PIERRO, CONNOR & STRAUSS, LLC
Trusted Counsel

Starting Soon...

Medicaid: What Happens If You're Denied?

June 12, 2023

Aaron E. Connor, Esq.
Managing Partner

Frank E. Hemming III, Esq.
Senior Associate Attorney

Welcome

- Your Lines Are Muted
- Type Questions in the Q&A Section at the Bottom of Your Screen
- Presentation is Posted: Pierrolaw.com/ Resources Under Medicaid Planning
- Fill Out Our Survey with Feedback

Our Team Of Attorneys

Louis Pierro

Aaron Connor

Peter Strauss

Caryn Keppler

Richard Rothberg

Frank Hemming, III

Ingrid Johnson

Theresa Skaine

Carolyn Glynn

Kristen Peck

Jacob Verchereau

Bethany Van Pelt

Robert Bosman

<u>Serving New York State Residents Through Offices in:</u>

Albany, New York City, Ronkonkoma, Hudson, Lake Placid, Utica

Also licensed in New Jersey, Massachusetts and Florida

WATCH ALL MEDICAID MONDAY VIDEOS:

January	2023 Update and the Surprising New Numbers
February	Qualifying and Why It's Become Harder
March	Medicaid Asset Protection Trusts
April	Using a Pooled Trust to Qualify for Medicaid Home Care
May	Nursing Home Medicaid

https://www.pierrolaw.com/medicaid-planning-videos/

MEDICAID INCOME & ASSET LIMITS INCREASED IN 2023

Landmark Medicaid Increases Passed in NYS Budget:
Same income limit will be used for younger people under Affordable Care Act and for Age 65+, blind & disabled

	INCOME / MTH		ASSET LIMIT	
YEAR	SINGLES	COUPLES	SINGLES	COUPLES
2023	$1,677 + $20	$2,268 + $20	$30,182	$40,821
Difference over 2022	**+$743**	**+$901**	**+$13,382**	**+$16,221**

Institutionalized Individual Income Allowance remains the same: $50

POSSIBLE REASONS FOR DENIAL

Denied Due to Income

- Can be solved with Trust Planning

Denied Due to Assets

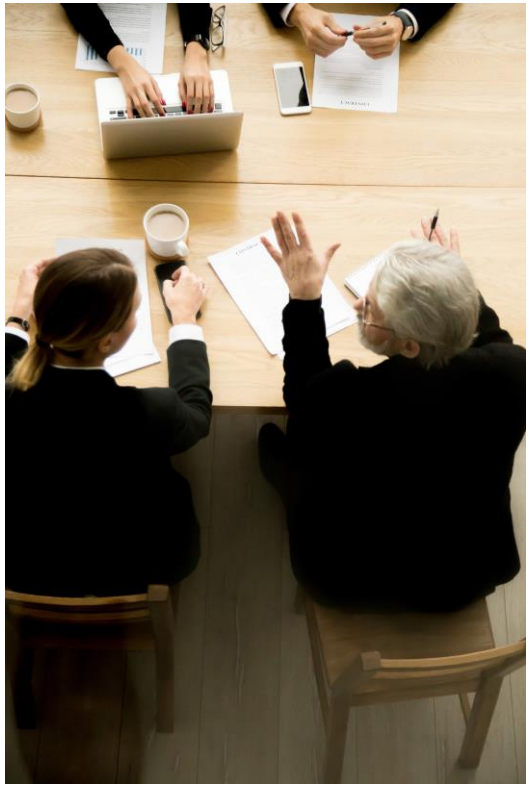
- There is considerable room for interpretation of countable and exempt assets

Approved but with a Look-Back Penalty

- A period of ineligibility due to a past asset transfer that violated Medicaid rule - ensure no errors were made in

Approved without sufficient services

- Denial due to lack of Medical Need or Insufficient Hour Determinations



REDUCTIONS

Examples:

- Plan is proposing to reduce hours it previously authorized.
- Plan is proposing to reduce hours for a member who transferred to new plan – whether assigned to the new plan or selected it -- after:
  - Another plan CLOSED
  - Member transitioned to MLTC after received IMMEDIATE NEED services for 120 days or other home care services from CASA/HRA/DSS

CAN YOU SIMPLY REQUEST A FAIR HEARING?

- If appealing a decision made by a Managed Long Term Care (MLTC)Company, the Appellant must first request an Internal Appeal from the plan of an Initial Adverse Determination by the plan.
- Only after a decision on that internal appeal is made by the plan, called a "Final Adverse Determination" or "FAD," may the member request a FAIR HEARING.
  - This is true regardless of whether the plan's action is to reduce, terminate, or deny services.

- The new rules apply to all Medicaid Managed Care Plans

"EXHAUSTION" INTERNAL APPEAL

Does This Change Affect The Allowed Reasons for when a Plan May Reduce Services?

- No. State Regulations were amended in 2015 to clarify the **limited grounds for reductions**, and to strengthen the requirements for the content of notices of reduction
- Notices must **specify the justification for reducing hours to less than was previously found medically necessary**

APPLICANT DEADLINES – AID CONTINUING

- **To Receive Aid Continuing** for an existing service if a Plan's decision is a **reduction in services** or **stops** services – you must request the appeal **within 10 days of the date of the notice**, or before the effective date of the notice, which must be at least 10 days after the date of the notice.
  - Otherwise, you will not receive Aid Continuing.

