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 | INFORMATIONAL LETTER |
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TRANSMITTAL: 90 INF-38

TO: Commissioners of
 Social Services

DIVISION: Medical
 Assistance

DATE: August 8, 1990

SUBJECT: Medical Assistance - Clarification of the Impact of
 Community Spouse Income Allowance

SUGGESTED

DISTRIBUTION: Medical Assistance Staff
 Income Maintenance Staff
 Staff Development Coordinators

CONTACT PERSON: MA Eligibility County Representative 1-800-342-3715,
 extension 3-7581 or New York City Representative at
 (212) 587-4853

ATTACHMENTS: New York State Division of Veterans' Affairs Press
 Release (Not Available On-Line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
90 INF-19		360-4.10	SSL 366-c		SSI
89 ADM-47			SSA-1924		Regional
88 ADM-10					Program Circular #90-02

The purpose of this Informational Letter is to request that Medical Assistance staff advise community spouses that rebudgeting of their institutionalized spouse's income under the provisions of 89 ADM-47, "Treatment of Income and Resources for Institutionalized Spouses/Individuals and Legally Responsible Relatives", may have an impact on the community spouse's eligibility for benefits from other needs based programs.

A community spouse means a person who is the spouse of an institutionalized person and who is residing in the community. The provisions of 89 ADM-47 were effective October 1, 1989 and allow a deduction from the available income of the institutionalized spouse to a community spouse. A community spouse monthly income allowance is that amount necessary to raise the community spouse's otherwise available monthly income to \$1,565 effective January 1, 1990. This additional income that is available to the community spouse may result in a decrease or loss of benefits from other needs based programs in which the community spouse's monthly income is considered in the eligibility determination. Medical Assistance (MA) staff should therefore advise such persons that they need to promptly notify appropriate agencies of the change in their income to avoid overpayments or recoveries from these other programs.

Region II of the Social Security Administration (SSA) and the New York State Division of Veterans' Affairs have issued notifications regarding the impact of the implementation of the spousal impoverishment provisions, specifically the community spouse income allowance, on their respective programs.

An SSI Regional Program Circular, Transmittal #90-02, issued February 6, 1990, advised that SSA will count the community spouse income allowance as unearned income to the community spouse, unless the institutionalized spouse refuses to make such income available to the community spouse. If the community spouse refuses to accept the community spouse income allowance, SSI will still consider the allowance as available countable income to the community spouse. In order to retain SSI eligibility, however, the community spouse can request the institutionalized spouse to make a reduced community spouse income allowance available. Similarly, if the community spouse is representative payee of the institutionalized spouse, the community spouse may elect to make available and accept a reduced community spouse income allowance in order to retain his/her SSI eligibility.

MA staff should alert such SSI recipients of the need to notify the Social Security district office of any change in income. If the community spouse has any questions regarding the impact of receipt of the community spouse income allowance on SSI eligibility, such questions should be referred to the Social Security district office. MA staff should contact the Social Security district office to document the income change for the community spouse SSI recipient. SSA will accept a letter from the social services district with the information on the amount of the community spouse income allowance.

Budgeting changes in accordance with 89 ADM-47 may also effect the amount of a veteran's disability pension benefit. The New York State Division of Veterans' Affairs (NYSDVA), Executive Department issued a press release dated March 12, 1990, regarding the impact of implementation of the spousal impoverishment provisions. This release advised that the decreased contribution to the cost of nursing home care (because the institutionalized spouse's income is made available to the community spouse instead of the nursing home) may result in decreased expenses and a subsequent increase in the couple's countable income for VA purposes. The change in medical expenses is likely to result in a decrease or loss of veterans' benefits. Therefore, MA staff should advise affected community spouses to contact the local VA counselor to report the change in medical expenses promptly so that VA overpayments are minimized. Although the veterans and their spouses are responsible for notifying the local VA counselor of changes in family income, it may be in the best interests of all parties for MA staff to provide assistance in contacting the VA counselor. Please note if the institutionalized spouse receives Aid and Attendance, such benefits must be applied to the cost of care (88 ADM-10) and cannot be used toward the community spouse income allowance.

In accordance with Section 1924 of the Social Security Act and Section 366-c of Social Services Law, the MA Program must apply the income of the institutionalized spouse to the community spouse monthly income allowance to raise the otherwise available monthly income of the community spouse up to the minimum monthly maintenance needs allowance (currently \$1,565), unless the institutionalized spouse refuses to make his/her income available to community spouse or the community spouse refuses to accept such income.

NOTE: For purposes of the community spouse's Medicaid eligibility, the community spouse cannot refuse the community spouse monthly income allowance. However, as indicated in 89 ADM-47, an otherwise eligible community spouse who is related to a federally participating (FP) category may achieve MA eligibility by contributing any excess income to the cost of care of the institutionalized spouse.

The social services district must document any circumstances which result in a lower community spouse allowance than that to which the community spouse is entitled. A community spouse or representative who freely chooses not to accept the community spouse income allowance or who accepts a reduced income allowance should be asked to sign a written statement documenting the circumstances. If an institutionalized spouse refuses to make all or part of his or her income available to the community spouse, the case record should clearly document the circumstances. The institutionalized spouse or the representative should be asked to sign a corroborating written statement.

Date August 8, 1990

Trans. No. 90 INF-38

Page No. 4

If a community spouse receives Public Assistance, Food Stamps, or benefits from any other needs based programs administered by the social services district, any changes of income for the community spouse as a result of the community spouse income allowance change should be promptly reported by MA staff to the other appropriate agency staff.

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