LOCAL COMMISSIONERS MEMORANDUM

Transmittal No: 94 LCM-153

Date: December 22, 1994

Division: Services & Community Development

TO: Local District Commissioners

SUBJECT: Domestic Violence: Questions and Answers

ATTACHMENTS: Attachment A - Domestic Violence: Questions and Answers (available on-line)
Attachment B - Sample Budget for purposes of calculating client fees (not available on-line)
Attachment C - List of DV Liaisons by County (available on-line)

The purpose of this memorandum is to expand upon the previous Question and Answer LCM on domestic violence issues, 92 LCM-104, dated July 2, 1992 which clarifies various policies related to services for victims of domestic violence.

As you are aware, Section 131-u of the Social Services Law, Chapter 53 of the Laws of 1991, 1992, and 1993 (Aid To Localities Budgets) and Department regulations, 18 NYCRR Part 408, require social services districts to offer and provide necessary and available emergency shelter and services at a domestic violence residential program to victims of domestic violence whether or not they are eligible for public assistance. In addition, Chapter 53 and Department regulations, 18 NYCRR Part 462, require social services districts to offer and provide necessary and available non-residential services to victims of domestic violence, whether eligible or ineligible for public assistance. Chapter 53 provides that 50 percent state reimbursement is available for: (1) residential services provided after January 1, 1992 for victims of domestic violence who are ineligible for public assistance; and (2) non-residential services provided for victims of domestic violence whether eligible or ineligible for public assistance.

Such state reimbursement will be provided only to the extent that a social services district has exhausted its Title XX allocation. Chapter 53 also requires the Department, rather than social services districts, to establish rates for residential programs for victims of domestic violence, subject to approval by the Division of Budget. These rates became effective January 1, 1992, and are revised on an annual basis.

Attachment A covers a broad range of issues on domestic violence relating to rates, reimbursement, income maintenance and program issues. It includes the questions and responses provided in 92 LCM-104, which were issues raised during statewide regional technical assistance meetings that were held by the Department during March and April, 1992 for social services districts and domestic violence service providers. Where appropriate, the responses have been updated. In addition, Attachment A addresses questions which have been raised since those technical assistance sessions. Also attached is a Sample Budget (Attachment B) to illustrate how client fees are calculated when a victim has income.

This information will also be distributed to domestic violence service providers. In addition, the recently issued Administrative Directive on Domestic Violence: Eligibility and Payment for Residential Services for Victims (94 ADM-11) provides a comprehensive overview of funding, income maintenance and services issues related to domestic violence residential services. The Department is also in the process of developing an ADM which will address issues relating to non-residential services for victims of domestic violence.

Any questions concerning this memorandum should be directed to your Regional Office. For additional contact persons on specific issues related to income maintenance, rates, or fiscal concerns refer to 94 ADM-11

Frank Puig
Deputy Commissioner
Division of Services and
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Attachment A

DOMESTIC VIOLENCE
QUESTIONS AND ANSWERS

RATE ISSUES

1. QUESTION: How often are the Domestic Violence State Aid Rates (DVSAR) revised?

   ANSWER: The State established per diem rates for domestic violence residential programs are revised annually. For DV programs located in New York City the DVSAR's are revised annually effective July 1. DV programs in the rest of State are revised annually, effective January 1. Social services districts must pay those promulgated rates for all eligible victims of domestic violence. During the fiscal year DVSAR's may be revised based upon rate consultation or addition of food add on's. This will require districts and programs to reconcile billings retroactive to that date.

2. QUESTION: Is the social services district always required to pay the full mandated rate?

   ANSWER: No. The full mandated rate is always the basis for payment. The actual payment made by a social services district to a provider could be a lesser amount, depending upon the amount of the fee the victim is required to pay.

3. QUESTION: Will domestic violence residential programs operated directly by a social services district be subject to the rate methodology and the flat rate structure?

   ANSWER: No. The Department's rate methodology, at this time, only applies to residential programs that are <u>not</u> directly operated by a social services district.

4. QUESTION: Is the rate paid for each adult and child receiving emergency shelter, services and care at a domestic violence residential program or is it paid for each family unit served?

   ANSWER: The DVSAR is established based upon individualized occupancy. There is no distinction made between adults and children in shelter. The same per diem is paid regardless of age of person in the shelter. If a family based rate methodology had been selected, the rates would have been much higher. Such a methodology could not have reflected differences in family sizes.

5. QUESTION: If a district has a contract with a residential program which is currently in effect, should the program be reimbursed the contracted rate until the contract expires?