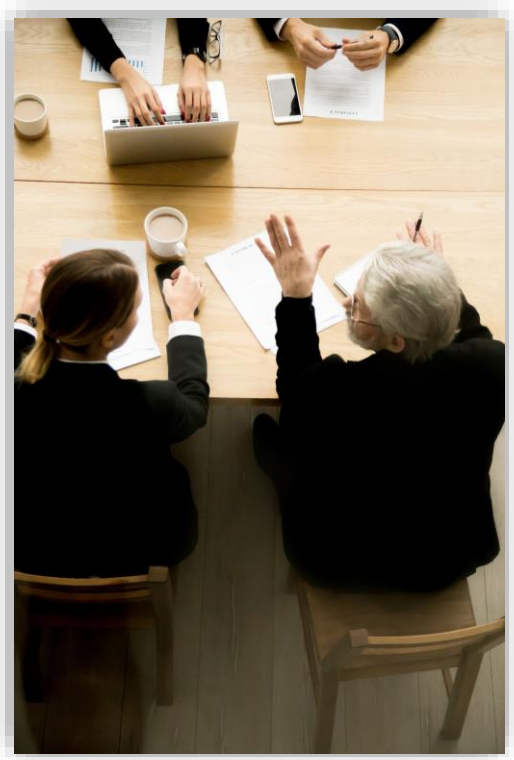
APPLICANT DEADLINES

- **If the plan's "initial adverse determination" is not a reduction,** but denies a new service, or denies an increase in an existing service, or authorizes a service in less than the amount requested, the Appellant has **60 calendar days** to request an internal appeal, from the date of the notice.

RIGHTS IN THE INTERNAL APPEAL PROCESS

- Appeal must consider all documents and information submitted in the appeal, regardless of whether it was submitted initially in the initial adverse benefit determination
- Must provide the enrollee a reasonable opportunity, in person and in writing, to present evidence and testimony and make legal and factual arguments
  - Plan must inform the appellant of the time frame available for submission of evidence
  - Appellant can request more time from the plan to make a submission

RIGHTS IN THE INTERNAL APPEAL PROCESS



- Must provide the enrollee and his or her representative the enrollee's case file, including medical records, other documents and records, and any new or additional evidence considered, relied upon, or generated by the plan in connection with the appeal.
  - This information must be provided free of charge.
  - Appeal must be decided by a plan employee who was not involved in the initial adverse determination being appealed, and who is not a subordinate of anyone involved in the initial adverse determination

RIGHTS IN THE INTERNAL APPEAL PROCESS

When and with what notice must Plan decide internal appeal?

- **STANDARD APPEAL**
  - The plan must decide a standard appeal within **30 calendar days of receipt of the appeal request**
    - Subject to extension by up to 14 days on the enrollee's request or if the plan shows the State, upon request, that additional information is needed and how the delay is in the enrollee's request.

RIGHTS IN THE INTERNAL APPEAL PROCESS

- **FAST TRACK or EXPEDITED APPEAL**
  - The Plan must decide an expedited appeal within 72 hours after the plan receives the appeal, subject to same extension of up to 14 days as for standard appeals, above.
  - Plan must make a reasonable effort to give oral notice for expedited appeals and must send written notice within 2 business days of decision for all appeals

WHAT IF THE PLAN HAS EXTENDED THEIR TIME TO MAKE A DECISION?

- The plan must make reasonable efforts to give the enrollee prompt oral notice of the delay, and within 2 calendar days give the enrollee written notice of the reason for the delay and of the right to file a grievance about the delay.
  - The plan must resolve the appeal "as expeditiously as the enrollee's health condition requires and no later than the date the extension expires."

"DEEMED EXHAUSTION"

- The regulations provide for an exception to the "exhaustion" requirement. Where the managed care plan "fails to adhere to the notice and timing requirements of sec. 438.408, the enrollee is deemed to have exhausted the [managed care plan's] ... appeals process. **The enrollee may initiate a State fair hearing."**

FAIR HEARING

RIGHT TO REQUEST FAIR HEARING after Adverse Internal Appeal Decision ("Final Adverse Determination")

- If the plan wholly or partly denies the Internal Appeal, the plan will issue a "Final Adverse Determination" notice
- You have 120 calendar days to request a fair hearing., from the date of the Final Adverse Determination (the plan's internal appeal decision). This is longer than the previous limit of 60 days.

EXAMPLE 1 – MEDICAID DECISION

Jane Doe Applied for Chronic Care Medicaid in March 2023

- April 2023 – Approved, but with 6-month penalty period due to asset transfers
- Fair hearing requested immediately
  - Hearing held before administrative law judge and decision rendered deciding validity of penalty period calculation
    - If decision is unfavorable, filing Article 78 proceeding is possible

EXAMPLE 2 – MLTC DECISION

John Doe Approved for Community Medicaid in April 2023

- Enrolled with MLTC and received 4 hours a day of assistance
- John accepts the amount of hours, but then requests an increase in services up to 12 hours per day
- MLTC issues Initial Adverse Determination
- Internal Appeal is requested
- Internal appeal is denied, and Final Adverse Determination is issued
- Fair Hearing request is filed immediately
  - Hearing held before administrative law judge and decision is made regarding number of hours granted by MLTC
    - If decision is unfavorable, filing Article 78 proceeding is possible

NEXT MEDICAID MONDAY

July 10, 2023
Special Needs and Medicaid Planning

- How to plan for a Special Needs Person in your life
- What if someone who is receiving government benefits receives an inheritance?
- What if someone receiving Medicaid benefits wishes to work but still requires assistance?

REGISTER:
https://www.pierrolaw.com/events/
(518)459-2100

PRESENTED BY

Louis W. Pierro,
Frank E. Hemming III

PIERRO, CONNOR & STRAUSS, LLC
Trusted Counsel

Thank You!
QUESTIONS?

Please Fill Out Your Survey Following the Program

Schedule a Consultation for your loved one or clients:

info@pierrolaw.com
(518) 459-2100