

**TO:** Local District Commissioners, Medicaid Directors

**FROM:** Judith Arnold, Division of Coverage and Enrollment

**SUBJECT:** "Notice of Medicaid Disability Determination" Revisions

**EFFECTIVE DATE:** Immediately

**CONTACT PERSON:** Local District Support Unit  
Upstate (518)474-8887 NYC (212)417-4500

The purpose of this General Information System (GIS) message is to inform local Departments of Social Services of revisions to the "Notice of Medicaid Disability Determination" (LDSS-4141).

This manual notice was first introduced with 90 ADM-17 as DSS-4141 and subsequently became LDSS-4141. The 92 INF-41 gave LDSS workers further options for completing the form. The form has recently been revised and given an OHIP number (OHIP-0040 and OHIP-0040S, Spanish version). Effective immediately, the revised notice is to be used by all local districts and blank copies of the LDSS-4141 notice destroyed. The OHIP-0040 and OHIP-0040S are available on CentraPort and the DOH intranet library. The intranet library can be accessed at <http://health.state.nyenet/revlibrary2.htm>.

Similar to the LDSS-4141, the revised "Notice of Medicaid Disability Determination" (OHIP-0040) provides individuals with a written decision of the disability determination made by the State or local Disability Review Team (DRT). The first section of the revised form is identical to the LDSS-4141 and is completed in the same way by the worker. A second section has been added to allow a worker to notify an individual that a disability determination was not performed by the DRT. This is to be used in the event that a DRT discovers, prior to the completion of a disability review, that the individual has already received a disapproval of disability from the Social Security Administration (SSA) and the conditions provided in 08 OHIP/INF 03 are not met.

08 OHIP/INF-03, "Disability Determinations for Medicaid Applicants/Recipients," instructs districts that a disapproval of disability made by SSA is binding on a Medicaid case until SSA changes the determination; however, under certain instances, the State or local DRT **must** make a disability determination.

The DRT must make a disability determination despite disapproval by SSA for medical reasons if the individual:

- alleges a different or additional disabling condition than that considered by SSA in making its determination; or
- alleges less than 12 months after the most recent unfavorable SSA disability determination that his/her condition has changed or deteriorated, alleges a new period of disability which meets the duration requirement, and SSA has refused to reopen or reconsider the allegations, or the individual is now ineligible for SSA benefits for a non-medical reason; or

- alleges more than 12 months after the most recent unfavorable SSA disability determination that his/her condition has changed or deteriorated since the SSA determination and alleges a new period of disability which meets the duration requirement, and has not applied to SSA regarding these allegations.

For all cases that have been disapproved by SSA and **do not** fall within the conditions listed above, the DRT **must not** complete the disability review and the district must notify the individual by using the second section of the new OHIP-0040 (see attachment).

For example, an individual applies for Medicaid and a referral is made for a disability review because there is no indication that a disability review has been or is in the process of being completed by SSA. At some point in the disability review process, it becomes apparent that the applicant has received a disapproval of disability by SSA and does not meet the conditions in 08 OHIP/INF-03 that allow the DRT to proceed with the disability review.

To summarize, the first section of the new OHIP-0040/0040S is used to notify an individual of the decision of a disability determination performed by the State or local DRT. This section is completed by checking Roman numeral I and completing the remainder of the section as for the previous LDSS-4141.

The second section is to be used when the State or local DRT **must not** continue with the disability review process as described above. In this instance, the worker checks the box for Roman numeral II, fills in the applicant's name and mails the notice to the individual. A copy of the notice must be kept in the case file.

### NOTICE OF MEDICAID DISABILITY DETERMINATION

NOTICE DATE:		NAME AND ADDRESS OF AGENCY/CENTER OR DISTRICT OFFICE		
CASE NUMBER	CIN NUMBER	GENERAL TELEPHONE NO. FOR QUESTIONS OR HELP _____ ----- <b>OR</b> Agency Conference _____ Fair Hearing Information and Assistance _____ Record Access _____ Legal Assistance Information _____		
CASE NAME (And C/O Name if Present) AND ADDRESS				
<div style="border: 1px solid black; width: 100%; height: 100%; position: relative;"> <span style="position: absolute; top: 5px; left: 5px;">┌</span> <span style="position: absolute; top: 5px; right: 5px;">┐</span> <span style="position: absolute; bottom: 5px; left: 5px;">└</span> <span style="position: absolute; bottom: 5px; right: 5px;">┘</span> </div>				
OFFICE NO.	UNIT NO.	WORKER NO.	UNIT OR WORKER NAME	TELEPHONE NO.

This notice is to advise you that

**I. A Medicaid Disability review has been completed for (name(s) \_\_\_\_\_**

**The Department has:**

**APPROVED.** The individual has been determined disabled with an effective date of disability of \_\_\_\_\_.  
 The expiration date, if applicable, is \_\_\_\_\_.

**NOTE:** Individuals may be required to provide the Department with medical and social information from time to time to show that the disability is continuing.

