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Administrative Directive

Section 1

Transmittal:	03 ADM 9
To:	Local District Commissioners
Issuing Division/Office:	Temporary Assistance
Date:	September 23, 2003
Subject:	Regulatory Changes: Temporary Assistance (TA) Budgeting: Percentage Earnings Disregard Extended to Pregnant SNA Women and Trust Fund Policy Clarification
Suggested Distribution:	TA Directors CAP Coordinators TOP Coordinators MA Directors Staff Development Coordinators
Contact Person(s):	TA Questions: Central Team at (518) 474-9344 Medicaid Questions: Local District Support Unit: Upstate - (518) 474-8216 NYC - (212) 268-6855
Attachments:	None
Attachment Available On – Line:	<input type="checkbox"/>

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
01 INF-8; 96 ADM-8		352.20(c); 352.22 (e); 360-4.4(c)	SSL 366; Estates, Powers and Trusts Law Section 7-1.12		

Section 2

I. Purpose

The purpose of this release is to inform districts of two regulatory changes:

- The first change extends the provision of the percentage earned income disregard to SNA households that include a pregnant woman but no other child of eligible age (under age 18, or 18 and in high school/equivalent).

- The second regulatory change to 18 NYCRR 352.22(e) clarifies the general TA policy regarding the treatment of trusts.

II. Background

When the percentage earned income disregard was first introduced with the Welfare Reform Act of 1997, it was only available to Family Assistance (FA) households (case type 11) and Safety Net Assistance (SNA) households that contained a dependent child. At that time, SNA households that contained a dependent child were primarily (with rare exceptions) comprised of adults that contained a drug/alcohol dependent or sanctioned adult (case type 12). This lessened the likelihood that an employed SNA pregnant woman living alone would be receiving assistance.

Now that the 60 month time limit on cash benefits has become effective, there are a great many more SNA households that contain dependent children and therefore it is more likely that a district may encounter a situation where an employed SNA pregnant woman living alone would not receive the percentage earned income disregard. .

Accordingly, this Office recently filed a regulatory amendment to Office regulation 352.20 (c) extending the provision of the percentage disregard to SNA pregnant women who do not live in a household containing a dependent child. The intent behind this change is to insure that the percentage earned income disregard is provided to SNA families under circumstances that it would similarly be provided to FA families

Regarding trust policy, there has been no change in the treatment of trust funds for TA. However, this Office received many phone calls from districts regarding 18 NYCRR 352.22(e)(2), which is a regulation that was clearly outdated and misleading. The existing rule referred to an outdated resource limit (\$1,000) and implied that Office policy regarding trusts applied only to the trust funds of infants (minor under age 21). Policy regarding the use of trusts is uniform regardless of whether the individual is an adult or minor. Accordingly, on August 13, 2003 this Office repealed 18 NYCRR 352.22(e)(2) and amended 352.22(e)(1). This policy is outlined below.

III. Program Implications

We expect little or no immediate implications from these regulatory changes. The change involving the percentage earned income disregard will provide for equitable treatment of employed pregnant women under FA and SNA.

The regulatory change involving trusts does not change policy; it simply clarifies an outdated rule so it will have no impact on TA other than helping to insure that correct policy is applied. Trust policy remains as follows: If the value of the trust, when combined with other countable assets, exceeds the TA resource limits (\$2, 000 or \$3, 000 as appropriate), the district must determine if the terms of the trust and the amount of funds in the trust warrant an application to the court to have funds in the trust released for the basic maintenance of the beneficiary of the trust. If the terms of the trust allow the trust funds to be used for basic maintenance purposes and the amount of funds in the trust warrant, application to the court must be made for release of the funds that exceed the resource limits.

IV. Required Action

Staff need to be notified of the regulatory change involving the percentage earned income disregard so they are aware of the correct policy. Any case adjustments should be made at the time of next contact, but no later than next recertification. It is likely that few if any cases are directly impacted at this time.

The clarification of trust policy should be reviewed with staff so that any confusion regarding existing trust policy is eliminated.

V. Systems Implications

Upstate

None.

New York City

Workers will be provided information when the percentage disregard change is available.

VI. Medicaid Implications

Medicaid already includes and will continue to include pregnant women as eligible to receive the Earned Income Disregard under the Low Income Families (LIF) Medicaid category. All pregnant women who are eligible for cash assistance receive Medicaid under the LIF category.

In the case of exception trusts and third party trusts as defined in 96 ADM-8, "OBRA '93 Provisions on Transfers and Trusts", the principal and accumulated income are disregarded in determining Medicaid eligibility. However, any distributions of trust assets actually made to the applicant/recipient (A/R) are counted as income in the month received. In addition, social services districts are authorized, but not required, to commence court proceedings on behalf of A/Rs who are beneficiaries of third party trusts, seeking to compel the trustee to use trust assets to pay for necessary medical care. However, if the terms of the trust specifically prohibit the trustee from using trust assets for medical care, as will be the case with supplemental needs trusts conforming to Section 7-1.12 of the Estates, Powers and Trusts Law, it is extremely unlikely a court will order the trustee to do so.

In the case of an irrevocable trust established by the A/R, any portion of the principal of the trust, or the income generated from the trust, which can be paid to or for the benefit of the A/R, is considered an available resource. If the language of the trust specifies that money can be made available for a specific event, that amount shall be considered an available resource, whether or not that event has occurred.

VII. Additional Information (Optional)

None.

VIII. Effective Dates

The effective dates of these regulatory changes are: September 24, 2003 for the SNA percentage earned income disregard and August 13, 2003 for the trust fund clarification.

Issued By

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