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| LOCAL COMMISSIONERS MEMORANDUM |
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Transmittal No: 90 LCM-192

Date: November 29, 1990

Division: Commissioner's
Office

TO: Local District Commissioners

SUBJECT: Filed Regulations

ATTACHMENTS: Attachment I - 358-2.2 et al (available on-line)
Attachment II - 358-2.15 et al (available on-line)
Attachment III - 387.19(a)(5)(ii) (available on-line)
Attachment IV - 423.5 (available on-line)

The following changes to the Official Regulations of the State Department of Social Services have been filed for adoption with the Secretary of State.

18 NYCRR 358-2.2 et al relating to fair hearings: mass change notices and hearing rights.

The final rule - Filed: 11/20/90 - Effective: 12/5/90.

18 NYCRR 358-2.15 et al relating to fair hearings: notices of employability.

The final rule - Filed: 11/27/90 - Effective: 12/12/90.

18 NYCRR 387.19(a)(5)(ii) relating to reduction in food stamp allotment - intentional program violation.

The final rule - Filed: 11/27/90 - Effective: 12/12/90.

18 NYCRR 423.5 relating to non mandated preventive services.

The final rule - Filed: 11/20/90 - Effective: 12/5/90.

Michael J. McNaughton
Director, Local District
Policy Communications

Attachment I Page 1 of 8
STATE DEPARTMENT OF SOCIAL SERVICES
ALBANY, NEW YORK

Pursuant to the provisions of Sections 20(3)(d), 22(8) and 34(3)(f) of the Social Services Law, I, Cesar A. Perales, Commissioner of Social Services do hereby amend the opening language of section 358-2.2, designate subdivisions (a) through (n) of section 358-2.2 as paragraphs (1) through (14) and all paragraphs and subparagraphs within such subdivisions are renumbered accordingly, add a new paragraph (15) to newly designated subdivision (a) of section 358-2.2, add a new subdivision (b) to section 358-2.2, amend paragraph (8) of subdivision (f) of section 358-3.1, add a new paragraph (9) to subdivision (f) of section 358-3.1, add a new paragraph (3) to subdivision (a) of section 358-3.3, amend clause (e) of subparagraph (ii) of paragraph (2) of subdivision (e) of section 358-3.3, amend paragraphs (1) and (2) of subdivision (b) of section 358-3.5, redesignate subparagraph (iii) of paragraph (1) of subdivision (a) of section 358-3.6 as subparagraph (iv), add subparagraph (iii) to paragraph (1) of subdivision (a) of section 358-3.6, amend subparagraph (i) of paragraph (2) of subdivision (a) of section 358-3.6, redesignate subparagraph (iii) of paragraph (1) of subdivision (c) of section 358-3.6 as ubparagraph (iv), and add subparagraph (iii) to paragraph (1) of subdivision (c) of section 358-3.6 of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective upon publication of the Notice of Adoption in the New York State Register.

Dated: November 19, 1990

Signed: _____
Commissioner

This is to certify that this is the original of an order of the State Department of Social Services made on November 20, 1990 amending the opening language of section 358-2.2, designating subdivisions (a) through (n) of section

358-2.2 as paragraphs (1) through (14) and renumbering all paragraphs and subparagraphs within such subdivisions accordingly, adding a new paragraph (15) to newly designated subdivision (a) of section 358-2.2, adding a new subdivision (b) to section 358-2.2, amending paragraph (8) of subdivision (f) of section 358-3.1, adding a new paragraph (9) to subdivision (f) of section 358-3.1, adding a new paragraph (3) to subdivision (a) of section 358-3.3, amending clause (e) of subparagraph (ii) of paragraph (2) of subdivision (e) of section 358-3.3, amending paragraphs (1) and (2) of subdivision (b) of section 358-3.5, redesignating subparagraph (iii) of paragraph (1) of subdivision (a) of section 358-3.6 as subparagraph (iv), adding subparagraph (iii) to paragraph (1) of subdivision (a) of section 358-3.6, amending subparagraph (i) of paragraph (2) of subdivision (a) of section 358-3.6, redesignating subparagraph (ii) of paragraph (1) of subdivision (c) of section 358-3.6 as subparagraph (iv), and adding subparagraph (iii) to paragraph (1) of subdivision (c) of section 358-3.6 of the Official Regulations of the State

Department of Social Services, being Title
18 NYCRR, the express terms of which were
published in the New York State Register on
July 3, 1990

Dated: November 19, 1990

Signed: _____
Commissioner

The opening language of section 358-2.2 is amended to read as follows:

(a) [An] Except as provided in subdivision (b) of this section, an adequate notice means a notice of action, or an adverse action notice or an action taken notice which sets forth all of the following:

Current subdivisions (a) through (n) of section 358-2.2 are designated as paragraphs (1) through (14) and the paragraphs and subparagraphs contained within those subdivisions are renumbered accordingly.