**DISAPPROVED.** The individual does not meet the disability criteria for Medicaid.

We have made the determination as follows or see the attached DSS-639, "Disability Review Team Certificate".

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See attached Notice of Decision for details of (name(s) \_\_\_\_\_ eligibility.

(Name(s) \_\_\_\_\_ is currently in receipt of Medicaid, and those benefits will continue unchanged.

The REGULATION which allows us to do this is 18 NYCRR 360-5.

**II. A Medicaid Disability review has *not* been completed for (name(s) \_\_\_\_\_**

This is because the individual received an unfavorable disability determination from the Social Security Administration (SSA). This determination is binding on the Medicaid program until SSA changes its determination or there is a change in the individual's circumstances. Therefore, the Medicaid Disability Review Team is not allowed to make a disability determination at this time. If the individual's condition changes or deteriorates, or the individual has an additional disabling condition that was not considered in the SSA decision, contact this Department.

The REGULATION which allows us to do this is 42 CFR 435.541.

*REGULATIONS REQUIRE THAT YOU IMMEDIATELY NOTIFY THIS DEPARTMENT  
 OF ANY CHANGES IN NEEDS, INCOME, RESOURCES, LIVING ARRANGEMENTS OR ADDRESS*

**YOU HAVE THE RIGHT TO APPEAL THIS DECISION  
 BE SURE TO READ THE BACK OF THIS NOTICE ON HOW TO APPEAL THIS DECISION**

**RIGHT TO A CONFERENCE:** You may have a conference to review these actions. If you want a conference, you should ask for one as soon as possible. At the conference, if we discover that we made the wrong decision or if, because of information you provide, we determine to change our decision, we will take corrective action and give you a new notice. You may ask for a conference by calling us at the number on the first page of this notice or by sending a written request to us at the address listed at the top of the first page of this notice. This number is used only for asking for a conference. ***It is not the way you request a fair hearing.*** If you ask for a conference you are still entitled to a fair hearing. Read below for fair hearing information.

**RIGHT TO A FAIR HEARING:** If you believe that the above action is wrong, you may request a State fair hearing by:

- 1) **Telephone:** You may call the state wide toll free number: 800-342-3334 (PLEASE HAVE THIS NOTICE WITH YOU WHEN YOU CALL); **OR**
- 2) **Fax:** Send a copy of this notice to fax no. (518) 473-6735; **OR**
- 3) **On-Line:** Complete and send the online request form at: <http://www.otda.state.ny.us/oah/forms.asp>; **OR**
- 4) **Write:** Send a copy of this notice **completed**, to the Fair Hearing Section, New York State Office of Temporary and Disability Assistance, P.O. Box 1930, Albany, New York 12201. Please keep a copy for yourself.

I want a fair hearing. The Agency's action is wrong because: \_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_ Case Number: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

Signature of Client: \_\_\_\_\_ Date: \_\_\_\_\_

**YOU HAVE 60 DAYS FROM THE DATE OF THIS NOTICE TO REQUEST A FAIR HEARING**

If you request a fair hearing, the State will send you a notice informing you of the time and place of the hearing. You have the right to be represented by legal counsel, a relative, a friend or other person, or to represent yourself. At the hearing you, your attorney or other representative will have the opportunity to present written and oral evidence to demonstrate why the action should not be taken, as well as an opportunity to question any persons who appear at the hearing. Also, you have a right to bring witnesses to speak in your favor. You should bring to the hearing any documents such as this notice, pay stubs, receipts, medical bills, heating bills, medical verification, letters, etc. that may be helpful in presenting your case.

**LEGAL ASSISTANCE:** If you need free legal assistance, you may be able to obtain such assistance by contacting your local Legal Aid Society or other legal advocate group. You may locate the nearest Legal Aid Society or advocate group by checking your Yellow Pages under "Lawyers" or by calling the number indicated on the front of this notice.

**ACCESS TO YOUR FILE AND COPIES OF DOCUMENTS:** To help you get ready for the hearing, you have a right to look at your case file. If you call or write to us, we will provide you with free copies of the documents from your file which we will give to the hearing officer at the fair hearing. Also, if you call or write to us, we will provide you with free copies of other documents from your file which you think you may need to prepare for your fair hearing. To ask for documents or to find out how to look at your file, call us at the Record Access telephone number listed at the top of the front of this notice or write us at the address printed at the top of the front of this notice.

If you want copies of documents from your case file, you should ask for them ahead of time. They will be provided to you within a reasonable time before the date of the hearing. Documents will be mailed to you only if you specifically ask that they be mailed.

**INFORMATION:** If you want more information about your case, how to ask for a fair hearing, how to see your file, or how to get additional copies of documents, call us at the telephone numbers listed at the top of the front of this notice or write to us at the address printed at the top of the front of this notice.

**ATTENTION:** Children under 19 years of age who are not eligible for Medicaid or other health insurance may be eligible for the Child Health Plus Insurance. The plan provides health care insurance for children. Call 1-800-698-4543 for information.