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OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE  
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## Local Commissioners Memorandum

### Section 1

<b>Transmittal:</b>	13-LCM-15
<b>To:</b>	Local District Commissioners
<b>Issuing Division/Office :</b>	Center for Employment and Economic Supports
<b>Date:</b>	November 12, 2013
<b>Subject:</b>	Document Packet for Fair Hearings Related to Interim Assistance Reimbursement (IAR)
<b>Contact Person(s):</b>	Temporary Assistance (TA) Bureau at 1-800-343-8859 extension 4-9344 Office of Administrative Hearings (OAH) at 518-474-8787
<b>Attachments:</b>	None
<b>Attachment Available On – Line:</b>	

### Section 2

#### I. Purpose

The purpose of this Local Commissioners Memorandum, (LCM) is to provide guidance to Social Services Districts (SSDs) regarding the necessary scope and sufficiency of testimonial and documentary evidence to support the applicability and extent of an Interim Assistance Reimbursement (IAR) as may be at issue upon fair hearing.

#### II. Background

Section 211 of the Social Services Law (SSL) provides the authority for the State to enter into an agreement with the federal government to obtain reimbursement for Safety Net Assistance (SNA) or any other payment made exclusively from State or local funds to meet basic needs, during the pendency of an individual's Supplemental Security Income (SSI) application, or during a period in which their SSI benefits were incorrectly suspended or terminated and subsequently restored (referred to as post eligibility IA).

OTDA has been party to several recent litigations where the IAR process was raised as an issue. In various fact-specific situations, courts have made findings that the particular IAR recoveries could not be supported because the SSD had failed to produce as evidence at fair hearing a LDSS 2921, LDSS 3174, or LDSS 4887 properly signed by both the Temporary Assistance (TA) applicant/recipient and the SSD worker, as well as citing a lack of sufficient evidence (testimonial and documentary) that the interim assistance benefits paid to the individual were out of only State and local, and not federal funds.

### **III. Program Implications**

#### **Interim Assistance Reimbursement (IAR)**

IAR is a type of recovery of TA assistance paid to an assistance unit. An assistance unit (case) is defined as an individual, or number of individuals, for whom TA is provided. Pursuant to SSL §158(2) and as indicated in 10-INF-15 and 08-ADM-11, to obtain IAR directly from the SSA out of the individual's initial payment of retroactive SSI benefits (in the context of an initial or post eligibility determination) the SSDs must have a valid IAR authorization executed with either a handwritten or electronic signature by both the TA applicant/recipient and the SSD representative.

The mandated language of the IAR authorization is found upon the LDSS-2921 Statewide Common Application; the LDSS-3174 Recertification Form for Temporary Assistance (TA) Medical Assistance (MA) Medicare Savings Program (MSP) Food Stamp Benefits (FS) - *now known as Supplemental Nutrition Assistance Program (SNAP)*; and the LDSS-4887 Mail-In Recertification/Eligibility Questionnaire and approved local equivalent.

The Office of Temporary and Disability Assistance (OTDA) pursued and received a modification to the "Agreement for Reimbursement to State for Interim Assistance Payments between the Social Security Administration (SSA) and the State of New York," dated 9/7/2011, which allows the use of an electronic signature on the IAR authorization for both the SSI applicant or former recipient and the SSD representative. The SSA's approved definition of an electronic signature allows for the use of an electronic symbol or process attached to, or logically associated with, an electronic record that identifies and authenticates a particular person as being such individual intending to affix his signature to the document, and indicating his adoption or approval of the substance and contents of same.

An electronic signature has the same legal effect and can be enforced in the same way as a signature affixed by hand.

In cases where an individual challenges the correctness or extent of an SSD's recovery of IA from his initial retroactive payment of SSI benefits (upon initial or post eligibility determinations), the SSD must be prepared to offer documentary evidence and oral testimony at a fair hearing that the SSD obtained a valid IAR authorization as discussed above (and, if electronic signatures are used as part of the IAR authorization the SSD must provide written or testimonial details of the applicable electronic process), and that the benefit payments comprising the IA were paid exclusively out of State and local, and not federal funds.

#### **Life of the Authorization**

If a SSD is unclear regarding the validity of an IAR authorization to submit for a fair hearing, any and all IAR authorizations with a correct life of authorization relating to the interim assistance period identified in 08- ADM-11 may be submitted. The term "life of the authorization" means the period of time that the SSD can use the valid authorization to recover IAR directly from the

SSA. Since the life of an IAR authorization is far reaching, the SSD must produce at least one IAR authorization that represents the interim assistance period as defined in 08 ADM-11. The IAR authorization life cycle is as follows:

### **Life of the Authorization for Initial (IC) Cases**

The term initial eligibility refers to the period of time between which an individual applied for SSI benefits and the time the individual is eligible to receive an SSI payment. For initial SSI claims, the period for the life of the authorization is 12 months.

If the individual applies for SSI before the end of the 12-month life of the authorization or has already applied for SSI before the life of the authorization begins, the life of the authorization extends beyond the 12-month period until:

- SSA makes the first Post Eligibility (PE) payment of retroactive SSI benefits following the suspension or termination of the individual's benefits;
- SSA makes a final determination on the PE case and no timely request for review is filed; or
- the State and the individual agree to terminate the authorization.

### **Documentation of Funding**

The SSD is **not** to seek to recover any federally funded payments when calculating the amount of IA for which recovery can be sought. Federal funding sources include, but are not limited to: Home Energy Assistance Payments (HEAP), Supplemental Nutrition Assistance Program benefits (SNAP), Emergency Assistance to Families (EAF), Family Assistance benefits (FA), employment payments financed with federal funds, housing payments financed with federal funds (such as Housing Opportunity for Persons with AIDS – HOPWA) and Safety Net Non-Cash Assistance Federally Participating (SN-FP case type 12) payments. In several recent cases, the SSD was ordered to repay to the individual the amount of IA it had recovered directly from the SSA out of the individual's initial payment of restored SSI benefits because the exclusivity of State and local funds comprising the IA was not adequately demonstrated.

SSDs must provide documentary evidence and oral testimony at fair hearing that any TA benefits recovered by IAR were only from expended State and local funds. Additionally, SSDs must offer testimonial and documentary evidence at the fair hearing that no TA benefits paid with federal funds were recovered by IAR. For purposes of fair hearings, SSDs should consider such documentary evidence as relevant screen prints of the Benefits Issuance and Control Systems (BICS) inquiry screens that indicate the case category as SNA and the payment dates of SNA assistance to the assistance unit, or other SSD financial records that document the source of funding, and should prepare SSD fair hearing representatives so as to be able to explain any records intended to be offered in this regard.

### **Fair Hearings**

If a fair hearing is requested under 18 NYCRR 358-3.1(b)(15) which states, "you object to the amount deducted from your initial payment of supplementary security income as reimbursement of public assistance," and the client is objecting to calculation of that initial payment due to an alleged inclusion of federal funds, the burden of proof is on the social services agency to establish that its actions were correct. The fair hearing decision must be supported by and in accordance with substantial evidence.

If an SSD fails to submit a validly executed IAR authorization by the SSD representative or the TA recipient or fails to provide substantial evidence that the IAR is solely funded by State and local dollars, there is a risk of an unfavorable fair hearing decision or potentially an Article 78 proceeding that results in a direction that the SSD re-pay to the individual the amount of IA recovered (from the initial retroactive SSI payment) out of local funds.

**Issued By**

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