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| LOCAL COMMISSIONERS MEMORANDUM |  
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DSS-4037EL (Rev. 9/89)

Transmittal No: 95 LCM-28

Date: March 20, 1995

Division: Health & Long Term  
Care

TO: Local District Commissioners

SUBJECT: Procedures for Identifying and Reimbursing Certain Disabled  
Adult Children (DACs) Potentially Eligible for Medicaid  
(McMahon v. Dowling)

ATTACHMENTS: A: Listing of all attachments  
(Available On-Line)

Local Commissioners Memorandum (LCM) 92 LCM-41, dated February 28, 1991, advised social services districts of the eligibility criteria for Medical Assistance (MA) under the Disabled Adult Children (DAC) provision of Section 1634(c) of the Social Security Act. This letter also informed districts of a number of individuals who were not continued on MA in accordance with the DAC provision. Districts who received SDX records for 1991 were instructed to review such cases to ensure that all individuals who meet the DAC criteria are identified on WMS.

This LCM provides districts with cases identified by the Social Security Administration (SSA) as having lost SSI benefits due to receipt of or an increase in DAC benefits during the period July 1987 through October 1992. The report which accompanies this letter is district-specific based on the most recent known address for the individual. In accordance with the Stipulation and Order in the McMahon v. Dowling class action lawsuit, we are requesting your review of the enclosed report/records to see whether WMS has to be changed to reflect DAC status.

In addition, some individuals may have received MA with a spenddown of income rather than full coverage. Others may have decided to have their MA case closed rather than pay a spenddown. In settlement of the litigation, we agreed to send a notice, a copy of which is enclosed, to all individuals who might not have been identified as DACs, advising them of their potential eligibility for MA benefits, including possible reimbursement. This notice was sent on March 17, 1995. For each individual who responds to the notice you may need to determine the individual's:

- (1) eligibility for payment or reimbursement of past medical bills;
- (2) entitlement to a refund of money paid to the district in the form of a spenddown;
- (3) entitlement to reimbursement of Medicare Part B premiums; and
- (4) current MA eligibility, if the individual is not currently in receipt of full MA coverage.

To assist districts in identifying individuals who may be entitled to reimbursement and/or a redetermination of current eligibility, MA coverage data has been captured for each DAC record. The enclosed report contains MA coverage information back to the time when SSI eligibility was lost.

Although we provided a report of potential DAC eligibles for 1991 with 91 LCM-41, it has come to our attention that not all affected individuals were identified in that report. Therefore, although there may be some individuals that will reappear on this new report, there are others for 1991 that had not previously been identified.

#### Identifying Individuals Who Meet the DAC Criteria

An individual who meets the DAC criteria is one who:

- is at least 18 years of age;
- was eligible for SSI benefits on the basis of blindness or a disability;
- became blind or disabled before the age of 22; and
- lost SSI eligibility on or after July 1, 1987 as a result of becoming entitled to child's insurance benefits under section 202(d) of the Social Security Act, or because of an increase in those benefits.

It is critical that individuals who meet the DAC criteria be identified on WMS. This will help to ensure that the DAC MA eligibility criteria, and not the MA-Only criteria, is followed when the individual case is recertified or when certification occurs following a period of ineligibility. Therefore, for each individual who appears on the enclosed report who meets the DAC criteria listed on page two of this letter, you should review WMS to see if the SSI Indicator is set to "5"- Closed SSI- Continue OASDI. It should be noted that even in cases where an individual's income (other than the child's insurance benefits) or resources result in a loss of MA eligibility under the DAC provision and regular budgeting procedures apply, the individual should be coded with SSI Indicator "5". For closed cases, districts should also change the SSI Indicator to "5" if a determination can be made that the individual meets the DAC criteria. This includes cases where an individual does not request a redetermination of MA eligibility or a determination of eligibility for reimbursement.

The Department will be reviewing DAC cases to ensure that they are properly identified on WMS.

#### SDX Records

The SDX records that accompany this letter must be filed in the individual's case folder (or the information entered on a computer or microfich file, where applicable) as this is the only documentation of the amount of DAC benefits to be disregarded in determining MA eligibility under the DAC provision.

#### Request for Review: Time Frames

Individuals have 60 days from the date that they receive the McMahon v. Dowling notice to request a redetermination of eligibility for payment/reimbursement of medical bills or reimbursement of a spenddown. Districts are to presume that all notices are received five days after the mailing unless an individual can establish that receipt actually occurred later, in which case the 60-day time period will run from the date of actual receipt. For purposes of determining whether an individual has met the 60-day deadline, any inquiry from such an individual including a written communication, telephone call or visit, must be considered a request for review. Before a request for review is to be processed, a completed request for review form must be submitted to the district office.

#### Redeterminations of Eligibility for Payment/Reimbursement of Medical Bills or Reimbursement of a Spenddown

Redeterminations of eligibility must be completed within 90 days of receiving a request for review form. However, if additional information is required, the 90 day count stops when the additional information is requested and resumes when the information is received.

When determining financial eligibility for retroactive periods, current SSI levels and treatment of income and resources must be used. Wherever possible, documentation of income and resources of the individual at the time the bill was incurred must be obtained. If, however, information for a retroactive period is unavailable and current income and resource information shows that the individual meets the financial eligibility requirements, it will be presumed that the individual met the income and resource criteria for the earlier time period.

