

STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: June 13, 2017

AGENCY: MAP

FH #: 7551614L

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 18, 2017, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant



For the Social Services Agency

Barbara Allen (10/18/17); No Appearance by Center Plan for Healthy Living (08/18/17), Fair Hearing Representative

ISSUES

Was the Agency's determination to authorize the Appellant for Medical Assistance by subject to a monthly spenddown of excess income in the amount of \$458.00 for the period commencing May 1, 2016, correct?

Was the Agency's determination to authorize the Appellant for Medical Assistance subject to a monthly spenddown of excess income in the amount of \$458.00 for the period commencing October 1, 2016, correct?

Was the Agency's determination to reduce the Appellant's Medical Assistance by increasing the Appellant's monthly spenddown of excess income from \$458.00 to \$461.00 for the period commencing January 21, 2017, 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 63 and certified disabled, has been in receipt of Medical Assistance benefits, subject to a spenddown of excess gross monthly income.

2. By Notice of Acceptance dated March 29, 2016, the Agency informed the Appellant its determination to accept the Appellant for Medicaid subject to a monthly spenddown of excess income in the amount from \$458.00 for the period commencing May 1, 2016.

3. At the time of the Agency's determination, the Appellant was in receipt of monthly Social Security Disability benefits in the amount of \$1,302.80 and paid no Medicare premium according to the Agency's BENEFICIARY EARNINGS AND DATA EXCHANGE ("BENDEX") computerized screen printout.

4. As of October, 2016, the Appellant was in receipt of monthly Social Security Disability benefits in the amount of \$1,303.00 and paid a Medicare premium in the amount of \$121.80 according to the Agency's BENEFICIARY EARNINGS AND DATA EXCHANGE ("BENDEX") computerized screen printout.

5. By Notice of Reduction dated January 9, 2017, the Agency informed the Appellant its determination to accept the Appellant for Medicaid subject to a monthly spenddown of excess income in the amount from \$458.00 to \$461.00 for the period commencing January 21, 2017.

6. At the time of the Agency's determination, the Appellant was in receipt of monthly Social Security Disability benefits in the amount of \$1,307.00 and paid a Medicare premium in the amount of \$126.00 according to the Agency's BENEFICIARY EARNINGS AND DATA EXCHANGE ("BENDEX") computerized screen printout.

7. On June 13, 2017, the Appellant requested this fair hearing to contest the Agency's 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

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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:

- 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, co-insurance, 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.

DISCUSSION

The record establishes the following relevant facts. The Appellant, age 63 and certified disabled (due to a stroke), has been in receipt of Medical Assistance benefits, subject to a spenddown of excess gross monthly income. By Notice of Acceptance dated March 29, 2016, the Agency informed the Appellant its determination to accept the Appellant for Medicaid subject to a monthly spenddown of excess income in the amount from \$458.00 for the period commencing May 1, 2016. At the time of the Agency’s determination, the Appellant was in receipt of monthly Social Security Disability benefits in the amount of \$1,302.80 and paid no Medicare premium according to the Agency’s BENEFICIARY EARNINGS AND DATA EXCHANGE (“BENDEX”) computerized screen printout.

As of October, 2016, the Appellant was in receipt of monthly Social Security Disability benefits in the amount of \$1,303.00 and paid a Medicare premium in the amount of \$121.80 according to the Agency’s BENEFICIARY EARNINGS AND DATA EXCHANGE (“BENDEX”) computerized screen printout.

By Notice of Reduction dated January 9, 2017, the Agency informed the Appellant its determination to accept the Appellant for Medicaid subject to a monthly spenddown of excess income from \$458.00 to \$461.00 for the period commencing January 21, 2017. At the time of the Agency’s determination, the Appellant was in receipt of monthly Social Security Disability benefits in the amount of \$1,307.00 and paid a Medicare premium in the amount of \$126.00 according to the Agency’s BENEFICIARY EARNINGS AND DATA EXCHANGE (“BENDEX”) computerized screen printout.

At the initial hearing, the issue was clarified because it was ascertained that the woefully belated bill that the Appellant received from his Managed Long Term Care Plan, Centers Plan for Healthy Living, in excess of \$6,000.00, was, in fact, because the Appellant’s authorization for Medicaid was subject to a spenddown of excess monthly income.

