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 | ADMINISTRATIVE DIRECTIVE |
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TRANSMITTAL: 98 ADM-12

TO: Commissioners of
 Social Services

DIVISION: Temporary
 Assistance

DATE: July 28, 1998

SUBJECT: Recovery of Overpayments: Modification of PA Threshold

SUGGESTED
 DISTRIBUTION:

| IM Directors
 | FS Directors
 | Investigation Units
 | Fair Hearing Staff
 | CAP Coordinators
 | Staff Development Coordinators

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ATTACHMENTS:

| None.

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
94 ADM-5	90 LCM-204	352.31(d)(5)		PASB XIX-A	
97 ADM-19		348.4		FSSB XV- E-1.1-1.2	

I. PURPOSE

This directive notifies social service districts (SSDs) of an increase from \$35 to \$125 in the threshold for required collection of nonfraud overpayments from former recipients of public assistance. In addition, this directive explains the greater flexibility now available to SSDs for determining when recovery will be pursued.

II. BACKGROUND

Under the federal Deficit Reduction Act (DEFRA) in 1985, SSDs were required to waive recovery of an overpayment from an individual no longer receiving public assistance if the amount of the overpayment was less than \$35 and the overpayment was not the result of fraud on the part of the former recipient. If the amount of the overpayment was \$35 or more, SSDs were required to make a reasonable effort to collect the amount. If the overpayment was less than \$35, SSDs were required to waive recovery attempts. With the passage in 1996 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), states were given the administrative flexibility to modify the \$35 threshold. Department Regulation 352.31(d)(5) has therefore been revised to raise the \$35 standard to \$125, and to make the waiver of the collection of amounts under \$125 optional with the social services districts. These two changes (threshold increase to \$125 and greater local flexibility in recovery) are made in an attempt to relieve the burden placed upon SSDs by a requirement to collect very small overpayments. All other provisions for recovery of overpayments remain unchanged. The threshold for required recovery of Food Stamp overpayments has also been raised from \$35 to \$125, as explained previously in 97 ADM-19.

III. PROGRAM IMPLICATIONS

The following re-statement of existing Office policies in regard to the recovery of overpayments from former recipients of public assistance is provided to place the change to the recovery threshold in the appropriate context:

Department regulations require that recovery of public assistance overpayments be made by appropriate legal action against the income or resources of those individuals who are no longer recipients. These efforts are a source of additional revenue and also help insure program integrity.

SSDs should review their procedures to ensure the routine review of closed public assistance cases with outstanding overpayments so that recovery action can be initiated as quickly as possible. At a minimum, local districts must attempt to notify the individual about the amount of, and the reason for, the overpayment and request that repayment be made.

SSDs should send a letter after case closing informing the former recipient of the outstanding overpayment balance and requesting voluntary repayment or agreement to a repayment plan. If this first effort is not successful, efforts must continue so long as it is cost effective or if the overpayment involves fraud. Continued efforts include additional letters advising the client that legal action may be taken, use of collection agents and/or legal action itself. The cost of each level of continued effort should be weighed against the amount of the outstanding balance. SSDs are strongly urged to renew these efforts at least once a year when previous attempts to recover have been unsuccessful and a balance remains.

Where an overpayment has been identified and it has been established that the recipient is deceased, appropriate legal action should be initiated to recover the overpayment from the recipient's estate, where possible.

Collection efforts should be suspended when a district has been unable to locate the former recipient after a diligent search has been made, including, but not limited to, the following sources:

- (1) Coles Directory (or other types of City directories found in most public libraries)
- (2) Bank Clearance
- (3) Credit Check
- (4) Post Office
- (5) Telephone Directory
- (6) Motor Vehicle Bureau Clearance
- (7) State Unemployment Insurance Bureau
- (8) Bendex

Collection efforts should be suspended on those cases in which, after a thorough investigation, it is determined that the individual is unable to pay. Discretion should be exercised in marginal cases. For example, if an individual is employed but without other resources, and an imposition of a repayment schedule would cause a return to public assistance, the recovery effort should be suspended.

Efforts to determine the ability to pay will include reviewing for resources from the following sources:

- (1) Bank Clearance
- (2) Motor Vehicle Bureau Clearance
- (3) Credit Bureau Clearance
- (4) Ownership of Real Property Listing
- (5) Federal Tax Liens on Real Property Listings
- (6) Employers
- (7) Unemployment Insurance Bureau Records
- (8) Uniform Commercial Code Listings

The SSD must maintain a record of the outstanding overpayment in the event that the former recipient's financial circumstances change or the case is reopened. SSDs should establish procedures that require the routine review of closed public assistance cases with outstanding overpayments which have had no collection activity within one year of the review.

IV. REQUIRED ACTION

A. Public Assistance

SSD administrative staff must modify overpayment recovery procedures to reflect the threshold increase from \$35 to \$125 and the new option to collect amounts under the new threshold. These changes may result in some administrative savings.

Effective immediately, SSDs may waive recovery of an overpayment from an individual no longer receiving public assistance if the amount of the overpayment is less than \$125 and the overpayment was not the result of fraud by the former recipient. It is the local district's decision to pursue or not to pursue recovery of amounts under \$125. Please note, however, that SSDs must continue to make an effort to recover the overpayment, regardless of the amount, in cases involving fraud. Department Regulation 348.1 defines fraud.

When the overpayment amount is \$125 or more and does not involve fraud, SSDs must make a reasonable effort to collect the overpayment, as outlined in "Program Implications," above. At a minimum, SSDs must attempt to notify the individual about the amount of the overpayment, the reason for it, and request repayment. However, SSDs may decide to discontinue collection efforts when they no longer appear to be cost effective. SSDs must recover overpayments from a current recipient that the recipient received during a previous period of assistance.

B. Food Stamp Program

SSDs were notified of the changed FS threshold in 97 ADM-19. As explained in that directive, effective August 1, 1997, SSDs may waive the establishment and collection of any claim that is \$125 or less for any non-participating household, effective August 1, 1997. This is a change from the prior threshold of \$35 which had been in effect since 1977. Please refer to 97 ADM-19 for detailed instructions concerning the FS change.

EXAMPLE

On April 20, Mrs. Franklin notifies the local social services office that her wages have increased. In May, she requests that her PA case be closed. In processing the closing for May 31st, the worker discovers that the increase in income has not been budgeted. The worker initiates the case closing and also recalculates the May budget. Mrs. Franklin has been overpaid \$91 as a result of the failure to rebudget the increased income. After obtaining no

response to several letter requesting repayment, the worker discusses the case with her supervisor in order to determine if recovery should be pursued. Since the county has contracted collection efforts to a collection agency and since the per case referral costs are low relative to the overpayment, they decide to refer the case for recovery. Because the increase in wages was reported April 20, and the case was closed May 31, there is no FS overissuance.

C. Medical Assistance

Medicaid instructions regarding overpayment recovery procedures will be addressed in a separate OMM/DOH Administrative Directive.

V. EFFECTIVE DATE

The change to the PA threshold is effective July 29, 1998, the filing date of the revised 18 NYCRR 352.31(d)(5). The FS change was effective August 1, 1997, as explained in 97 ADM-19.

Patricia A. Stevens
Deputy Commissioner
Division of Temporary Assistance