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 | ADMINISTRATIVE DIRECTIVE |
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TRANSMITTAL: 91 ADM-8

TO: Commissioners of
 Social Services

DIVISION: Medical
 Assistance

DATE: February 22, 1991

SUBJECT: Federal and State Changes Concerning
 Medical Assistance Eligibility Policy

SUGGESTED
 DISTRIBUTION: Medical Assistance Staff
 Fair Hearing Staff
 Staff Development Coordinators

CONTACT
 PERSON: MA Eligibility Representative: 1-800-342-3715,
 Extension 3-7581
 In New York City: 212-587-4853

ATTACHMENTS: Attachment I (Available On-Line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
90 ADM-3	83 ADM-39	360-2.2	PL 98-542	MARG p.	GIS90MA049
89 ADM-38		360-4.3	PL 100-485	122, 124,	GIS90IMDC006
89 ADM-24		360-4.6	PL 100-383	152, 181,	GIS89MA029
88 ADM-10		360-4.7	PL 101-239	187	GIS89MA028
87 ADM-48		352.14, 17,	Chapter 734		
83 ADM-39		19, 22	and 743 of Laws of 1989		
			SSL 131(a)		
			Chapter 517		
			and 817 of		
			Laws of		
			1990		

I. PURPOSE

The purpose of this Directive is to advise districts of several Medical Assistance (MA) eligibility policy changes necessitated by recent federal and State regulatory or statutory revisions and clarifications. These revisions concern the following:

- A. Changes to Earned Income Disregards
- B. Disregard of restitution to Japanese-Americans and Aleuts for relocation or internment during World War II
- C. Disregard of payments due to Agent Orange exposure
- D. Categorical eligibility of stepparents for ADC

II. BACKGROUND

Recent federal and State laws have changed MA requirements concerning income to be disregarded in determining MA eligibility. In addition, a federal policy clarification has significantly limited stepparents' categorical eligibility for Aid to Dependent Children (ADC).

The following is a description of policy changes necessitated by recent legislation.

- A. Changes to Earned Income Disregards

MA applicants/recipients (A/Rs) who meet the ADC-related or HR-related categorical criteria and who are employed are allowed certain disregards of earned income. In the past, the first \$75 of earned income was disregarded. In addition, if the individual had to pay for care of a dependent child or incapacitated adult to be able to work, up to \$160 per month was disregarded for care of the dependent. Both of these disregards were taken from income before the \$30 or \$30 and 1/3 disregard was applied.

Certain families with children and limited income are eligible to receive an Earned Income Tax Credit (EIC) from the Internal Revenue Service (IRS). The EIC is a tax credit which may be received as an advance payment on tax liability or as a refund on federal taxes paid. When an MA A/R receives an EIC, the amount received had been considered earned income.

The Family Support Act of 1988 (P.L. 100-485) increased the amounts of the earned income and child care/incapacitated adult disregards. It also revised the order in which the disregards are applied and provided that the EIC shall be exempt rather than counted as income. Chapter 734 of the Laws of 1989 revised Social Services Law 131(a)(8)(a) to reflect these changes and authorize them in the ADC and HR cash programs. These revisions apply to all ADC-related and HR-related A/Rs of MA.

B. Disregard of Restitution to Japanese-Americans and Aleuts for Relocation During World War II.

MA policy generally mandates that one time "windfall" payments such as court settlements be considered as available resources. The Civil Liberties Act of 1988 and the Aleutian and Pribilof Islands Restitution Act (Titles I and II of P.L. 100-383) and Chapter 817 of the Laws of 1990 provide for an exception to this policy.

Public Law 100-383 allows for federal payments to certain Japanese-Americans and residents of the Aleutian Islands who were relocated or interned during World War II. In the case of eligible Japanese-Americans who are deceased, payment may be made to the surviving spouse, children, or parents. Payments equal \$20,000 for eligible Japanese-Americans and \$12,000 for eligible Aleuts. Payments are expected to be made in the Federal fiscal year 1991. The law provides that these payments will be exempt as both income and resources when determining MA eligibility for A/Rs related to a federally funded category. Chapter 817 of the Laws of 1990 provides for exempting these payments as both income and resources for purposes of determining eligibility for any program provided under the authority of Article 5 of the Social Services Law, which includes the MA program.

