ADM-4 provides that some over-the-counter drugs and medical supplies such as bandages and dressings may be applied to offset determined excess income if they have been ordered by a doctor or are medically necessary. Bills for cosmetics and other non-medical items may not be so applied.

Local social services districts now provide a "Pay-In" program, established under provisions of Section 366(2)(b)(3) under which Medical Assistance recipients having excess income may simply remit the amount of the excess to the local district each month, and receive an uninterrupted authorization for full coverage for all costs (at the Medicaid rate) of all necessary medical services by participating providers.

Administrative Directive 05 OMM/ADM-5, dated November 7, 2005, advises that certain individuals who have used their prescription costs to help meet their spenddown, may find that Medicare covers their drug spending and they no longer "spend down" as quickly to become Medicaid eligible. However, with Medicare paying for their prescription drugs, they will have more available income. Any out-of-pocket costs paid or incurred for items such as Part D premium, coinsurance, deductible or co-payments may be used to meet a spenddown. Medical expenses other than prescription drug costs may continue to be used to meet their spenddown. Although the premium amount may be used as a deduction from income, there is no State authority to pay or reimburse the recipient for the Medicare Part D premium.

In addition, 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

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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.

DISCUSSION

By Notice dated August 7, 2010, the Agency notified the Appellant that it had determined to increase the Appellant's monthly spend-down for Medical Assistance from \$189.30 per month to \$421.70.

Although the Agency's notice advised the Appellant that a fair hearing must be requested within sixty (60) days, the Appellant failed to request this hearing until October 13, 2010, which was more than sixty days after the Agency's determination.

The record, however, establishes a sufficient basis for tolling the sixty (60) day statute of limitations. The Appellant's daughter, who served as the Appellant's representative at the hearing and who also testified on her behalf, stated that the Appellant suffers from a medical condition that causes her to be forgetful and to put mail "away." The Appellant's daughter testified that when she found the Notice among the Appellant's mail, she requested a fair hearing. Based upon the above, the Appellant established good cause for failing to request a hearing within the sixty (60) day period and the statute of limitations is therefore tolled.

Turning to the merits of the case, the Agency, at the hearing, presented evidence establishing that Appellant's household was in receipt of \$1,655.00 monthly in unearned income at the time of its determination. The Appellant's daughter confirmed that these Agency findings as to income were correct.

Accordingly, based upon the record at the hearing, a proper computation of Appellant's Medicaid-related excess income at the time of the Agency determination is as follows:

Appellant's Social Security	\$448.00
Social Security of Appellant's Husband	\$974.50
<u>Pension of Appellant's Husband</u>	<u>\$232.70</u>
Gross Unearned Income	\$1,655.00
Subtract	
\$20 Disregard	\$20.00
Medicare Premium	\$96.50
<u>Total Subtractions</u>	<u>\$ 116.50</u>
Net Monthly unearned income	\$ 1538.70
Subtract	
Medical Assistance standard of need	<u>\$ 1117.00</u>

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Excess Income \$ 421.70

It is also noted that the record established that the Appellant and her husband are the owners of a two-family house and that they reside in one apartment. The Appellant's representative testified as to renting the other apartment to a tenant at a monthly rate of \$700.00. However, the record also established that the Agency did not include any rental income in its budget; whether the lack of net rental income was proper could not be determined. Still, as calculated, the Agency's budget was correct.

As the amount of monthly excess income based on Appellant's actual income at the time of the Agency's determination may actually be greater than that determined by the Agency, the Agency's computation of excess income must be sustained.

Finally, the Appellant's Representative stated that the Appellant cannot afford the spenddown amount due to living expenses. However, with the exception of physician ordered or medically necessary expenses, there is no provision in the Social Services Law or the Regulations for the deduction, disregard, or exemption from income for the actual cost of these expenses when determining monthly excess income for Medical Assistance purposes. With regard to physician ordered or medically necessary expenses, such costs may be applied toward an excess income amount in accordance with Administrative Directive 87 ADM-4. The Appellant is advised she may provide copies of proof of payment of pharmacy co-payments and any other medical expenses such as medical insurance premiums, medical transportation, medical supplies, physicians' charges, etc., to the local Agency office, in order to request offset to reduce the spenddown.

The Appellant is advised that if her medical expenses exceed \$421.70 monthly she may submit verification of such expenses to the Agency for offset against the monthly surplus/excess income amount of \$421.70. She is also advised that she may pay the surplus directly to the Agency in order to receive outpatient coverage for that month or pay six months of said excess income to receive inpatient coverage.

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DECISION

The Agency's determination that the Appellant's monthly spend-down of income for Medical Assistance is \$421.70 was correct.

DATED: Albany, New York
03/10/2011

NEW YORK STATE
DEPARTMENT OF HEALTH

By

A handwritten signature in black ink, consisting of several loops and flourishes, positioned below the word "By".

Commissioner's Designee