STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST March 4, 1996
CASE# M00941556
CENTER Suffolk
FH# 2434519R

In the Matter of the Appeal of :

[redacted] deceased : **DECISION AFTER FAIR HEARING**

from a determination by the Suffolk County 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 the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on April 28, 1997, in Suffolk County, before Richard S. Levchuck, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Howard J. Atlas, Esq., Appellant's Representative; [redacted] Witness

For the Social Services Agency

Monica Linss, Fair Hearing Representative

ISSUE

Was the Agency's determination to deny the Appellant's application for Medical Assistance benefits for failure to provide documentation necessary to determine the Appellant's eligibility for such benefits correct?

FACT FINDING

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 September 22, 1995, an application for Medical Assistance benefits was filed on behalf of the Appellant by her daughter-in-law.

2. The Appellant was admitted to Huntington Hospital on August 25, 1995. She was transferred to Gurwin Nursing Home on October 2, 1995. The Appellant passed away on March 30, 1996.

3. The Appellant's daughter-in-law was advised by the Agency on September 29, 1995 to submit the following documentation to the Agency by October 22, 1995:

[redacted]

copies of statements from two NatWest bank accounts during the period from March, 1993 through August, 1994.

4. The Appellant's daughter-in-law provided the Agency with all of the statements in question with the exception of statements from one account for the months of March, 1993, May, 1993 and statements from both accounts for the month of October, 1994.

5. On December 29, 1995, the Agency sent a Denial Notice setting forth its determination to deny the Appellant's application for Medical Assistance benefits because the Appellant's daughter-in-law had failed to return to the Agency with certain documentation from NatWest Savings Bank and Jamaica Savings Bank which was necessary to determine Appellant's eligibility for Medical Assistance benefits.

6. The Agency presented no evidence of any request for bank statements for an account contained in Jamaica Savings Bank.

7. The Appellant's son contacted the Agency in January, 1996 and inquired as to the status of the Appellant's application for Medical Assistance. The Appellant's son was advised that the application for Medical Assistance had been denied for failure to provide bank statements from NatWest and from Jamaica Savings Bank.

8. The Appellant's son requested a reconsideration of the Agency's determination to deny the Appellant's application for Medical Assistance. The Agency advised the Appellant's son that he had three working days within which to obtain the missing bank statements. The Appellant's son advised the Agency that he would do whatever he could to obtain the missing bank statements as soon as possible.

9. On February 8, 1996, the Appellant's son submitted various bank statements to the Agency.

10. On February 22, 1996, the Agency advised the Appellant's son that the Medical Assistance application of his mother remained denied because he had not provided the Agency with missing bank statements from NatWest from one account for the months of March, 1993, May, 1993 and statements from both accounts for the month of October, 1994.

11. On or about March 5, 1996, the Appellant's son provided the Agency with the missing bank statements.

12. On March 4, 1996, the Appellant's son requested this fair hearing.

APPLICABLE LAW

Section 360-2.2(f) of the Regulations requires that a personal interview be conducted with all applicants for Medical Assistance. Such personal interview shall be conducted before a decision on Medical Assistance

eligibility is authorized or reauthorized. The Department may grant a waiver of the personal interview requirement for recertification of aged, certified blind or certified disabled recipients when the Agency demonstrates that alternative procedures have been established to verify that recipients continue to meet all eligibility requirements for Medical Assistance. Section 360-2.3 of the Regulations provides that the Medical Assistance applicant and recipient has a continuing obligation to provide accurate and complete information on income, resources and other factors which affect eligibility. An applicant or recipient is the primary source of eligibility information. However, the Agency must make collateral investigation when the recipient is unable to provide verification. The applicant's or recipient's failure or refusal to cooperate in providing necessary information is a ground for denying an application for a Medical Assistance Authorization or for discontinuing such benefits.