C. Disregard of Payments Due to Agent Orange Exposure

The Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239) provides that payments from the Agent Orange Settlement Fund or any other fund established pursuant to the In re Agent Orange product liability litigation must be disregarded from both income and resources in federally funded MA eligibility determinations.

Chapter 517 of the Laws of 1990 amended Section 235-a of the Military Law to exclude from income and resources, for the purpose of determining eligibility for or the amount of benefits under any means-tested State, State-assisted, or federally-assisted program, payment received from the Agent Orange Settlement Fund, from any other fund established pursuant to the In re Agent Orange product liability litigation, and from court proceedings brought for personal

injuries sustained by veterans resulting from exposure to dioxin or phenoxy herbicides in connection with the war in Indochina in the period of January 1, 1962 through May 7, 1975.

The disregard of these payments as income or resources applies to all A/Rs in determining MA eligibility.

D. Categorical Eligibility of Stepparents for ADC

In recent years, districts included stepparents in ADC cases when the stepparent was not also an adoptive or natural parent of another child in the household as long as the stepparent was willing to support the stepchild(ren).

A recent federal policy interpretation states that a stepparent cannot be added to an ADC case unless that person is also the natural or adoptive parent of another child living in the household who is deprived of parental support.

Stepparents are now and will continue to be eligible for ADC when both natural parents are absent from the household, necessitating that the stepparent be the child's caretaker relative.

III. PROGRAM IMPLICATIONS

The effect of the Family Support Act of 1988, the Civil Liberties Act of 1988, the Aleutian and Pribilof Islands Restitution Act, the Omnibus Budget Reconciliation Act of 1989, Chapters 734 and 743 of the Laws of 1989, and Chapters 517 and 817 of the Laws of 1990 is to allow MA A/Rs to retain income or resources that currently must be applied to the appropriate standard.

The following are the policy revisions authorized:

A. Changes to Earned Income Disregards

For ADC-related and HR-related A/Rs for whom eligibility is determined on or after October 1, 1989, the following revisions apply:

1. The amount of the earned income disregard has been increased from \$75 to \$90/month.
2. The amount of the incapacitated adult/child (age 2 or older) care disregard for persons employed full time is increased from a maximum of \$160 per month to \$175 per month. The disregard has been increased to allow for up to \$200 per month for care of a child under age 2.

For persons employed part time or not employed throughout the month, the maximum allowances for care are increased to \$174.99 and \$199.99, respectively.

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3. The order of monthly disregards has been revised as follows:
 - a. \$90 earned income disregard
 - b. \$30 or \$30 and 1/3 earnings disregard, when applicable
 - c. child care/incapacitated adult expenses
 4. Payments received as EIC shall be considered exempt income in the month received. To allow recipients a reasonable period of time to dispose of any EIC received, the exemption shall apply through the end of the month following the month of receipt. An EIC retained beyond this time shall be counted as a resource.

Note: For SSI-related A/Rs, the EIC continues to be counted as earned income in the month received and as a resource thereafter.

B. Disregard of Restitution to Japanese-Americans and Aleuts for Relocation During World War II

The number of New York State residents eligible for payments under the provisions of P.L. 100-383 is expected to be small. The amount of the payment shall be exempt from both income and resources when determining eligibility. This exemption is unusual due to the amount of the payments to be received, which is \$12,000 for Aleuts and \$20,000 for Japanese-Americans.

Payments may also be made to surviving spouses, children or parents of deceased Japanese-Americans who would have been eligible for benefits. Such payments to Japanese Americans are also exempt from income and resources when determining eligibility for SSI-related, ADC-related and HR-related individuals.

In the post-eligibility treatment of income for persons who are in chronic care, payments received are exempt income in the month received. Therefore, these payments are not considered available when determining the amount of the community spouse income allowance, family member allowance or former family household contribution.

Funds remaining after the month of receipt are considered exempt resources.

