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 | ADMINISTRATIVE DIRECTIVE |
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TRANSMITTAL: 91 ADM-33

TO: Commissioners of
 Social Services

DIVISION: Medical
 Assistance

DATE: August 22, 1991

SUBJECT: Spousal Impoverishment: Family Member Allowance Increase and
 Community Spouse Entitlement to Monthly Income Allowance

 SUGGESTED

DISTRIBUTION: Medical Assistance Staff
 Public Assistance Staff
 Adult Services Staff
 Fair Hearing Staff
 Legal Staff
 Staff Development Coordinators

CONTACT

PERSON: Questions concerning this Administrative Directive
 should be directed to your MA Eligibility County
 Representative by calling 1-800-342-3715, extension
 3-7581 or your New York City Representative at
 (212) 417-4853.

ATTACHMENTS: Attachment -- Spousal Impoverishment Income and
 Resource Amounts (available on-line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
91 ADM-13		360-1.4	SSA 1924		GIS 91MA018
90 ADM-35		360-4.3(f)	SSL 366-c		
90 ADM-29		360-4.9(a)	SSL 366		
89 ADM-47		(3)			
90 INF-19		360-4.10			

I. PURPOSE

This Directive advises social services districts of:

- A. an increase in the family member allowance used in determining the eligibility of institutionalized spouses, effective July 1, 1991, and
- B. a change in the entitlement of the community spouse to the community spouse monthly income allowance (CSMIA).

II. BACKGROUND

A. FAMILY MEMBER ALLOWANCE

Social Services Law (SSL) Section 366-c provides that if an institutionalized spouse or community spouse has dependent family members, who are living with the community spouse and whose otherwise available income is below a calculated family allowance amount, income must be set aside to meet the needs of the family members before applying any income to the institutionalized spouse's cost of care.

The family allowance amount established for each family member is an amount equal to one-third of the amount by which one-twelfth of the applicable percentage of the poverty line for a family of two exceeds the amount of the family member's otherwise available monthly income. The poverty line for two increased from \$8,420 to \$8,880 effective July 1, 1991. In addition, pursuant to the provisions of SSL Section 366-c, the applicable percentage of the poverty line increased from 122 percent to 133 percent (%) effective July 1, 1991. This increased figure is used to calculate the family member allowance(s) for all spousal impoverishment cases involving a dependent family member.

When applicable, the new family member allowance formula also is used to determine the amount of income requested as a contribution from a community spouse or a spouse living apart from an SSI-related applicant/recipient (A/R).

B. CHANGE IN THE ENTITLEMENT OF THE COMMUNITY SPOUSE TO THE COMMUNITY SPOUSE MONTHLY INCOME ALLOWANCE

Prior to the implementation of the spousal impoverishment provisions of the Medicare Catastrophic Coverage Act of 1988 (MCCA) in October, 1989, the maintenance needs of family members of an institutionalized spouse were determined by using the

medically needy standards. In order to be determined to be medically needy, both the income and resources of family members (including spouses) had to be below the medically needy levels. If household income was below the appropriate Medical Assistance (MA) income level or the Public Assistance (PA) Standard of Need, whichever was higher, but household resources exceeded the appropriate MA resource standard, the household was not considered to be medically needy. Therefore, the household was not eligible to receive an allowance in an amount sufficient to bring the household income up to the appropriate MA income level or PA Standard of Need. If household income and resources were below the appropriate MA levels/PA Standard of Need, then the household was medically needy and entitled to receive an allowance in an amount sufficient to bring the household income up to the appropriate MA income level and/or PA Standard of Need.

In accordance with 89 ADM-47, "Treatment of Income and Resources for Institutionalized Spouses/Individuals and Legally Responsible Relatives", if a community spouse refused to make his or her resources available to the institutionalized spouse, the community spouse was not entitled to the CSMIA. It has been clarified that Section 1924 of the Social Security Act (Act) does not require that the resources of a community spouse be at or below the maximum community spouse resource allowance (CSRA) in order to be entitled to the CSMIA.

Therefore, districts must determine entitlement to the CSMIA without regard to the amount of resources owned by the community spouse, other than to determine the amount of income generated from the resources.

III. PROGRAM IMPLICATIONS

A. FAMILY MEMBER ALLOWANCE

Under the provisions of SSL Section 366-c, a family member allowance is established for a minor child, dependent child, dependent parent, or dependent sibling of the institutionalized spouse or community spouse, who is residing with the community spouse and who has over 50% of his or her maintenance needs met by the community spouse and/or the institutionalized spouse.

The allowance for each family member is an amount equal to one-third of the amount by which one-twelfth of the applicable percentage of the poverty line for a family of two exceeds the amount of the family member's otherwise available monthly income.

The poverty line for a family of two is \$8,880 effective July 1, 1991. One-twelfth of 133% (applicable percentage) of \$8,880 equals \$984.20, which rounded up to the nearest dollar equals

\$985. Therefore, the maximum family member allowance for a family member with no other available income is calculated as follows:

$$\frac{\$985-0}{3} = \$329 \text{ (rounded up to nearest dollar)}$$

A higher family member allowance also will affect the amount of income which may be requested as a contribution from a community spouse or from a spouse living apart from an SSI-related A/R.

B. COMMUNITY SPOUSE MONTHLY INCOME ALLOWANCE

As stated in 89 ADM-47, where a community spouse refuses to provide information concerning his or her resources, the MA case is denied due to lack of sufficient information to make an eligibility determination. If the undue hardship provisions are met, MA must be authorized for the institutionalized spouse. Since the amount of income generated by resources is not known, the CSMIA cannot be determined. Therefore, the community spouse would not receive an income allowance.