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At the adjourned hearing, the Agency submitted evidence in support of its contentions. The evidence adduced at the hearing supports the following computation of Appellant's Medicaid-related excess income:

For the period commencing May 1, 2016:

Appellant's Social Security		\$1,302.80	
Gross Unearned Income			\$1,302.80
Subtract			
\$20 Disregard (for disabled, aged or blind persons)	\$ 20.00		
Appellant's Medicare Premium		\$ 0.00	
Total Subtractions		\$ 20.00	
Net Monthly Un-Earned Income		\$1,283.00	
Subtract			
Medical Assistance Standard of Need		\$ 825.00	
Excess Income			\$
458.00			

Accordingly, the Agency's determination to subject the Appellant to a monthly spenddown of excess income in the amount of \$458.00 for the period commencing May 1, 2016 must be sustained.

For the period commencing October 1, 2016:

Appellant's Social Security		\$1,303.00	
Gross Unearned Income			\$1,303.00
Subtract			
\$20 Disregard (for disabled, aged or blind persons)	\$ 20.00		
Appellant's Medicare Premium		\$ 121.80	
Total Subtractions		\$ 141.80	
Net Monthly Un-Earned Income		\$1,181.00	
Subtract			
Medical Assistance Standard of Need		\$ 825.00	
Excess Income			\$
336.00			

Accordingly, the Agency's determination to subject the Appellant to a monthly spenddown of excess income in the amount of \$458.00 for the period commencing October 16, 2016 cannot be sustained.

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For the period commencing January 1, 2017:

<u>Appellant's Social Security</u>	<u>\$1,307.00</u>
Gross Unearned Income	\$1,307.00

Subtract		
\$20 Disregard (for disabled, aged or blind persons)	\$ 20.00	
Appellant's Medicare Premium		\$ 126.00
<u>Total Subtractions</u>		<u>\$ 146.00</u>
Net Monthly Un-Earned Income		\$1,161.00

Subtract		
<u>Medical Assistance Standard of Need</u>	<u>\$ 825.00</u>	
Excess Income		\$
336.00		

Accordingly, the Agency's determination to subject the Appellant to a monthly spenddown of excess income in the amount of \$461.00 for the period commencing January 21, 2017 cannot be sustained.

Still at the hearing, the Appellant expressed concerns about an ability to continue to meet daily living needs and contended that such expenses should be considered in computing Medical Assistance eligibility. With the exception of physician-ordered or medically necessary expenses and any out-of-pocket costs paid or incurred for items such as Part D premium, coinsurance, deductible or co-payments, 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 ordinary living 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. Also, excess income can be offset by Medicare Part D premiums and co-pays, pursuant to 05 OMM/ADM-5.

The Appellant is informed of the right to submit paid or unpaid medical expenses that are equal to or more than the monthly excess income in order to be eligible for payment of covered outpatient expenses through the Agency's Excess Income Program.

DECISION AND ORDER

The Agency's determination to authorize the Appellant for Medical Assistance by subject to a monthly spenddown of excess income in the amount of \$458.00 for the period commencing May 1, 2016 is correct.

The Agency's determination to authorize the Appellant for Medical Assistance subject to a monthly spenddown of excess income in the amount of \$458.00 for the period commencing October 16, 2016 is not correct.

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1. The Agency is directed to adjust the Appellant's Medical Assistance related excess income amount to \$336.00, effective-retroactive to October 1, 2016.

The Agency's determination to authorize the Appellant for Medical Assistance subject to a monthly spenddown of excess income in the amount of \$461.00 for the period commencing January 21, 2017 is not correct.

1. The Agency is directed to adjust the Appellant's Medical Assistance related excess income amount to \$336.00, effective-retroactive to January 21, 2017.
2. The Agency is directed to continue to provide Medical Assistance benefits to the Appellant, subject to a spenddown of excess income in the amount of \$336.00.

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
11/07/2017

NEW YORK STATE
DEPARTMENT OF HEALTH

By

A handwritten signature in black ink, consisting of a stylized 'L' followed by a series of loops and a horizontal stroke.

Commissioner's Designee