   ANSWER: The promulgated DVSAR is a mandated rate and takes precedence over any lower contracted rate for DV residential services. The social services district must pay the DVSAR established by the Department.

6. QUESTION: What is the fiscal year of the rate forms?

ANSWER: The fiscal year for all programs located in New York City is July 1 to June 30. The fiscal year for programs located in the rest of the State is January 1 to December 31.

7. QUESTION: When a residential program provides 3 meals per day, is the food per diem add-on mandated or is it a negotiated item? How will districts be notified that a program's rate has been amended to include the food add-on?

ANSWER: If a program provides 3 meals per day, and that fact is verified by the Department's regional office staff and a rate revision request is made by the social services district, a rate revision will be made. The rate revision letters will be sent directly to the agency providers with a copy to social services districts. The letter may be used as a formal notice to inform all social services districts and clients of the revised rate. Social services districts who were not copied on the original rate letter can confirm all rate revisions through the Division of Services and Community Development Bureau of Resource Management.

8. QUESTION: How is it determined that a residential program has a surplus? What is the process for recouping a surplus?

ANSWER: The Department will compare the reported program expenditures and reported income from all government sources (both per diem and grants). Any surplus of government income over program expenditures is considered a program surplus. The program surplus divided by the higher of either the actual program utilization or the minimum program utilization allowed under the rate methodology will be used to reduce the flat rate per diem for the affected domestic violence program. Because the fiscal reports on which these determinations are made must lag two years, any surplus experienced in a given fiscal year will be used to discount the DVSAR two years later. If a program experiences a surplus, it should identify the amount at the end of the year it occurs and earmark the surplus funds for future use when the rate is reduced to "retain" the surplus amount.

9. QUESTION: Can programs fund a capital reserve from a surplus?

ANSWER: Programs can fund a depreciation fund and use those monies to purchase capital goods or make capital improvements. In addition, programs may use private funds to establish a cash reserve fund. However, programs cannot move surplus government money into a capital reserve fund to keep in case of a future emergency. All surplus government funds will be recouped in future rate years.

10. QUESTION: Will the DVSAR for mixed population programs apply to any persons who receive shelter at the program regardless of whether such persons are victims of domestic violence?

ANSWER: The DVSAR is intended to be the per diem rate necessary to meet compliance with Departmental regulations governing domestic violence residential programs. The non-domestic violence population of a mixed population program may require less services, and therefore, be charged a lower rate based upon this Department's promulgated administrative and maintenance costs. However, programs must notify this Department (through the fiscal reports) if they are charging a reduced rate and document the difference in cost for non-domestic violence residents.

11. QUESTION: How does the rate address an unforeseen catastrophic situation?

ANSWER: The per diem rate is intended to fund normal operational expenditures. It is not intended to accommodate catastrophic situations. However, interest expense on bank loans and use charges to fund a depreciation fund are reimburseable. Depreciation funds may be used to make needed emergency expenditures.

12. QUESTION: Can the social services district require a provider to pay the local match of the per diem rate?

ANSWER: No. The per diem bills must include the social services district portion. Providers are not expected to provide private funds to supplement a reduced per diem rate.

13. QUESTION: Will programs be allowed to use their rate income for cash reserves, and if so, how will the allowable amount be determined?

ANSWER: Programs will be allowed to use their rate income only for allowable cost accounts included in Part 408. Cash reserves are not an allowable program cost. A program may want to use private funds to develop an endowment or cash reserve fund. Government income is provided solely to fund allowable operational program expenditures.

14. QUESTION: Will there be cost of living adjustments?

ANSWER: There will be no cost of living adjustments through calendar year 1993. Any future cost of living adjustments will be determined by by the legislature via State budget appropriations.

15. QUESTION: Will the standards used as the basis for the DVSAR remain constant or will there be regular changes in the standards?

ANSWER: In future years, subject to the sufficiency of funds, the standards will be revised by cost of living adjustments (COLA's). In addition, the Department will continue to analyze the fiscal reports to review the appropriateness of the various standards based upon more current and more accurate information.

16. QUESTION: Will social services districts be required to pay for licensed beds vs. contracted beds?

ANSWER: Districts are required to pay for all eligible victims of domestic violence. Funding for these payments will be either through a public assistance program, or Title XX, or through the 50/50 Title XX overclaim. Local districts cannot restrict payments based upon a cap of any sort if the victim is eligible for government support.