A new paragraph (15) is added to subdivision (a) of section 358-2.2 to read as follows:

(15) when an action concerning medical assistance is based on a change in law, a statement of the circumstances under which a hearing may be obtained and assistance continued. Such statement must advise the recipient that although the recipient has the right to have a hearing scheduled, the hearing officer at the hearing may determine that the recipient did not have a right to a hearing or continuation of assistance if the sole issue is a federal or State law requiring an automatic change adversely affecting some or all medical assistance recipients.

A new subdivision (b) is added to section 358-2.2 to read as follows:

(b) Where an automatic public assistance grant adjustment is required for a class of recipients because of a

change in either State or federal law, the notice provided to a member of such class will be adequate if it includes:

(1) a statement of the intended action; and

(2) the reasons for such intended action; and

(3) a statement of the specific change in the law requiring such action; and

(4) a statement of the circumstances under which a hearing may be obtained and assistance continued. Such statement must advise the recipient that although the recipient has the right to have a hearing scheduled, the hearing officer at the hearing may determine that the recipient did not have a right to a hearing or continuation of assistance unless the reason for the appeal is the incorrect computation of the grant; and

(5) the liability, if any, to repay continued or reinstated assistance, if the recipient loses the fair hearing.

Paragraph (8) of subdivision (f) of section 358-3.1 is amended and a new paragraph (9) is added to such subdivision to read as follows:

(8) your services have been discontinued as a result of a court order, or the court order which required the provision of services has expired[.] ; or

(9) you are a member of a class of public assistance recipients for whom either State or federal law requires an automatic grant adjustment, unless the reason for your appeal is the incorrect computation of your grant.

Paragraph (3) is added to subdivision (a) of section 358-3.3 to read as follows:

(3) Action based on a change in State or federal law requiring automatic public assistance grant adjustments for classes of recipients. When you are a member of a class of public assistance recipients for whom changes in either State or federal law require automatic grant adjustments, you are entitled to timely notice of such grant adjustment. This notice will be adequate if it includes those items listed in section 358-2.2(b) of this Part.

Clause (e) of subparagraph (ii) of paragraph (2) of subdivision (e) of section 358-3.3 is amended to read as follows:

(e) the right to continued benefits and under what circumstances benefits will be continued, pending issuance of the fair hearing decision. You will be informed that at the hearing, the hearing officer may determine to end your continuation of benefits if it is determined that the issue being contested is not based on improper computation of benefits or misapplication or misinterpretation of federal law or regulation;

Paragraphs (1) and (2) of subdivision (b) of section 358-3.5 are amended to read as follows:

(1) A request for a fair hearing must be made within 60 days after the social services agency's

determination, action, or failure to act about which you are complaining except as provided in paragraphs (2) and (3) of this subdivision for fair hearings relating to food stamp benefits, and paragraph (4) relating to HEAP benefits. Where the social services agency's action is based on a change in State or federal law requiring automatic public assistance grant adjustments for classes of recipients, a request for a fair hearing must be made within 60 days after the changed grant becomes available to you.

(2) A request for a fair hearing to complain about any action by the social services agency affecting your food stamp benefits, including a loss of food stamp benefits, must be made within 90 days after the determination, action or failure to act about which you are complaining. Action includes a denial of a request for restoration of any benefits lost more than 90 days but less than one year prior to the request for restoration. Where the social services agency's action is the result of a mass change, a request for a fair hearing must be made within 90 days after the changed level of benefits become available to you.

Subparagraph (iii) of paragraph (1) of subdivision (a) of section 358-3.6 is redesignated as subparagraph (iv), and a new subparagraph (iii) is added to such section to read as follows:

(iii) In cases where the action is an automatic public assistance grant adjustment based on a change in State or federal law, the effective date for determining the right to continued public assistance, medical assistance and food stamps

will be deemed to be 10 days after the date the changed grant becomes available to you.