Regulations at 18 NYCRR 360-7.5(a)(1) provide that payment for services or care under the Medical Assistance Program may be made to a recipient or the recipient's representative at the Medical Assistance rate or fee in effect at the time such care or services were provided when an erroneous determination by the Agency of ineligibility is reversed. Such erroneous decision must have caused the recipient or the recipient's representative to pay for medical services which should have been paid for under the Medical Assistance Program. Note: the policy contained in the regulation limiting corrective payment to the Medical Assistance rate or fee at the time such care or services were provided has been enjoined by Greenstein et al. v. Dowling et al. (S.D.N.Y.).

Regulations at 18 NYCRR 360-7.5(a)(5) provide that payment for services or care under the Medical Assistance Program may be made to a recipient or the recipient's representative at the Medical Assistance rate or fee in effect at the time such services or care were provided for paid medical bills for medical expenses incurred during the period beginning three months prior to the month of application for Medical Assistance and ending with the recipient's receipt of a Medical Assistance identification card, provided that the recipient was eligible in the month in which the medical care and services were received and that the medical care and services were furnished by a provider enrolled in the Medical Assistance Program.

Section 360-2.4(c) of the Regulations provides 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

The Appellant's son testified at the hearing that neither he nor his spouse received a Denial Notice from the Agency and that he only became aware of what documents the Agency was missing when he contacted the Agency in January of 1996 to inquire about the status of his mother's application for Medical Assistance. This testimony was plausible and was persuasive. The Agency mailed the Denial Notice to an address that was utilized by the

Appellant prior to her moving into an adult home. While the Agency was utilizing what appeared to be a mailing address for the Appellant, there was no evidence that the Appellant's daughter-in-law or son were mailed a copy of the Denial Notice.

The Appellant's son also testified that upon contacting the Agency in January, 1996, he was advised of the documentation that was missing and was given three business days by the Agency to provide the requested documentation. The Appellant's son testified that he provided the Agency with what he believed to be all of the bank statements at issue and was not advised of any missing statements until he received the Agency's notice dated February 22, 1996 advising him that upon reconsideration, the Appellant's application for Medical Assistance remained denied. The Appellant's son obtained the missing bank statements on March 5, 1996 and provided them to the Agency at that time.

In this case, the record establishes that the Appellant's daughter-in-law responded to the Agency's initial request for information in a timely manner. The Agency noted that the case worker who handled the Appellant's application for Medical Assistance became ill and is no longer working for the Agency. There were no other requests for information presented by the Agency at the hearing and the record was devoid of any communication between the Agency and the Appellant's son and daughter-in-law that would have apprised them of any documentation that was missing. While it appeared that the response of the Appellant's daughter-in-law to the Agency's initial request for information was not complete, the Agency should have apprised her of the months of bank statements that she was missing rather than waiting three months to deny Appellant's application for Medical Assistance. As such, the Agency's determination to deny the Appellant's application for Medical Assistance was correct when made. However, the Agency should continue to process the Appellant's application for Medical Assistance and afford her son the opportunity to submit any documentation that is needed to establish eligibility.

DECISION AND ORDER

The Agency's determination to deny the Appellant's application for Medical Assistance benefits was not correct and is reversed.

1. The Agency is directed to continue to process the Appellant's application and afford the Appellant's son the opportunity to submit any other documents necessary to establish eligibility.

2. The Agency is directed to advise the Appellant's son in writing of its determination.

3. If the Appellant is found to be eligible to receive Medical Assistance, the Agency is directed to issue a Medical Assistance Authorization for the Appellant retroactive to the date of initial eligibility in accordance with verified financial degree of need.

4. If the Appellant is found to be eligible to receive Medical Assistance, the Agency is directed to provide a Medical Assistance Authorization for the three months prior to the month of application if the

Appellant was eligible during that period of time.

5. If the Appellant is found to be eligible to receive Medical Assistance, the Agency is directed to restore all lost benefits resulting from the Agency's denial of the Appellant's Medical Assistance application.

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

DATED: Albany, New York
May 9, 1997

NEW YORK STATE DEPARTMENT
OF HEALTH

By

Marie G. Vidal

Commissioner's Designee