17. QUESTION: Do programs need district approval for program expansion?

ANSWER: Local districts and regional office staff mut approve any bed expansion or new programs prior to the fiscal approval needed for issuance of an operating certificate. Regional Office approval of all program expansion will be based upon a combination of factors such as: historic program utilization; district support and need; and licensing factors.

18. QUESTION: My program is much different than the domestic violence model the Department used to develop the flat rate. Will a program be considered to be out of compliance if it does not match the rate model?

ANSWER: No. Program compliance with SDSS regulations can be achieved in a variety of different ways. The need to create a basis for rate setting resulted in the Department defining certain specific staffing/spending patterns as meeting SDSS regulations. The staffing, salary and other costs in the flat rate models were developed solely to determine a reasonable level of revenue to allow domestic violence residential programs to be in compliance with departmental regulations at reasonable program utilizations. In practice, the rate models are intended to be flexible so as to allow for the combination of unique patterns of operation consistent with Department regulations and discretion on the part of program directors. For example, programs may decide to have less staff than the model allows and pay them higher salaries. Program directors may be expected to conduct counseling sessions and be paid more. Programs may use volunteers to do advocacy work, transportation, or counseling and pay increased compensation to paid staff or higher rent.

19. QUESTION: My program's salaries and fringe benefits are different from the rate model. Will this be a problem for my program?

ANSWER: The rate methodology does not control your spending through a line-item budget. You are allowed to fully interchange your budget lines for allowable program expenditures, based on the revenue you receive from the per diem rate. This approach permits you to make agency-specific budgeting choices not only within personnel lines, but also between personnel and non-personnel lines as appropriate. Your agency-specific salaries and fringes may result in compensation figures which are sometimes higher or lower than the figures we used in the rate models which is fine. The historical spending by domestic violence agencies reflects a wide middle range of compensation amounts for salaries and fringe benefits applied to various titles. Thus, the compensation standards we published with the rate models should be viewed only as guidelines or middle range figures.

20. QUESTION: How does my program access the start-up funds to begin a new program or expand my existing program?

ANSWER: The Department does not have available funds to pay for start-up costs up front. However, the Department will promulgate a supplemental start-up rate add-on to pay back the approved program start-up budget over a five year period. The program will need to raise the upfront money by fund raising, obtaining non-government grants, borrowing, or through negotiation with local districts. However, the approved budgeted expenses will be reimbursed over five years through a special start-up rate add-on. Programmatic approval from both the district and the regional office should be obtained prior to submission of the start-up budget to the Division of Services and Community Development Bureau of Resource Management.

21. QUESTION: Were funds designated for serving victims who have dual issues/problems, such as domestic violence victims who also have mental health problems, are non-English speaking, are hearing impaired, or have problems related to substance abuse?

ANSWER: Although a decision has not yet been reached, one of the proposed priorities in the 1994 Federal Funding Opportunities RFP is related to designing programs which are responsive to the needs of underserved populations.

REIMBURSEMENT ISSUES

22. QUESTION: When is a social services district financially responsible for payment to a residential program?

ANSWER: The social services district in which a victim of domestic violence was residing in at the time of the alleged domestic violence incident will be financially responsible for payment when the district receives a completed public assistance application on behalf of the victim and the victim cooperates with the public assistance application process during their shelter stay. A district will not be responsible for payment when a victim refuses to complete a public assistance application.

23. QUESTION: What procedures must be followed for a residential program to receive reimbursement for victims who are ineligible for public assistance?

ANSWER: To receive reimbursement for persons eligible or ineligible for public assistance (i.e. either through a public assistance program or the 50/50 Title XX overclaim), a residential program must ensure that at the time of admission the victim fills out a common application form (DSS-2921). The application must indicate the person's birthdate and if the person has income/resources, and it must be signed by the client. The public assistance application should be forwarded, as soon as possible, to the social services district the victim was residing in at the time of the domestic violence incident. The social services district must then determine whether or not the person is eligible for public assistance. Provided these procedures are followed, when a person is determined ineligible for public assistance, the person's shelter stay would be eligible for reimbursement under Title XX or the 50/50 Title XX overclaim. NOTE: To the extent the person remains in the shelter, the person must comply with the face to face interview and any other public assistance requirements.

24. QUESTION: Does the domestic violence model contract place a reimbursement CAP on reimbursement to a residential program for victims of domestic violence?