C. Disregard of Payments Due to Agent Orange Exposure

Benefits received by MA A/Rs under the Agent Orange Settlement Fund or pursuant to the product liability litigation must be disregarded as income in the month received. This disregard will allow affected recipients to retain income above the Public Assistance standard of need, or above the MA income eligibility level. These benefits must be disregarded from income and resources for all A/Rs effective 1/1/89.

In the post-eligibility treatment of income for SSI-related recipients in chronic care, Agent Orange payments must be considered exempt income in the month received. Therefore, these payments are not considered available when determining the amount of the community spouse income allowance, family member allowance or former family household contribution.

Any funds remaining as of the next month are exempt resources.

D. Categorical Eligibility of Stepparents for ADC

A stepparent may no longer be considered eligible for ADC unless that person is also the natural or adoptive parent of another child deprived of parental support who lives in the stepparent's household. A stepparent cannot be added to the child's case even if the stepparent is incapacitated or meets ADC-U criteria. However, a stepparent may be added to a child's ADC case when the stepparent serves as the child's caretaker relative. This situation may exist when both natural parents are absent.

Stepparents who are not eligible for ADC as natural or adoptive parents and who are eligible for Public Assistance may be eligible for ADC as essential persons in Public Assistance. 89 ADM-24 explains the recently revised criteria for eligibility as essential persons in Public Assistance.

If the stepparent is not eligible for ADC because the stepparent has no child meeting the deprivation criteria and is not eligible for Public Assistance as an essential person, the stepparent's eligibility may continue as a federally nonparticipating parent. Procedures to determine eligibility for FNP parents are described in 89 ADM-38, "Medical Assistance Eligibility Expansion for FNP Parents Living with their Children and Who Have Income and/or Resources Above the PA Standard." Since these procedures involve using FP criteria, MA eligibility for many ADC ineligible stepparents shall continue without federal participation.

Eligibility will not continue for those stepparents who are eligible now with a spenddown and whose eligibility is redetermined as an FNP parent because spenddown provisions do not apply to FNP parents.

IV. REQUIRED ACTION

The recent federal and State legislation previously described requires that districts change certain procedures in determining MA eligibility. Actions to be taken are described as follows:

A. Changes to Earned Income Disregards

For ADC and HR-related A/Rs for whom eligibility is determined on or after October 1, 1989, districts must use the following revised disregards:

- 1) The earned income disregard equal to \$90 per month.
- 2) The maximum child care/incapacitated adult disregard equal to \$175 per month for persons age of 2 or older. The maximum is increased to \$200 per month for care of a child under age 2.

For persons employed part time or through only part of a month, the maximum allowance for care is \$199.99 for children under age 2 and \$174.99 for adults and children aged 2 and over.

- 3) The child care/incapacitated adult disregard must be applied after the \$90 earned income disregard and the \$30 or \$30 and 1/3 disregard.
- 4) The Earned Income Tax Credit is exempt income in the month received and the following month to allow the recipient to use the payment. Any EIC payment remaining after this time must be applied to the allowable resource level.

Note: For SSI-related A/Rs, the EIC continues to be counted as earned income in the month received and as a resource thereafter.

B. Disregard of Restitution to Japanese-Americans and Aleuts for Relocation During World War II

Payment to Japanese-Americans under P.L. 100-383 must be disregarded from income and resources. Chapter 817 of the Laws of 1990 extended this disregard to HR-related A/Rs.

Payments to all Aleutian Islanders are also exempt.

The recipient must document that the source of the funds is the authorizing federal legislation.

When an SSI or ADC-related A/R in chronic care or in receipt of waived services receives a payment under these provisions, such payment must be disregarded in the post-eligibility treatment of income. Any funds remaining after the month of receipt are then considered exempt resources for eligible individuals as well as spouses, children and parents of Japanese-Americans.

C. Disregard of Payments Due to Agent Orange Exposure

In determining eligibility for all MA only A/Rs, benefits received under the Agent Orange Settlement Fund or due to Agent Orange product liability litigation shall be disregarded from income and resources effective January 1, 1989.

For cases that have been denied due to excess income from this military service connected disability benefit, recalculation will be necessary. Districts must identify all cases in which receipt of Agent Orange benefits has resulted in MA denial or excess income. At recertification or next client contact, whichever occurs first, cases must be reviewed to determine whether Agent Orange benefits were included in the eligibility determination. If so, eligibility must be recalculated, disregarding this income retroactive to January 1, 1989.

