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| ADMINISTRATIVE DIRECTIVE |
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TRANSMITTAL: 92 ADM-32

TO: Commissioners of
Social Services

DIVISION: Medical
Assistance

DATE: August 21, 1992

SUBJECT: Treatment of Certain Income and Resources for Medical
Assistance Applicants/Recipients

SUGGESTED

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

CONTACT

PERSON: | MA Eligibility County Representative at 1-800-342-
| 3715 extension 3-7581 or in New York City at 212-417-
| 4853.

ATTACHMENTS: | None

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
83 ADM-17		360-4.6(a)	OBRA 1990		GIS 91MA012
91 ADM-8		(2)	PL 101-508		
91 INF-20		360-4.6(b)	SSA 1612(6)		
		(2)	& 1613(a)		

I. PURPOSE

This Administrative Directive (ADM) informs social services districts of changes in the treatment of certain income and resources when determining eligibility for Medical Assistance (MA) for aged, certified blind or certified disabled applicants. It also addresses Aid to Dependent Children (ADC)-related and Home Relief (HR)-related treatment of these payments (see Section IV).

The Omnibus Budget Reconciliation Act of 1990 (OBRA '90) required the Department to make changes in the following areas:

- A. Disregard of Crime Victims' Compensation Payments;
- B. Disregard of State Relocation Assistance Payments;
- C. Disregard of Earned Income Tax Credit; and
- D. Treatment of royalties and honoraria.

SSI program litigation required other changes. They are:

- E. Disregard of Austrian Reparation Payments; and
- F. Change in the treatment of Veterans' Dependent Benefits (augmented payments).

II. BACKGROUND

OBRA '90 amended Sections 1612(b) and 1613(a) of the Social Security Act to change the treatment of certain types of income and resources when determining eligibility for the Supplemental Security Income (SSI) program. The federal Social Security Act requires that the Department use no more restrictive methodology in determining MA eligibility for the aged, certified blind or certified disabled (SSI-related), than is used in the SSI program. Therefore, similar changes are necessary for SSI-related applicants/recipients (A/Rs) in the MA program.

SSI program litigation has resulted in changes to the treatment of Austrian reparation payments and Veterans Administration (VA) dependent benefits. Comparable changes are necessary when determining MA eligibility for SSI-related A/Rs.

III. PROGRAM IMPLICATIONS

The following describes these changes for SSI-related A/Rs:

A. Disregard of Crime Victims' Compensation Payments

Previously, payments received from State Crime Victims' Assistance funds were included as income and/or resources when determining eligibility for MA.

OBRA '90 requires that these payments be excluded from income in the month received and exempt as resources for nine months after the month of receipt. Furthermore, an A/R cannot be required to apply for State Crime Victims' Assistance funds or accept compensation from such funds as a condition of eligibility for MA.

B. Disregard of State Relocation Assistance Payments

Relocation assistance is paid when the government requires an individual to move. For example, the government might need the individual's land for a highway or the individual might need to move because toxic wastes were discovered on the site.

Federal relocation assistance payments paid under Title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 are excluded as income and resources when determining eligibility for MA. Prior to OBRA '90, any other State or local relocation assistance payments were considered income in the month received and a resource thereafter.

OBRA '90 requires that relocation assistance payments provided by a State or local government are excluded from income in the month received. If retained beyond the month received, these payments are exempt resources for a nine-month period beginning the month after the month of receipt. However, to be exempt under this provision, the payments must be comparable to assistance provided under Title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970.

This provision applies only to State and local relocation assistance payments received during the period May, 1991, through April, 1994.

C. Disregard of Earned Income Tax Credit (EIC)

Certain families with children and limited income are eligible to receive an EIC from the Internal Revenue Service. The EIC may be received as an advance payment on tax liability or as a refund on federal taxes paid.

Previously, EIC payments were considered income in the month received and as a resource thereafter when determining MA eligibility for SSI-related A/Rs.

OBRA '90 requires that any EIC paid under Section 32 of the Internal Revenue Code or paid by an employer under Section 3507 of the Internal Revenue Code is now exempt as income in the month received and the following month. If retained beyond that time, it is counted as a resource.

D. Change in Treatment of Royalties and Honoraria

Royalties are payments such as remuneration to the holder of a patent or copyright for the use of an invention or the duplication of a writing, or to the owner of a mine for the extraction of a product such as oil, gas, or minerals. Previously, royalties were unearned income unless they represented self-employment earnings from a royalty-based trade or business.