Subparagraph (i) of paragraph (2) of subdivision (a) of section 358-3.6 is amended to read as follows:

(i) public assistance where the Department has determined that the sole issue is one of State or federal law or policy, or change in State or federal law and not one of incorrect grant computation; or

Subparagraph (iii) of paragraph (1) of subdivision (c) of section 358-3.6 is redesignated as subparagraph (iv), and a new subparagraph (iii) is added to such section to read as follows:

(iii) Where the action being taken is the result of a mass change, the effective date of the action is deemed to be 10 days after the date the changed level of benefits become available to you.

(Deleted material [brackets] new material underlined).

Pursuant to the provisions of Sections 20(3)(d), 22(8) and 34(3)(f) of the Social Services Law, I, Cesar A. Perales, Commissioner of Social Services do hereby amend section 358-2.15, paragraph (14) of subdivision (b) of section 358-3.1; amend the title of paragraph (1) of subdivision (a) of section 358-3.3; repeal subparagraph (iii) of paragraph (1) of subdivision (a) of section 358-3.3; redesignate subparagraphs (iv), (v) and (vi) of paragraph (1) of subdivision (a) of section 358-3.3 as subparagraphs (iii), (iv) and (v); amend subparagraph (ii) of paragraph (1) of subdivision (a) of section 358-3.3; amend paragraph (2) of subdivision (a) of section 358-3.3; and add paragraph (4) to subdivision (a) of section 358-3.6 of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective upon publication of the Notice of Adoption in the New York State Register.

Dated: November 26, 1990

Signed: _____
Commissioner

This is to certify that this is the original of an order of the State Department of Social Services made on November 27, 1990 amending section 358-2.15, paragraph (14) of subdivision (b) of section 358-3.1; amending the title of paragraph (1) of subdivision (a) of section 358-3.3; repealing subparagraph

(iii) of paragraph (1) of subdivision (a) of section 358-3.3; redesignating subparagraphs (iv), (v) and (vi) of paragraph (1) of subdivision (a) of section 358-3.3 as subparagraphs (iii), (iv) and (v); amending subparagraph (ii) of paragraph (1) of subdivision (a) of section 358-3.3; amending paragraph (2) of subdivision (a) of section 358-3.3; and adding paragraph (4) to subdivision (a) of section 358-3.6 of the Official Regulations of the State Department of Social Services, being Title 18 NYCRR, the express terms of which were published in the New York State Register on September 5, 1990

Dated: November 26, 1990

Signed: _____
Commissioner

Section 358-2.15 is amended to read as follows:

Notice of action means a notice from a social services agency advising an applicant or recipient of any action the agency intends to take or has taken on any assistance or benefits except food stamp benefits, including the acceptance, denial, discontinuance, suspension, or reduction of public assistance, medical assistance or services, an increase in public assistance or medical assistance, a change in the amount of one of the items used in the calculation of a public assistance grant or medical assistance spenddown although there is no change in the amount of such public assistance grant or medical assistance spenddown, a change in the manner or method or form of payment of a public assistance grant, a determination that an applicant for or recipient of public assistance or medical assistance is employable, a restriction of a medical assistance authorization, and a denial or acceptance of HEAP.

Paragraph (14) of subdivision (b) of section 358-3.1 is amended to read as follows:

(14) you are an applicant for or a recipient of public assistance or medical assistance and you object to a social services agency determination that you are employable or to the extent of your employability; or

The title of paragraph (1) of subdivision (a) of section 358-3.3 is amended to read as follows:

(1) Action to discontinue, suspend, reduce, restrict; [employability determinations;] changes in the manner of payment for employment and JOBS related child care services; changes in the manner of payment for transitional child care.

Subparagraph (iii) of paragraph (1) of subdivision (a) of section 358-3.3 is repealed and subparagraphs (iv), (v) and (vi) of such paragraph are redesignated as subparagraphs (iii), (iv) and (v).

Subparagraph (ii) of paragraph (1) of subdivision (a) of section 358-3.3 is amended to read as follows:

(ii) [determines to] change the manner or method or form of payment of your public assistance grant; or

Paragraph (2) of subdivision (a) of section 358-3.3 is amended to read as follows:

(2) Action to accept, deny, increase or make change in calculation; denial of utilization threshold exemption or increase application; employability determination; changes in the manner of payment for employment and JOBS related child care services; changes in the manner of payment for transitional child care.