ANSWER: No. The "Model Contract for Local Purchase of Residential Domestic Violence Services Agreements" (93 ADM-24) does not limit payment for eligible bed nights billed to the district. The model contract requires that a per diem rate (which cannot be lower than the DVSAR) be specified in the contract agreement for each domestic violence residential type operated by the provider. Reimbursement is limited to 90 consecutive days but may be extended for up to 45 days beyond the maximum 90 day period when a victim is unable to secure alternative housing and is deemed eligible to remain in the program.

An estimate must be made as to the total cost of the agreement by multiplying the per diem rate by the anticipated number of bed nights that will be provided. However, Chapter 53 of the Laws of 1991 1992 and 1993 require that the local district is responsible to pay for all eligible victims of domestic violence. Therefore, if the estimated amount appears to be exceeded, the local district is required to prepare an amendment to be executed with the provider. The local district has no option but to prepare an amendment if the original estimate is too low. Therefore, the required estimate in the contract is not a CAP on reimbursement, but rather a planning tool for budgeting purposes.

25. QUESTION: Will reimbursement under the 50/50 Title XX overclaim be retroactive to January 1, 1992? If yes, what procedures must be followed for a program to receive retroactive payments for persons ineligible for Public assistance?

ANSWER: A residential program will be eligible for retroactive reimbursement to January 1, 1992 under the 50/50 Title XX overclaim, provided the victim completed and signed the common application form (DSS-2921). The residential program should immediately forward the application form to the social services district in which the victim was residing at the time of the domestic violence incident.

26. QUESTION: Is a social services district financially responsible to pay the per diem for children who do not enter the residential program with their mother as they reside with their father but they visit (i.e., spend the weekend) with the mother in a domestic violence residential program? What if the mother has joint custody of the children (i.e., they are not visiting)?

ANSWER: No. When the mother does not have custody of the children she cannot receive the per diem on their behalf. Under ADC rules, custody does not involve so much the legal court order as it does care and control of the children. If the children live with the father, and he is making most of the parental decisions (care and control), then the children are considered to be visiting the mother when they are with her. In these instances, no per diem allowance can be given, but a visitor's allowance of $4 per day per child can be provided to the mother for each day the children visit her.

When joint custody exists, both parents provide for the care and control of the children, regardless of where the child resides. That is, both parents are equally involved in the children's upbringing. The decisions involving maintenance, care and guidance are shared between the two parents. In these instances, each parent may maintain a home for the child. The per diem can be provided for the days the children are with the mother in the residential program.

27. QUESTION: How is funding under the 50/50 Title overclaim authorized on the WMS services system?

ANSWER: Open a WMS services case in the usual manner. Service type 23G is to be authorized for residential and non-residential domestic violence services in both the DIR and POS fields, regardless of the eligibility category. Since this service is no longer an optional one, the use of the suffix G bypasses the Title XX service type/eligibility category edits with no matrix change required. It is not necessary to open a non-residential services case on WMS. Refer to 92 LCM-6 for the procedures for claiming expenditures for non-residential services.

For those districts with a local BICS file, the Domestic Violence service providers should be added to the vendor file before attempting to make any payments.

28. QUESTION: Will a residential program receive reimbursement for a client who refuses to fill out a public assistance application?

ANSWER: No. When a victim refuses to fill out a public assistance application, the social services district will not be financially responsible for the cost of emergency shelter, services and care at a residential program for victims of domestic violence.

29. QUESTION: If a person refuses to cooperate with public assistance requirements while in the shelter (e.g. cooperate with child support), and is therefore deemed ineligible for public assistance, will that person then be eligible for reimbursement under the 50/50 Title XX overclaim?

ANSWER: No. To receive reimbursement, the residential program must ensure that to the extent a person remains in the shelter, the person complies with the face-to-face interview, and any other public assistance requirements pursuant to Department regulations.

30. QUESTION: Will a residential program be reimbursed when persons are in the shelter program for only a short period of time (e.g. over a weekend), and therefore, are not in shelter long enough to have a face to face interview as required for public assistance?

ANSWER: Yes. The intent of the 50/50 Title XX overclaim is to cover persons who are in a domestic violence residential program for only a short period time and leave the program before having a face to face interview. Therefore, a social services district will be responsible for the cost of emergency shelter, services and care provided to a victim who leaves the residential program prior to having a face to face interview provided the victim completed and signed the common application form (DSS-2921).

31. QUESTION: Is the residential program or social services district responsible for collecting client fees?

ANSWER: Residential programs are responsible for collecting client fees.