Honoraria are payments for services for which no fee has been set. They may be gratuities given in appreciation for services rendered and/or compensation for expenses incurred. Previously, honoraria were treated as unearned income.

OBRA '90 requires that royalties and honoraria be treated as earned income.

E. Disregard of Austrian Reparation Payments

Austrian reparation payments are payments made by the Federal Republic of Austria under paragraphs 500 to 506 of the Austrian General Social Insurance Act. They may be made to individuals who suffered a loss, were imprisoned, unemployed or forced to flee Austria during the period from March, 1938 to May, 1945, for political, religious, or ethnic reasons. Previously, these payments were counted as income and, if retained, as resources in determining eligibility for SSI and MA.

As the result of a class action lawsuit, Bondy v Sullivan, reparation payments made by the Austrian government to victims of National Socialist persecution must be excluded in determining eligibility for SSI. Therefore, these payments are not to be counted as income or resources when determining eligibility for MA for SSI-related A/Rs.

In the post-eligibility treatment of income, Austrian reparation payments must not be applied toward the cost of care or considered available for the personal needs allowance (PNA), community spouse monthly income allowance (CSMIA) or family member allowance.

When retained beyond the month of receipt, Austrian reparation payments received by an institutionalized individual will be exempt as resources. However, interest earned on these excluded payments will be counted as available income. If interest is left to accumulate, it is an available resource.

F. Change in the Treatment of Veterans' Dependent Benefits

SSI policy provides that VA disability compensation or pension benefits received by an individual are income to the individual in the month received and are an available resource if retained. Under VA law, a veteran or widow(er) (designated beneficiary) may receive an increased payment if he or she has a dependent. Previously, if this additional (augmented) portion was included in the VA payment to the designated beneficiary, it was counted as unearned income to the designated beneficiary when determining eligibility for SSI.

As a result of a class action lawsuit, Anderson v Sullivan, the Social Security Administration no longer includes the dependent's portion of an augmented VA pension when determining SSI eligibility for the designated beneficiary. The augmented portion is unearned income to the dependent.

The changes described in A. through F. of this Section will allow SSI-related MA A/Rs to retain income and resources that were previously applied to the appropriate income or resource standard. Social service districts which have A/Rs in receipt of these payments may see a minimal increase in their expenditures.

IV. REQUIRED ACTION

The OBRA '90 legislation and court orders described in Section III. require that social services districts change the treatment of certain income and resources for SSI-related A/Rs. The following actions must be taken:

A. Disregard of Crime Victims' Compensation Payments

Crime victims' compensation payments are excluded from income in the month received and excluded from resources for the next nine months. An SSI-related A/R is not required to apply for or accept these payments as a condition of eligibility for MA.

NOTE: For ADC- or HR-related A/Rs, these payments will continue to be counted as income in the month received and a resource thereafter.

B. Disregard of State Relocation Assistance Payments

For SSI-related A/Rs, State or local relocation assistance payments are excluded from income in the month received and from resources for nine months after the month received. This exclusion from income and resources is only for payments received during the period May, 1991, through April, 1994. Interest earned on excluded payments is countable income.

NOTE: For ADC- or HR-related A/Rs, relocation assistance payments provided by a state or local government are counted as income in the month received and as a resource thereafter.

Federal relocation assistance payments will continue to be excluded as income in the month received and as excluded resources thereafter for all A/Rs, under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

C. Disregard of EIC

As advised in GIS message 91MA012 dated April 25, 1991, effective January 1, 1991, social services districts must no longer include EIC as income or resources in the month received and the following month when determining eligibility for SSI-related individuals. This includes EIC received as a lump sum refund or as an advance payment in a paycheck.

NOTE: For ADC- or HR-related A/Rs, these payments are already exempt as income or resources in the month received and the following month, effective October 1, 1989.

D. Change in the Treatment of Royalties and Honoraria

Royalties and honoraria will receive the same disregard as other earned income, e.g., first \$65 of monthly earnings and half of the remainder.

NOTE: For ADC- or HR-related A/Rs, these payments will also be treated as earned income in the month received and as a resource thereafter.

E. Disregard of Austrian Reparation Payments

For SSI-related A/Rs, Austrian reparation payments are excluded as income and resources when determining eligibility for MA.

The Health Care Financing Administration has clarified that Austrian reparation payments are to be treated in the same manner as German reparation payments. Therefore, effective January 1, 1991, in the post-eligibility treatment of income, Austrian reparation payments are not available for the PNA, CSMIA, family member allowance, or toward the cost of care.