Within 30 days of receiving this Directive, districts must post the attached notice (Attachment I) for six months. Any cases brought to the district's attention must have eligibility redetermined excluding the Agent Orange payment. In any instance where a previously denied applicant who is determined eligible as a result of the new rules has paid medical bills, reimbursement must be provided in accordance with 87 ADM-48.

D. Categorical Eligibility of Stepparents for ADC

Categorical eligibility of stepparents must be reevaluated when the stepparent is not also the natural or adoptive parent of at least 1 child with a deprivation living in the household or when the stepparent is included as a second caretaker. Stepparents who are eligible for Public Assistance and who meet the criteria for essential persons must first be evaluated for ADC under Public Assistance as described in 89 ADM-24.

If the stepparent is not eligible under the Public Assistance criteria, the stepparent must have eligibility redetermined using the criteria for FNP parents as described in 89 ADM-38.

Districts must review categorical eligibility for all stepparents at recertification or next client contact. Stepparents must be authorized as essential persons under Public Assistance or as FNP parents where appropriate.

V. SYSTEMS IMPLICATIONS

A. Changes to Earned Income Disregards

As of October 10, 1989 MBL has supported the revisions to earned income disregards when an EFFECTIVE DATE of 10/01/89 or later is entered. (MBL Transmittal 89-3, dated 9/27/89). For those situations when EIC is to be counted as a resource, entry should be made on MBL as Resource Code 98 - Other Liquid Resources.

Note: For those cases which have to be budgeted with advanced EIC payments - SSI related applicants/recipients and budgets with EIC for periods prior to 10/1/89 - payments should be added to the gross earned income before entering on MBL since the EIC field has been eliminated.

B. Disregard of restitution to Japanese-Americans and Aleuts for Relocation or Internment During World War II

Since policy in this ADM states that such payments will be exempt as both income and resources when determining eligibility, no entry should be made on MBL.

C. Disregard of Payments Due to Agent Orange Exposure

Since policy in this ADM states that such payments will be exempt as both income and resources when determining eligibility, no entry should be made on MBL.

D. Categorical Eligibility of Stepparents for ADC

When stepparents meet categorical eligibility requirements for ADC they should be included in the MBL budget by increasing the number in case (CA field) appropriately.

VI. EFFECTIVE DATE

This Administrative Directive is effective March 1, 1991 with each content area effective as noted.

A. Changes to Earned Income Disregards

The provisions of this section were effective October 1, 1989.

- B. Disregard of Restitution to Japanese-Americans and Aleuts for Relocation or Internment During World War II

This provision was effective October 1, 1989. Please note that payments are not expected to be made until federal fiscal year 1991. [October, 1990 - September, 1991]

- C. Disregard of Payments Due to Agent Orange Exposure

These provisions were effective January 1, 1989.

- D. Categorical Eligibility of Stepparents for ADC

These provisions are effective immediately.

Jo-Ann A. Costantino
Deputy Commissioner
Division of Medical Assistance

DO YOU RECEIVE AGENT ORANGE BENEFITS?

Payments to veterans who were exposed to the herbicide Agent Orange began being made in 1989. Originally, these payments were included in determining Medical Assistance eligibility.

Recent federal and State laws say that Agent Orange payments must not be counted in determining Medical Assistance eligibility. Agent Orange benefits can be not counted as income back to January 1, 1989.

If you applied for Medical Assistance during 1989 or 1990 and either were denied assistance or were eligible but had Agent Orange payments counted in determining the amount of your benefits, let this social services district know.

You may now be eligible for services that you were not eligible for while Agent Orange benefits were counted. You may be due a refund or eligible to have unpaid medical bills paid for by Medical Assistance.

We will review active cases to try to find those that receive Agent Orange benefits. If you or a family member are receiving these benefits please call it to our attention now so we can redetermine your eligibility more quickly.

If you were denied assistance due to the amount of Agent Orange benefits let us know as soon as possible so that we may reevaluate your eligibility.

If you have questions, please call _____.