You have a right to adequate notice [When] when a social services agency: (i) accepts or denies your application for public assistance, medical assistance or services, or

(ii) increases your public assistance grant, or

(iii) determines to change the amount of one of the items used in the calculation of your public assistance grant or medical assistance spenddown although there is no

change in the amount of your public assistance grant or medical assistance spenddown, or

(iv) denies an application for an exemption from or an increase of a medical assistance utilization threshold and you have reached the utilization threshold, or

(v) changes the manner of payment for your employment and JOBS related child care provided to enable you to participate in JOBS activities pursuant to Part 385 of this Title except as provided in subparagraph (v) of paragraph (1) of this subdivision, or

(vi) changes the manner of payment for your transitional child care except as provided in subparagraph (vi) of paragraph (1) of this subdivision, or

(vii) determines that you are employable and you are an applicant for or recipient of public assistance or medical assistance [you have a right to adequate notice].

Paragraph (4) is added to subdivision (a) of section 358-3.6 to read as follows:

(4)(i) Where an applicant for or a recipient of public assistance or medical assistance is determined employable and a hearing is requested to contest employability within 10 days of the effective date of the agency's notice of employability, any failure to comply with employment requirements within the 10 day period or thereafter until a fair hearing decision is issued will not be considered willful non-compliance regardless of the outcome of the fair hearing.

(ii) If the 10th day after the effective date of the agency's notice of the action falls on a weekend or holiday, a hearing request postmarked or received by the department on the day after the weekend or holiday will be considered to be received within 10 days of the effective date of the agency notice for purposes of subparagraph (i) of this paragraph.

(deleted material [brackets] ; new material underlined).

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of Sections 20(3)(d), 34(3)(f) and 95 of the Social Services Law, I, Cesar A. Perales, Commissioner of Social Services do hereby amend Section 387.19(a)(5)(ii) of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR effective upon publication of the Notice of Adoption in the State Register.

Dated: November 26, 1990

Signed: _____

Commissioner

This is to certify that this is the original of an order of the State Department of Social Services, made on November 27, 1990 amending Section 387.19 (a)(5)(ii) of the Official Regulations of the State Department of Social Services, being Title 18 NYCRR, the express terms of which were published in the New York State Register on September 12, 1990.

Dated: November 26, 1990

Signed: _____

Commissioner

Subparagraph (ii) of paragraph (5) of subdivision (a) of Section 387.19 is amended to read as follows:

(ii) for intentional program violation as defined in section 387.1 of this Part - 20 percent of the [household's monthly allotment] amount the household would have received if the household member(s) had not been disqualified or \$10 per month, whichever is greater; and

(Deleted material [brackets] ; new material underlined.)

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of Sections 20(3)(d), 34(3)(f), and 409-a of the Social Services Law, I, Cesar A. Perales, Commissioner of Social Services, do hereby amend section 423.5(c) of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective when the Notice of Adoption is published in the State Register.

Dated: November 19, 1990

Signed: _____

Commissioner

This is to certify that this is the original of an order of the State Department of Social Services, made on November 20, 1990 amending section 423.5 of the Official Regulations of the State Department of Social Services, being Title 18 NYCRR, the express terms of which were published in the New York State Register on August 1, 1990

Dated: November 19, 1990

Signed: _____

Commissioner

Subdivision (c) of Section 423.5 is amended to read as follows:

(c)[Donated] In-kind or indirect services and donated funds.

(1) Up to one half of the [local] social services [department's] district's total annual share of the cost of mandated preventive services may be met by in-kind or indirect services or by [nontax] non-tax levy funds, including, but not limited to, privately donated funds[, provided that such services or funds are used solely for the provision of mandated preventive services]. However, [the above] this limitation [shall] does not apply to [an] that amount equal to the total reimbursable preventive services expenditures, the local share of which was met by privately donated funds and subject to State reimbursement, during the State fiscal year ending March 31, 1981.

(2) Up to one-half of the social services district's total share of the cost of non-mandated preventive services provided pursuant to subdivision (2) of Section 409-a of the Social Services Law may be met by in-kind or indirect services or by non-tax levy funds, including, but not limited to, privately donated funds. These provisions do not apply to community preventive services provided pursuant to subdivision (3) of Section 409-a of the Social Services Law.

(Deleted material [brackets] ; new material underlined).