These payments may not be readily distinguished from other payments made by the Austrian government. Therefore, when an individual alleges receipt of an Austrian reparation payment under the Austrian General Social Insurance Act, accept a signed statement of the amounts and dates received. No further documentation is required. If an applicant indicates that resources include Austrian reparation payments, the amounts and dates of corresponding account deposits are required.

NOTE: For ADC- or HR-related A/Rs, these payments will continue to be counted as income in the month received and a resource thereafter.

F. Change in the Treatment of Veterans' Dependent Benefits

When an SSI-related A/R indicates that a VA payment includes a dependent's portion, request the VA to verify the apportionment. Only that portion of a VA benefit attributable to the designated beneficiary is income to that individual.

The amount by which a VA benefit is augmented because of a dependent is income to the dependent. Such income to the dependent is not child support.

NOTE: When an ADC- or HR-related A/R indicates that a VA payment includes a dependent's portion and the dependent is not applying for MA, the verified augmented portion must be disregarded as income.

When the sources of excluded income described in this Section are retained as excluded resources, the interest earned is countable income. Social services districts must monitor these resources for as long as they are excluded and budget the interest as income. These excluded resources should be separately identifiable. When the resources are no longer excluded, districts must redetermine eligibility, including these resources in the budgeting process.

Social services districts are required to redetermine eligibility for any individual brought to their attention who was denied because eligibility was determined using the excluded income and/or resources described in this ADM. If otherwise eligible, the individual may be provided retroactive coverage for up to three months prior to the month of the original application, but no earlier than the effective date of the change in the treatment of the income and/or resources. See Section VI. of this ADM.

At the next client contact or recertification, districts must rebudget cases without counting the above excluded income or resources. If rebudgeting results in full eligibility or eligibility with a reduced spenddown, consult the New York State Fiscal Reference Manual for Local Social Services Districts for procedures for processing MA payments and/or reimbursements as a result of an agency redetermination. (Volume I, Chapter 7, pages 29-33, and Volume II, Chapter 5, pages 16-21.) Appropriate notices should be sent to affected A/Rs.

V. SYSTEMS IMPLICATIONS

A. Crime Victims' Compensation Payments and State Relocation Assistance

For combination budget types (i.e., 05, 06, 09 and 10), two

separate budgets will be necessary. For the SSI-related budget, the income should not be entered. When the resources are not excluded, use Resource Code 98-Other Liquid Resources.

For the ADC-related or HR-related budget, the income should be entered using unearned income source code 99-Other and Resource Code 98-Other Liquid Resources.

NOTE: Do not enter relocation payments which are received from the federal government.

For budget types 04, 07 and 08, the income should not be entered.

B. EIC

Budgeting of EIC as income has been deleted from MBL. In those instances where EIC needs to be counted as a resource, use Resource Code 98-Other Liquid Resources.

C. Treatment of Royalties and Honoraria

Earned Income Code 06-Other Earnings and Resource Code 98-Other Liquid Resources should be used for all categories of individuals.

D. Austrian Reparation Payments

These payments are to be treated the same way as German reparation payments. Therefore, use unearned income code 28-German Reparation Payments and Resource Code 10-German Reparation Payments. For more details on the German reparation codes, please refer to MBL Transmittal 88-2.

E. Veterans' Dependent Benefits

MBL is not currently programmed to support the budgeting of Veterans' Dependent Benefits. The Department will notify social services districts by an MBL Transmittal when this capability is available. In the meantime, districts must not include that portion of a Veterans' Benefit that is a dependent's share when determining eligibility for the designated beneficiary.

VI. EFFECTIVE DATE

This ADM is effective August 15, 1992, with retroactivity as noted below for SSI-related A/Rs, unless specified for all categories.

A. Disregard of Crime Victims' Compensation Payments

This provision is retroactive to May 1, 1991.

B. Disregard of State Relocation Assistance Payments

This provision is retroactive to May 1, 1991. The last month for which this exclusion may apply is April, 1994.

C. Disregard of EIC

This provision is retroactive to January 1, 1991.

D. Change in the Treatment of Royalties and Honoraria

This provision is retroactive to December 1, 1991 for all categories.

E. Disregard of Austrian Reparation Payments

This provision is retroactive to the month these payments were first received. In the post-eligibility treatment of income, this provision is retroactive to January 1, 1991.

F. Change in the Treatment of Veterans' Dependent Benefits

This provision is retroactive January 1, 1991.

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Deputy Commissioner
Division of Medical Assistance