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| LOCAL COMMISSIONERS MEMORANDUM |  
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Transmittal No: 91 LCM-195

Date: October 30, 1991

Division: Medical Assistance

TO: Local District Commissioners

SUBJECT: Medical Assistance Eligibility for Disabled Children  
(Sullivan v. Zebley)

ATTACHMENTS: None

This Local Commissioners Memorandum (LCM) provides additional information regarding 91 ADM-35, "Sullivan v. Zebley". That ADM contains the revised criteria to be used in the evaluation of childhood disability cases and instructed you to redetermine eligibility using the Supplemental Security Income (SSI)-related budgeting methodology for children who are reevaluated and determined to be disabled. The revised disability criteria will result in more children being determined disabled by both the SSI program and MA-Only Disability Review Teams. This LCM contains additional information and reminders about: eligibility policy for disabled children; category choices; reimbursement for Zebley cases; and State Data Exchange (SDX) and related systems implications.

The SSI program will be reevaluating children's disability cases over a period of many months and will be issuing retroactive and ongoing benefits as appropriate. Some of these new SSI cases will have already been in receipt of full MA if they were in receipt of Public Assistance. Other cases may have been MA-Only cases that were fully eligible or eligible with a spenddown. New SSI cash cases which were not in receipt of full MA coverage may be eligible for retroactive coverage/reimbursement for bills incurred since February, 1990 if retroactive SSI eligibility is indicated on the SDX.

MA-Only children who are determined disabled by the MA Disability Review Team using the revised criteria are entitled to have their financial eligibility determined or redetermined retroactive to February 1, 1990 or the effective date of disability, whichever is later, using the SSI-related budgeting methodology. Some relevant issues are discussed below:

#### Eligibility Policy for Certified Disabled Children

In accordance with current regulations and policy:

- o Parental financial liability ceases at age 18 rather than age 21.
- o Parental financial liability is not pursued if a disabled child is expected to be living separately from the parental household for 30 days or more, even if the child returns for periodic visits.
- o Household size, for the purposes of determining the appropriate income and resource levels, is always a household of one for an unmarried disabled child.
- o Retroactive lump sum SSI benefits are exempt as income in the month received and exempt from resources for six months following the month of receipt. Interest earned on these funds is countable unearned income.

After the six-month exemption period, any remaining portion of the lump sum payment must be evaluated as to its availability. If a trust was created with a retroactive lump sum SSI payment, the trust document must be reviewed to determine whether funds can be considered available from the trust. Trusts established by an individual's guardian or legal representative, acting on the individual's behalf, with the individual's own money, are treated as having been established by the individual and may be considered Medicaid-qualifying trusts. 88 ADM-32, "Treatment of Potential Payments from Medicaid-Qualifying Trusts for Medicaid A/Rs", should be consulted for cases in which a trust has been established using a child's retroactive SSI benefit. If the trust meets the definition of Medicaid-qualifying trust, all or part of the income and resources may immediately be deemed available as specified in 88 ADM-32; the usual six-month exemption period does not apply to amounts deemed available from an MA qualifying trust.

Districts are reminded that lump sum payments must continue to be treated as income in the month received and a resource thereafter when making MA determinations for Aid to Dependent Children (ADC)-related and Home Relief (HR)-related A/Rs.

Non-Title IV-E disabled foster care children who receive lump sum retroactive SSI payments are allowed the six-month exemption as specified above.

#### Choice of Category

Persons in the SSI-related category must be offered a choice between SSI budgeting methodology and the ADC budgeting methodology if they meet the categorical requirements for ADC.

A disabled child who would be eligible under more than one category must be offered the choice of category. The eligibility worker should explain the applicable options and help the applicant/recipient (A/R) or representative to select the category that is most advantageous. For example, children under the age of six have no resource test if net family income is at or below 133 percent of the federal poverty level for the family size. Therefore, eligibility under the expanded eligibility for children ages one through five should also be considered for younger disabled children. The SSI budgeting methodology may be more advantageous in cases where the parent(s) or child has earned income.

#### Retroactive Coverage Reimbursement

New SSI cash cases and SSI-related MA-Only A/Rs found eligible under the revised disability criteria will be entitled to retroactive coverage/reimbursement. Retroactive coverage/reimbursement is limited to medical care, services and supplies received on and after February 1, 1990; no coverage or reimbursement may be authorized for periods of time prior to February, 1990. When rebudgeting (using current SSI-related budgeting methodology) results in full eligibility or eligibility with a reduced spenddown, consult the New York State Fiscal Reference Manual for Local Departments of Social Services Districts for procedures for reimbursing MA recipients for paid out-of-pocket medical costs. (Volume I, Chapter 7, pages 29-33, and Volume II, Chapter 5, pages 16-21.) Appropriate notices should be sent to affected A/Rs.

New Zebley SSI cash recipients who have not already been in receipt of full MA coverage should also be advised of the availability of retroactive coverage/reimbursement for bills incurred or paid since February 1, 1990 if SSI eligibility for that time period has been established. The DSS-3868, "Notice of Medical Assistance Review" should be used for this purpose by indicating membership in the Zebley class and that Zebley class members are eligible for retroactive MA coverage for bills incurred since February 1, 1990 or the SSI effective date, whichever is later.

#### Systems

As a result of the court case Sullivan v. Zebley, new codes have been added to the SDX record. A new Zebley Indicator Code has been added to SDX/ASWI field 9, which replaces Race Code, on the upstate SDX/ASWI record. For New York City, the Race Code field will remain unaltered for individuals who are not potential Zebley payment clients. The Zebley codes are the same statewide:

Z = Zebley class member  
F = Zebley payments have been made  
D = Zebley denied for payments

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Medicaid Qualifying Trust information will also be displayed on the SDX/ASWI record. Field 50, Medicaid Eligibility Code, will contain the value "Q - Medicaid Qualifying Trust". These records will be an exception to ASWI processing since SSA will not make the MA determination for these individuals. Districts will need to make the eligibility determination after evaluating the Medicaid Qualifying Trust. Districts will be notified by a GIS message and SDX Information Sheets when this code becomes operational.

Questions may be directed to your Eligibility County Representative at 1-800-342-3715, extension 3-7581 or 212-417-4853 in New York City.

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