89 ADM-47 (Section V.A.2.b.) also advises social services districts that when a community spouse refuses to make his or her resources which exceed the maximum CSRA available to the institutionalized spouse, the community spouse is not entitled to a CSMIA.

However, the Division of Legal Affairs has clarified that Section 1924 of the Act does not require that the resources of a community spouse be at or below the maximum CSRA in order to be entitled to the CSMIA.

Therefore, a community spouse who refuses to make his or her resources which exceed the maximum CSRA available to the institutionalized spouse, is still entitled to a CSMIA.

IV. REQUIRED ACTION

A. FAMILY MEMBER ALLOWANCE

A GIS message dated June 10, 1991 (91 MA018), advised social services districts to use \$984 instead of \$856 in the family member allowance formula effective July 1, 1991. The Department has recently been advised by the Health Care Financing Administration that we cannot round down when calculating the family member allowance. Therefore, districts must use \$985 in the family member allowance formula, effective July 1, 1991. To calculate the family member allowance:

1. Subtract the otherwise available income of the family member from \$985;

2. Divide the result by three, and round up to the nearest dollar.

All spousal impoverishment cases involving a family member which are active on or after July 1, 1991, must be recomputed using the new family member allowance formula. Any increases in the family member allowance, or changes in the Net Available Monthly Income (NAMI) of the institutionalized spouse as a result of any increase in the family member allowance, are to be made effective July 1, 1991. A higher family member allowance also will affect the amount of income which may be requested as a contribution from a community spouse or from a spouse living apart from an SSI-related A/R.

NOTE: The new family member allowance must be used when completing an assessment of a couple's resources and income.

Dependent members of an unmarried institutionalized person's family must be allowed income up to the MA income level, or the PA Standard of Need, whichever is higher. Also, in accordance with 18 NYCRR 360-4.9(a)(3), in determining the maintenance needs of the dependent members of a single institutionalized person's former family household, the resources of the family members are not considered. The income generated by such resources are, however, used to determine the maintenance needs of dependent members.

B. COMMUNITY SPOUSE MONTHLY INCOME ALLOWANCE

A community spouse who refuses to make his or her resources which exceed the maximum CSRA available to the cost of care of the institutionalized spouse must be allowed the appropriate CSMIA effective July 1, 1991. In addition, undercare cases active as of July 1, 1991 where the community spouse refused to make excess resources available and did not receive the CSMIA, must be re-evaluated at the next contact, but no later than recertification, to determine if the community spouse was entitled to receive the CSMIA. Any case where the community spouse was entitled to receive the CSMIA must be rebudgeted retroactively to July 1, 1991.

C. NOTICE REQUIREMENTS

1. When a social services district changes the amount of one of the items used in the calculation of MA eligibility (even if the result is no change in liability), the district must send to the A/R or authorized representative and the community spouse:
 - a. an updated "Institutionalized Spouse Budget Worksheet" detailing current income information;
 - b. a copy of the revised MBL budget;

- c. the DSS-4021 "Notice of Intent to Change the Contribution Toward Chronic Care Costs," (revised as specified in 90 ADM-35); and,
 - d. if appropriate, the "Notice to Spouse (Undercare)."
- 2. Social services districts are reminded that they also must send the provider a copy of any client notice reflecting an adjustment in the NAMI, in order to allow providers to bill MMIS appropriately.
 - 3. Districts must use Attachment I, which has been updated to reflect the July 1, 1991 maximum family member allowance amount, to replace Attachment I "Spousal Impoverishment Income and Resource Amounts" (revised 1/91) contained in 91 ADM-13. Attachment I must be provided with the "Information Notice to Couples with an Institutionalized Spouse" contained in 90 ADM-29.

V. SYSTEMS IMPLICATIONS

A. MBL

The calculation of the family member allowance(s) must be done using the "Institutionalized Spouse Budget Worksheet." The total amount of the family member allowance should be entered on MBL as Additional Allowance Code 23.

B. MBL REPORT

Additional Allowance Code 23 became available on January 22, 1991. Reports have been produced identifying those MBL budgets containing either Additional Allowance Code 19 or Code 23. Additional Allowance Code 19 was utilized prior to January 22, 1991 to enter both court-ordered support and family member allowance amounts. Social services districts will have to ascertain whether a Code 19 amount is a court-ordered support or family member allowance amount. If the Code 19 is a family member allowance amount, the Code 19 should be replaced with a Code 23.

To request a report identifying MBL budgets containing Additional Allowance Codes 19 and 23, contact your MA Eligibility County Representative.

VI. EFFECTIVE DATE

The new family member allowance formula and the change in entitlement of the community spouse to the CSMIA are effective September 1, 1991, retroactive to July 1, 1991.

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

SPOUSAL IMPOVERISHMENT INCOME AND RESOURCE AMOUNTS

Maximum Community Spouse Resource Allowance

- \$60,000 - Effective October 1, 1989
- \$62,580 - Effective January 1, 1990
- \$66,480 - Effective January 1, 1991

Note: A higher amount may be established by court order or fair hearing.

Maximum Community Spouse Monthly Income Allowance is an amount of up to:

- \$1,500 - Effective October 1, 1989
- \$1,565 - Effective January 1, 1990
- \$1,662 - Effective January 1, 1991

if the community spouse has no income of his/her own.*

Note: A higher amount may be established by court order or fair hearing.

Family Member Allowance - for each family member is an amount up to:

- \$271 - Effective October 1, 1989
- \$285 - Effective July 1, 1990
- \$329 - Effective July 1, 1991

if the family member has no income of his/her own.*

* If the institutionalized spouse is receiving Medical Assistance, any change in income of the institutionalized spouse, the community spouse and/or the family member may affect the community spouse income allowance and/or the family member allowance. Therefore, the social services district should promptly be notified of any income changes.