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| LOCAL COMMISSIONERS MEMORANDUM |
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Transmittal No: 90 LCM-32

Date: March 8, 1990

Division: Commissioner's
Office

TO: Local District Commissioners

SUBJECT: Filed Regulation 352.17(b)(1),(e)(f), 352.19(a)(b) etc.
Filed Regulation 360-4.8 & 370-7.3
Filed Regulation 358-3.2 & 358-5.2

ATTACHMENTS: Attachment I - 352.17(b)(1),(e)(f), 352.19(a)(b) etc.
(not available on-line)
Attachment II - 360-4.8 & 370-7.3 (available on-line)
Attachment III - 358-3.2 & 358-5.2 (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 352.17(b)(1),(e)(f), 352.19(a)(b) etc. relating to earned income disregards.

Filed as emergency rule 11/30/89 - Effective 11/30/89 and again on 3/1/90 - Effective: 3/1/90.
The final rule - Filed: 3/1/90 - Effective: 3/21/90.

18 NYCRR 360-4.8 & 360-7.3 relating to medical assistance eligibility.

The final rule - Filed: 3/5/90 - Effective: 3/21/90.

18 NYCRR 358-3.2 & 358-5.2 relating to priority in scheduling and determining fair hearings.

The final rule - Filed: 3/8/90 - Effective: 3/28/90.

Michael J. McNaughton
Director, Local District
Policy Communications

Paragraph (1) of subdivision (c) of section 360-4.8 of Title 18 is amended to read as follows:

(1) Except as provided in paragraph (4) of this subdivision, if an otherwise eligible applicant's/recipient's net available income exceeds the appropriate income standard, he/she will be eligible for MA only after incurring medical expenses equal to or greater than the amount of excess income, provided such medical expenses are not subject to payment by a third party other than another public program of the State or any of its political subdivisions. Once deduction of incurred medical expenses reduces income to the income standard, the applicant/recipient is eligible for MA; however, no MA payment will be made for those incurred medical expenses used to establish eligibility. The social services district will deduct from the applicant's income the following medical expenses incurred by the applicant, by family members living with the applicant for whom the applicant is legally responsible, and by legally responsible relatives living with the applicant, in the order listed below and regardless of whether these expenses are subject to payment by another public program of the State or any of its political subdivisions:

(i) expenses incurred for Medicare and other health insurance premiums, deductibles or coinsurance charges;

(ii) expenses incurred for necessary medical and remedial services that are recognized under State law but are not covered by MA; and

(iii) expenses incurred for necessary medical and remedial services that are covered under the MA program.

Paragraph (1) of subdivision (c) of section 360-7.3 is amended to read as follows:

(1) Children under 21 years of age may be eligible for medical services under the children with physical disabilities program (formerly the physically handicapped children's program) provided for under Title V of Article 25 of the Public Health Law. The social services district must promptly refer the case of a child who may be eligible for this program to the local program medical [rehabilitation] director. If the local program medical [rehabilitation] director determines that the child is medically eligible, MA-covered services must be provided [as the director prescribes] in accordance with the plan of care approved by the local program medical director. Once the social services district official has been notified that the child is medically eligible, the child's financial eligibility for MA must be determined, in accordance with the agreement between the State [department] Department of Health and the State Department of Social Services. If the child is eligible for MA with no parental liability, the medical services must be authorized by the social services district and paid for from MA funds. If the child's parents are required to contribute toward the cost of his/her care under MA eligibility standards, the child's case must be referred [for payment] to the [physically handicapped children's] children with physical disabilities program for payment of the cost of medical services up to the amount of the child's excess income.

Deleted material [bracketed]; new material underlined.

Section 358-3.2 is amended to read as follows:

358-3.2 Right to priority in hearing and determination.

Priority in scheduling of your hearing and determination will be provided when:

(a) you are an applicant for emergency assistance to needy families with children [or], emergency assistance to aged, blind or disabled persons or emergency home relief and you are appealing the denial of such benefits; or

[(b) you have been denied other assistance or benefits where the Department requires the expedited determination of eligibility for such benefits; or]

(b) your circumstances warrant priority in scheduling and your hearing is being scheduled because you have:

(1) no food; or

(2) no shelter, or your shelter is imminently about to be lost or terminated; or

(3) an inadequate or inappropriate emergency shelter placement; or

(4) an eviction/dispossess notice; or

(5) no fuel for heat during the cold weather period; or

(6) a utility disconnect scheduled for a specific date; or

(7) a utility shut-off; or

(8) need for rental security deposit, broker's fee and/or first month's rent, if necessary to obtain permanent housing, and failure to expedite processing will lead to loss of such housing; or

(9) urgent need for medical care, services or supplies; or

(10) a denial or discontinuance of or inadequate personal care services; or

(11) a denial or discontinuance of or inadequate adult protective services; or

(12) any other problem which is determined, in the Department's discretion, to be an appropriate subject for priority processing and which presents a crisis situation or a threat to your health and safety or that of your family; or

(c) you are requesting a fair hearing concerning your food stamp benefits and your household is planning to move away from the local social services district before the fair hearing decision would normally be issued.

Subdivision (b) of Section 358-5.2 is amended to read as follows:

(b) Priority scheduling.

(1) A fair hearing which is subject to priority processing pursuant to Section 358-3.2 of this Part must be scheduled as soon as practicable after the request therefor is made. In determining the date for which the hearing will be

scheduled, consideration must be given to the nature and urgency of the appellant's situation, including any date before which the decision must be issued to allow for meaningful resolution of the issue under review.

(2) When a hearing is requested concerning food stamp benefits and the food stamp household intends to move from the local social services district before the decision normally would be issued, priority will be given to the scheduling of the hearing, taking into account any [pivotal dates] date before which the hearing must be scheduled to allow for the appellant to receive the decision while still in the district.

(3) After a hearing which was scheduled on a priority basis as set forth above, the decision must be issued as soon as practicable. In determining the date by which the decision will be issued, consideration must be given to the nature and urgency of the appellant's situation, including any date before which the decision must be issued to allow for meaningful resolution of the issue under review. If, at the conclusion of a hearing which was scheduled on a priority basis, the hearing officer determines that the issues do not warrant continued priority processing, the hearing officer will inform the parties that the issuance of the decision will not receive priority processing.

Subdivision (c) of Section 358-5.2 is repealed. Subdivision (d) of Section 358-5.2 is redesignated as subdivision (c).

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