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| LOCAL COMMISSIONERS MEMORANDUM |
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Transmittal No: 91 LCM-20

Date: February 13, 1991

Division: Commissioner's
Office

TO: Local District Commissioners

SUBJECT: Filed Regulation Part 360 (Agent Orange etc.)

ATTACHMENTS: Attachment listed below
(Attachment 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 Part 360 relating to medical assistance eligibility (agent orange etc.).

The final rule - Filed: 2/11/91 - Effective: 2/27/91.

Michael J. McNaughton
Director, Local District
Policy Communications

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of Sections 20(3)(d), 34(3)(f), and 363-a(2) of the Social Services Law, I Cesar A. Perales, Commissioner of Social Services, do hereby renumber Section 360-4.6(a)(1)(xxii) as 360-4.6(a)(1)(xxiv); renumber, in Section 360-4.6(a)(3), subparagraphs (v) - (x) as (vi) - (xi), (ii) as (v), and (iii) and (iv) as (ii) and (iii); add Sections 360-4.6(a)(1)(xxii) and (xxiii), 360-4.6(a)(3)(iv), and 360-4.6(b)(5)-(7); and amend Sections 360-2.2(d)(2), 360-4.1(c), 360-4.3(b)(3), 360-4.3(d)(1), 360-4.6(a)(1)(xxi), 360-4.6(a)(3)(i), 360-4.6(a)(3)(iii), 360-4.6(a)(3)(v), and 360-4.6(b)(2)(v) 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 New York State Register.

Dated: February 8, 1991

Signed: _____

Commissioner

This is to certify that this is the original of an order of the State Department of Social Services made on February 11, 1991 renumbering Section 360-4.6(a)(1)(xxii) as 360-4.6(a)(1)(xxiv); renumbering, in Section 360-4.6(a)(3), subparagraphs (v) - (x) as (vi) - (xi), (ii) as (v), and (iii) and (iv) as (ii) and (iii);

adding Sections 360-4.6(a)(1)(xxii) and (xxiii), 360-4.6(a)(3)(iv), and 360-4.6(b)(5)-(7); and amending Sections 360-2.2(d)(2), 360-4.1(c), 360-4.3(b)(3), 360-4.3(d)(1), 360-4.6(a)(1)(xxi), 360-4.6(a)(3)(i), 360-4.6(a)(3)(iii), 360-4.6(a)(3)(v), and 360-4.6(b)(2)(v) 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 November 28, 1990.

Dated: February 8, 1991

Signed: _____

Commissioner

Section 360-2.2(d)(2) is amended to read as follows:

(2) (i) HR eligibility will be determined for MA applicants who:

[(i)] (a) are not eligible under the assistance programs listed in section 360-3.3(a)(2)-(6) of this Part; and

[(ii)] (b) do not meet the requirements, other than financial, for medically needy status in section 360-3.3(b) of this Title.

(ii) Generally, [Eligibility] eligibility for MA on the basis of HR eligibility will be determined according to Parts 352 and 370 of this Title. [Such applicants must meet the resource requirements for HR, except that a homestead is exempt. No liens, assignments, adjustments or recoveries will be required for MA given correctly unless pursuant to section 369 of the Social Services Law.] Exceptions to this general rule are set forth below.

(a) A homestead, as defined in section 360-1.3(f) of this Part, is exempt from consideration in determining eligibility.

(b) Lump-sum and windfall payments will be counted as income in the month received. Any portion of such payments remaining in subsequent months will be counted as an available resource.

(c) A child's savings account of under \$500 accumulated from gifts from non-legally responsible relatives or from the child's own wages will be disregarded in determining eligibility.

Section 360-4.1(c) is amended to read as follows:

(c) This Subpart does not set forth the procedure for

calculating the HR eligibility of persons whose MA eligibility depends on their being eligible for HR. As more fully explained in section 360-2.2(d)(2) of this Part, the HR eligibility of such persons generally will be determined according to Parts 352 and 370 of this Title.

