LOCAL COMMISSIONERS MEMORANDUM

DSS-4037EL (Rev. 9/89)

Transmittal No: 96 LCM-60

Date: June 28, 1996

Division: H&LTC

TO: Local District Commissioners

SUBJECT: MA Disability Reviews for A/Rs With A Diagnosis of Substance Abuse

ATTACHMENTS: None

This Local Commissioner's Memorandum (LCM) provides MA disability review team staff with additional information on the provision of Public Law 104-121 (The Contract With America Advancement Act), which specifies that an individual shall not be considered disabled if alcoholism or drug addiction is a contributing factor material to the determination that the individual is disabled. (GIS messages 96 MA014 and 96 TA/DC016 provide additional background material about the federal legislation.)

The federal SSI program disability criteria are used to determine disability status for the MA program, when evaluating applicants/recipients (A/Rs) for the SSI-related category and for federal participation (FP). This LCM provides new guidance for disability review teams to use when evaluating cases in which the A/R has a diagnosis of substance abuse.

Efforts to obtain a complete medical file for the Disability Review Team (DRT) will be critical. A/Rs who identify themselves as substance abusers should be questioned to try to identify any other impairments that the A/R has not clearly articulated in the eligibility interview.

Local districts can facilitate the documentation of cases by:

1. Obtaining the adjudicated claims file from BICS for current or former recipients to identify and request information from treating sources for at least the last 12 months. Physicians, hospitals, and clinics may have records that will identify impairments and diagnoses other than substance abuse that may be disabling.

2. Arranging for a consultative exam if it appears that there may be a physical and/or mental diagnosis other than substance abuse that can be identified or more thoroughly documented.

The new disability evaluation process applies to all new applications filed on or after May 1, 1996. Applicants who applied before May 1, 1996 should be evaluated under the previous criteria for substance abuse, and if eligible on the basis of substance abuse, may be certified disabled up until December 31, 1996, if the 12 month duration requirement is demonstrated. Since the application date is critical to the DRT's evaluation process and decision, the DSS-1151, "Disability Interview", must clearly indicate the correct application date.

All undercare cases that were previously approved and found eligible for assistance as SSI-related based on a substance abuse impairment will need to be reviewed under the new criteria at the next financial eligibility recertification, or by December 31, 1996, whichever is later. Cases in the Home Relief (HR) category that are claimed as FP for MA purposes due to a disability related to drug addiction/alcoholism will need to be re-evaluated if FP claiming beyond December 1996 is sought. This review is necessary even if an earlier review set the disability date beyond December 31, 1996. The re-evaluation process to be used is not the usual continuing disability review (CDR) process, which requires demonstration of medical improvement before discontinuing the case. Instead, cases should be treated as new disability applications and evaluated under the process described in this document.

REVISED PROCEDURES FOR EVALUATING DISABILITY CASES WITH SUBSTANCE ABUSE IMPAIRMENTS

The following modifications to the sequential evaluation process shall be used for all new applications filed on or after May 1 1996, and for all undercare cases when evaluating disability for time periods beyond January 1, 1997 (including Quality Assurance & Audit cases reviewed for federal participation purposes).

1. Determine whether there is a diagnosis in the medical record other than alcohol or drug abuse; if not, deny disability. Consider requesting additional medical information including a mental status exam, if warranted. The best source of this information frequently is the A/R's own treating source(s).

   If there is another diagnosis(ses), consider each diagnosis and evaluate which physical and mental diagnoses and resulting limitations would be expected to remain if drug and/or alcohol abuse stopped.

   Some physical impairments related to substance abuse may not resolve, such as: severe/irreversible organ damage (i.e., liver, pancreatic or brain damage); HIV-related illness; and chronic impairments resulting from traumatic injuries even if sustained while intoxicated. For physical impairments which are related to substance abuse, consider whether such impairments are likely to resolve if substance abuse were to stop. This determination should be made using medical judgment based on the individual's medical record. Assess severity, duration, and residual functional capacity considering only those limitations that are expected to remain if drug or alcohol abuse stopped.

   Mental impairments should be evaluated under the medical listings for diagnoses reflected in the casefile. If mental impairments are related to substance abuse, assess whether such impairments are likely to resolve if substance abuse were to stop. Consider the combined effect of all functional limitations expected to remain when evaluating activities of daily living and mental residual functional capacity.

NOTE: In making this determination, it may be helpful to consider the longitudinal medical history to try to determine whether any of the medical conditions, especially psychiatric conditions, were present before the diagnosis of substance abuse. For example, an individual may have a long-standing documented psychiatric impairment such as depression or schizophrenia with more recent substance abuse. In many such cases, the mental impairment would be expected to remain even if substance abuse were to stop. Information about functioning during previous extended periods of abstinence may also be useful.

2. Assess disability using the sequential evaluation process, considering all physical and mental impairments that would be expected to remain if drug and/or alcohol abuse stopped. Also, evaluate any other physical or mental limitations that are not related to substance abuse. As with any other case, consider severity, duration, the listings, age, education and work experience, and the appropriate medical-vocational guidelines.

Local districts should keep a list of cases in which clients are denied assistance because they are found not disabled under the revised criteria by either the State or local DRT. The list will help to facilitate identification and re-review of cases, should this be necessary in the future. Districts may need to retrieve the medical records as well as other eligibility records for denied cases.

DENIAL LANGUAGE FOR THE DISABILITY REVIEW

It is particularly important to fully explain the rationale for a denial if the denial of disability means the applicant will be ineligible for assistance. All cases denied under the new criteria should have the following information included on the DSS-639, "Disability Review Team Certificate":

1. A reference to the new Social Security Act provision. Suggested language is: "The Social Security Act provides that an individual is not considered disabled if his/her disability would be based on drug addiction and/or alcoholism.";

2. All decisions should also have a summary of the pertinent medical findings (including a statement about which impairments would be expected to remain or not remain if substance abuse were to stop); and

3. One of the following suggested sentences as appropriate to the case circumstances:

Substance abuse is the only diagnosis documented in the medical records:

"The only diagnosis documented in the file is substance abuse; therefore, the individual is not considered disabled."

There is another diagnosis in the medical records but it is NOT expected to remain if substance abuse were to stop:

"There are no impairments that would be expected to remain if substance abuse were to stop."

There is another diagnosis in the medical records that IS expected to remain even if substance abuse stopped, but the remaining impairments would not be disabling:

"Impairments that would be expected to remain if substance abuse were to stop would not be disabling." In addition, cite the pertinent medical and nonmedical findings. The denial may be based on severity, duration, residual functional capacity, age, education, work experience, the medical-vocational rules, etc.

NOTE: Cases APPROVED based on an impairment which may be related to substance abuse should include a statement indicating the impairment(s) is expected to remain even if drug addiction and/or alcoholism were to stop.

The Department plans to offer training on this subject for local review teams in October. In addition, this information will be included in a forthcoming MA Disability Manual update.

Local districts that utilize the State Disability Review Team should send in any cases that were held locally in accordance with the instructions in GIS 96 MA014.

Please contact your MA disability representative at 1-800-383-8859 plus their extension number if you have any questions.

Martin J. Conroy
Acting Deputy Commissioner
Division of Health & Long Term Care