For cases that lost SSI benefits due to an increase in DAC benefits, the amount of DAC benefits received in the month prior to the termination of SSI is the amount of DAC benefits to be counted to determine eligibility. Any increase(s) in DAC benefits is disregarded in the determination of countable income. If the loss of SSI eligibility was due to the initial "entitlement to" DAC benefits, then the entire DAC benefit is disregarded. DAC benefit information can be obtained from the enclosed SDX records. Please note that although SSI-related income disregards are applicable when determining eligibility under the DAC provision, third party health insurance costs are not to be deducted as they are not an allowable deduction in determining eligibility for SSI. MBL Transmittal 93-4 sets forth the procedures for calculating DAC MA eligibility on MBL.

Once eligibility is established, you have the option of: (1) making payments directly to the individual or provider as appropriate; or (2) requesting the State to make payment according to existing procedures for processing MA payments as a result of court decisions. These procedures are found in the New York State Fiscal Reference Manual For Local Social Services Districts, Volume I, Chapter 7 (pages 29-33), and Volume II, Chapter 5 (pages 16-21). Payments cannot exceed the rate or fee allowed by MA at the time the service was rendered.

Individuals who request a determination of eligibility for payment of past medical bills must be sent the appropriate required notices, as contained in 89 ADM-21, "Mandatory Client Notices." These notices are: the DSS-3868 - Notice of Medical Assistance Review; and the DSS-3869 - Notice of Reimbursement by the Medical Assistance Program.

When completing the DSS-3868, you must indicate whether the individual is a McMahon v. Dowling class member. Individuals meeting the DAC criteria who lost SSI benefits during the period July 1, 1987 through October 31, 1992 and whose MA eligibility was not initially determined in accordance with the DAC provision are class members. If an individual is not a class member, you must indicate on the DSS-3868 why the individual is not a class member.

To the extent that an individual class member paid the amount of his or her spenddown to the social services district under a Pay-In Program, the individual is entitled to reimbursement by your agency of the amount paid in.

Reimbursement to an individual class member is to be considered exempt as income in the month received and exempt as a resource in the following month. Thereafter, any funds remaining are counted as a resource.

If you find that an individual who appears on your county's listing was a resident of another county in New York State for all or part of the time period for which reimbursement is requested, collect the financial information from the individual as required by this LCM (page 4, first paragraph) to determine MA eligibility for a retroactive period and forward the information to the appropriate county or counties.

#### Reimbursement of Medicare Part B Premiums

Individuals who are certified as DAC MA eligible and who are in receipt of Medicare Part B are eligible to have MA pay the appropriate Medicare Part B premium on their behalf through the Buy-In System. Individuals who have been paying their Medicare Part B premiums are entitled to reimbursement provided that the individual is determined to be retroactively eligible under the DAC provision. The same procedures for reimbursement of past medical bills may be applied when reimbursing individuals for Medicare premiums.

Since an individual's DAC status does not affect whether the individual is eligible for payment of Medicare deductibles and coinsurance as a Qualified Medicare Beneficiary (QMB), it is not necessary to determine whether the individuals identified on the enclosed list are eligible for such payments.

#### Determination of Prospective MA Eligibility

For opened DAC cases where an individual is not currently in receipt of full MA coverage, eligibility must be recomputed within 90 days of receipt of the request for a redetermination. If the DAC notice is not returned, eligibility must be recomputed no later than next client contact. The DSS-3868, "Notice of Medical Assistance Review" must be used to notify recipients that the agency has reconsidered their eligibility since they were identified as a potential DAC. (See instructions for completion of the DSS-3868 on page 4.)

For closed DAC cases, if the individual requests a redetermination of MA eligibility, an application (DSS-2921) may be mailed to obtain income and resource information and a face-to-face interview scheduled. The MA application form sent to class members must be clearly annotated with the phrase "Special Eligibility Criteria - Disabled Adult Child" to apprise eligibility staff of the need to determine MA eligibility under the DAC provision.

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Questions regarding specific SDX records included with this letter and questions concerning MA eligibility may be directed to Wendy Butz at 1-800-343-8859, extension 3-5501. Buy-In policy questions should be referred to Fred Perkins, extension 6-5870. Buy-In systems questions should be referred to Stanley Leslie, extension 3-5451. Questions in New York City may be directed to 212-383-2512. In addition, questions regarding reimbursement may be referred to Roland Levie at (518) 474-7549 or for Region V Marvin Gold 212-383-1733.

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Richard T. Cody  
Acting Deputy Commissioner  
Division of Health and Long Term Care

Listing of all Attachments

Attachment A - Listing of all Attachments to this LCM (available on-line).

Attachment B - A copy of the SDX records for DACs for the period July 1987 through October 1992 (not available on-line).

Attachment C - A copy of the Notice "Possible Good News About Medicaid" that was sent to all individuals identified by the Social Security Administration as meeting the DAC criteria for the period July 1987 through October 1992 (not available on-line).

Attachment D - A district-specific report of potential DACs that were sent the "Possible Good News About Medicaid" notice (not available on-line).