Section 360-4.3(b)(3) is amended to read as follows:

(3) Unearned income is income that is not received as compensation for work performed. Unearned income includes, but is not limited to, pensions, benefits, dividends, interest, and insurance compensation [, income from roomers, boarders, and lodgers, and income from rental property].

The opening language of Section 360-4.3(d)(1) is amended to read as follows:

(1) Income received from the rental of a person's real or personal property, after allowable business expenses are deducted, is considered available [unearned] income of the person. For persons under 21 years of age, pregnant women, persons ineligible for ADC solely because their income and/or resources are above the amounts allowed for ADC eligibility, and parents described in section 360-3.3(b)(7) of this Part, such income will be considered earned income. For persons 65 years of age or older, certified blind, or certified disabled, such income will be considered unearned income. The following business expenses are deductible:

Subparagraph (xxii) of Section 360-4.6(a)(1) is renumbered subparagraph (xxiv).

Subparagraph (xxi) of Section 360-4.6(a)(1) is amended and new subparagraphs (xxii) and (xxiii) are added to read as follows:

(xxi) payments provided as a preventive housing service under subdivision 423.4(1) of this Title; [and]

(xxii) benefits paid to eligible Japanese-Americans or Aleuts under the federal Civil Liberties Act of 1988 and the Aleutian and Pribilof Islands Restitution Act;

(xxiii) payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In re Agent Orange product liability litigation, and payments received 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; and

Subparagraph (i) of Section 360-4.6(a)(3) is amended to read as follows:

(i) the first [\$75] \$90 of earned income;

Subparagraphs (v) through (x) of Section 360-4.6(a)(3) are renumbered subparagraphs (vi) through (xi), respectively, subparagraph (ii) is renumbered subparagraph (v), and subparagraphs (iii) and (iv) are renumbered (ii) and (iii), respectively.

The opening language of subparagraph (iii) of Section 360-4.6(a)(3) is amended to read as follows:

(iii) after the disregards in subparagraphs (i) [through (iii)] and (ii) of this paragraph have been applied, \$30 plus one-third of the remainder of monthly earned income will be

disregarded for four consecutive months, and \$30 per month will be disregarded for an additional eight months after that. This disregard will apply only if:

A new subparagraph (iv) of Section 360-4.6(a)(3) is added to read as follows:

(iv) refunds or advance payments of the federal Earned Income Tax Credit paid to families with dependent children;

Subparagraph (v) of Section 360-4.6(a)(3) is amended to read as follows:

(v) for individuals employed full-time throughout the month, an amount equal to the actual cost, but not to exceed [\$160] \$175, for the care of each dependent child two years of age or older or incapacitated adult living in the same home and receiving assistance, and an amount equal to the actual cost, but not to exceed \$200, for the care of each dependent child under two years of age living in the same home and receiving assistance; for those individuals working less than full-time or not employed throughout the month, an amount equal to the actual cost, but less than [\$160] \$175 for the care of each dependent child two years of age or older or incapacitated adult, and an amount equal to the actual cost, but less than \$200, for each dependent child under two years of age;

Section 360-4.6(b)(2)(v) is amended to read as follows:

(v) for a period of nine months following the month of receipt, retroactive SSI and Social Security benefits received during the period of October 1, 1987 through September 30,

1989; for a period of six months following the month of receipt, retroactive SSI and Social Security benefits received on or after October 1, 1989.

New paragraphs (5), (6), and (7) of Section 360-4.6(b) are added to read as follows:

(5) A child's savings account of under \$500 accumulated from gifts from non-legally responsible relatives or from the child's own wages will be disregarded in determining eligibility.

(6) Benefits received by eligible Japanese-Americans or Aleuts under the federal Civil Liberties Act of 1988 or the Aleutian and Pribilof Islands Restitution Act will be disregarded.

(7) For all MA applicants/recipients, payments provided from the Agent Orange Settlement Fund, from any other fund established pursuant to the settlement in the In re Agent Orange product liability litigation, or 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, will be disregarded.

(Deleted material [brackets]; new material underlined)