Operations Memorandum - Medicaid
OPS041005

10/22/04

SUBJECT: Exclusion of Mandatory Income Tax Withholdings and Social Security Administration Benefit Recoupments When Determining Contribution Toward Cost of Long-Term Care Services

TO: Executive Directors

FROM: Christine M. Bowser, Director, Bureau of Operations

Purpose

To inform County Assistance Offices (CAOs) of a change in the treatment of mandatory income tax withholdings and a Social Security Administration (SSA) benefit overpayment recoupment when determining an individual's contribution towards his/her cost of Long-Term Care (LTC) services.

Background

Numerous questions have been raised concerning the contribution towards the cost of LTC services for individuals who have reduced income due to tax levies or Social Security overpayment recoupments. Prior to the issuance of this memorandum, the topic had been discussed in a series of meetings with staff from the Department of Public Welfare's Office of General Counsel, the Bureau of Operations, and the Bureau of Policy.

Discussion

Individuals eligible for Medicaid/LTC services who have income reduced because of mandatory Internal Revenue Service (IRS) income tax levies and SSA overpayment recoupments will have the amount of the levy/recoupment excluded from countable income when determining the individual's contribution towards his/her cost of care.

The amount of income the individual actually receives after the mandatory levy/recoupment is the income that is to be used in the calculation of an individual's contribution towards his/her cost of care (STEP 2 determination). The contribution towards cost of care (STEP 2) will be computed using the individual's income after adjusting for the levy/recoupment less any allowable and applicable STEP 2 deductions. **This <u>only</u> applies to income that has been reduced because of a mandatory IRS income tax levy or SSA overpayment recoupment.**

According to the IRS, an individual residing in an LTC facility who has income withheld as part of the IRS Federal Payment Levy Program (FPLP) may claim hardship to the IRS. The IRS indicates it will suspend levies through FPLP for LTC residents determined to be in a hardship situation. Therefore, any LTC Medicaid applicant or recipient who has income withheld because of FPLP **<u>must</u>** file a hardship claim with the IRS. The individual or his/her personal representative (agent, guardian, etc.) can contact the IRS by calling 1-800-829-7650 or complete IRS Form 433-F to begin this process. When a personal representative requests hardship on behalf of an individual, IRS Form 2848 (Power of Attorney and Declaration of Representative) must be completed and filed with the IRS. The forms and instructions may be downloaded from the IRS website at www.irs.gov. If an individual who had a levy suspended due to hardship is discharged to the community, he/she must notify the IRS immediately that he/she is no longer claiming hardship.

Regardless of whether or not the IRS authorizes the hardship, the CAO will count only that income received by the individual after adjusting for the levy in the post-eligibility determination of the individual's contribution towards his/her cost of care (STEP 2).

The revised treatment of an IRS levy or SSA overpayment recoupment does not apply to the calculation of what is considered available income of the community spouse (CS) when determining the CS maintenance needs allowance. If the CS has a levy/recoupment placed against his/her income, the CAO staff must count the gross monthly income received by the CS, not the net/actual amount of income received.

Example: Mr. G., age 40, is disabled and residing in a nursing facility. He is applying for LTC/Medicaid. His gross SSA disability benefit is $1,366.60 per month. SSA is keeping $1,000 per month to recoup an overpayment. Mr. G. pays a premium of $66.60 per month for Medicare B.

<u>STEP 1</u>
Mr. G.'s $1,366.60 gross monthly income is compared to the current NMP limit of $1,692
Mr. G. is determined eligible for NMP Medicaid with LTC Services.

<u>STEP 2</u>

Gross monthly income	$1,366.60
SSA Recoupment	- 1,000.00
Countable monthly income	$ 366.60
Personal Needs Allowance	- 30.00
	$ 336.60

Contribution towards cost of care is $336.60. The facility will allow $66.60 Medicare B premium deduction.

Note: For those situations that are brought to the attention of the CAO worker with an existing IRS levy or SSA overpayment recoupment as far back as September 1, 2004, the CAO is to send a revised 162 notice to reflect the change in the individual's contribution towards his/her cost of care.

Note: If the CAO staff receives a request for a revised 162 notice to reflect this change earlier than September 1, 2004, please contact Trudy Johnson at (717) 772-7811 for assistance on those situations.

Next Steps

1. Review this Operations Memorandum with appropriate staff.
2. Implement this change effective December 1, 2004.
3. This Operations Memorandum will become obsolete upon the incorporation of these changes into the Nursing Care Handbook.