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

Transmittal No: 97 LCM-51

Date: August 15, 1997

Division: Temporary Assistance

TO: Local District Commissioners

SUBJECT: Federal Changes in SSI Eligibility for Children

ATTACHMENTS: None

The purpose of this memorandum is to provide local districts with additional information concerning federal changes in the eligibility criteria for SSI benefits to children. A list of these "Zebley" cases was mailed to all local districts on March 7, 1997.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-188) established a new disability standard for the "Zebley" children. The new criteria for eligibility eliminated the comparable severity standard, the Individualized Functional Assessment (IFA) and the specific reference to maladaptive behavior in the Listing of Impairments. Beginning in November 1996, the Social Security Administration (SSA) sent notices to the SSI (Zebley) children advising them of the possible termination of SSI benefits. Recipients made ineligible due to the new disability standards will receive first priority in the review and redetermination process. Current beneficiaries who are found to be ineligible under the new SSI definition will not lose their benefits before July 1, 1997.

THE APPEAL PROCESS

The Department's Office of Disability Determinations (ODD) will conduct the medical re-determinations. If a child is determined not to meet the new disability criteria, the parent/guardian can request benefit continuation and a second review including an in-person Goldberg-Kelly hearing which will also be conducted by ODD. If it is determined at this step in the appeal process that the child does not meet the new disability criteria, the parent/guardian can again request benefit continuation and an additional hearing by a federal Administrative Law Judge (ALJ). The time period between the ODD hearing and the ALJ hearing may take several months. Each request for continuation of benefits must be made within ten (10) days from the receipt of the "denial" notice in order for the SSI benefits to continue. Although the Social Security Administration can request repayment of benefits paid during this benefit continuation period, there are good cause provisions to waive the repayment requirement.

PUBLIC ASSISTANCE IMPLICATIONS

Any applicant for or recipient of ADC who, based on a medical statement documenting or indicating the existence of a physical or mental impairment, reasonably appears to qualify for Supplemental Security Income (SSI) benefits must, as a condition of eligibility or of continuing eligibility, apply for and cooperate with all requirements set forth by the SSA for making a determination of that individual's eligibility for SSI benefits, appeal any denial of his or her initial SSI application and exhaust the available administrative remedies. In accordance with Administrative Directive 92 ADM-29, local social services districts must monitor, and assist as necessary, applicants/recipients for ADC in the application and appeals process for SSI benefits. It is suggested that you send these households a letter, if you haven't already done so; the letter should remind them of the importance of appealing an adverse decision on their SSI application. In addition, the letter should note the local legal services that are available to assist them.

MEDICAID IMPLICATIONS

Federally participating applicants/recipients (i.e., children under the age of 21 years) are not required to pursue SSI benefits. Therefore, parents/guardians of affected children are encouraged but not required to appeal a denial or discontinuance of SSI benefits and exhaust available administrative remedies.

In accordance with 80 ADM-19, children whose SSI benefits are discontinued must continue to receive Medicaid until a separate determination of Medicaid eligibility is made (Stenson v. Blum). Most "Zebley" children who lose SSI benefits will continue to be Medicaid eligible under the Medicaid-only income standard, the expanded Medicaid levels or the spenddown provisions. Social services district staff should refer children who are not otherwise eligible for Medicaid to the Child Health Plus Program.

Please share this Memorandum with:

- IM Directors
- MA Directors
- Centralized SSI Unit
- Staff Development Coordinators

Please direct any inquiries to:

Regional Representatives: Region I (518)473-0332;
Region II (518)474-9344; Region III (518)474-9307;
Region IV (518)474-9300; Region V (518)473-1469;
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