32. QUESTION: Is a foreign student who is here on a student visa eligible for reimbursement under the 50/50 Title XX overclaim? (Such students are ineligible for public assistance)

ANSWER: A foreign student who is here legally on a student visa would be eligible for reimbursement under the 50/50 Title XX overclaim, provided the student completed the common application form (DSS-2921).

33. QUESTION: What recourse does a social services district have if it discovers that an overpayment was made to a residential program because the victim provided fraudalent information on their common application form?

ANSWER: When a social services district has reason to believe that a person has provided fraudalent information, the district must comply with the requirements applicable to fraud cases pursuant to Section 145 of the Social Services Law and 18 NYCRR Part 348. However, a social services district will not be able to recoup such overpayment from the residential program.

INCOME MAINTENANCE ISSUES

34. QUESTION: If a client receives food stamps during their shelter stay, will that have an impact on the food per diem add-on?

ANSWER: No. A victim in a residential program for victims of domestic is eligible to receive food stamps, regardless of whether there is a food add-on. However, the amount of the food stamps may be affected by the food add-on. The food stamps are to be used as the victim determines. The victim may not be required to turn them over to a residential program.

35. QUESTION: If a program's negotiated rate was lower than the rate set by the Department, what procedures should the program follow to receive retroactive payments for public assistance eligible victims who were sheltered after January 1, 1992?

ANSWER: The program should submit an adjusted bill to the social services district for persons they were fiscally responsible for during the retroactive period. Since any income a victim may have had during the retroactive period was already budgeted against the victim's PA needs, the additional retroactive amount increases the standard of need and thus the PA deficit retroactively. The retroactive amount should be paid by the social services district as an underpayment adjustment to a case.

36. QUESTION: When a person has income, how is his or her fee calculated?

ANSWER: To receive reimbursement, either through a public assistance program or the 50/50 Title XX overclaim, a victim must complete, sign and submit a common application form (DSS-2921). The social services district must then determine whether the person is eligible for some form of public assistance (PA).

In determining eligibility for PA, any available unearned income, such as SSI or Social Security benefits, must be budgeted against the person's cost of care in the residential program, provided such income is considered available to the victim (refer to question #38). If the person is income eligible for PA, the social services district will make a partial payment toward the per diem. The remainder of the per diem, not paid by the district, is the victim's fee.

Available earned income (wages) also must be budgeted against the person's cost of care in the program. With earned income, some of the income is not counted in the PA budgeting process. Again, any amount of the per diem not paid by the social services district is the victim's fee. It should be noted that if the wages are small, the district may be able to pay the entire per diem under public assistance, because of the disregarded income.

The budgeting is done on a monthly basis, using the person's monthly income and the program's actual monthly cost, even if the person is in the program less than a month. When the person is in the program less than a month, the daily PA deficit is computed by dividing the monthly deficit by the actual number of days in the month. This amount is then multiplied by the actual number of days the person was in the shelter to determine the social services district's payment. Attachment B is a sample budget using a residential program that provides less than three meals a day and an eleven day stay. If three meals were provided, the personal needs allowance would be used rather than the basic and two energy allowances.

For public assistance purposes, any resources, such as a bank account, certificates of deposit, etc. to which a person actually has access, must be used to pay toward the cost of care in a domestic violence residential program. If the resources do not cover the full cost of care, the social services district will make a partial payment to cover the difference if the person is PA eligible. For example, the cost of care in the program is $1,200 and the person has no income but does have access to $900 in the bank. The social services district would pay $300 toward the cost of care and the victim's fee would be $900 under PA.

If the person is determined ineligible for public assistance (e.g., the person has left the program after a short stay and did not go to the face-to-face interview; sanctioned for employment reasons), the social services district must evaluate, using the information on the person's DSS-2921, eligibility for reimbursement under the 50/50 Title XX overclaim. For this funding source, resources are not counted in determining eligibility, but income is. When income is present, the same budgeting methodology is used to determine the district's payment under the Title XX overclaim as is used to determine that payment under PA. The amount not paid by the social services district toward the per diem is the victim's fee under the 50/50 Title XX overclaim also. However, if there is no income but there are resources, the entire per diem will be paid under the 50/50 Title XX overclaim.

The fees related to Title XX cannot be used to offset the local share. State reimbursement will be calculated on costs net of any fees collected.

37. QUESTION: When is a person's income or resources considered available?

ANSWER: When the person has access to the income. For example, the person is receiving paychecks, has a bank account which can be accessed, or CD's which can be accessed (regardless of penalty). The income or resources of a victim's spouse is not considered accessible.

38. QUESTION: If a person does not pay their fee, will this affect their eligibility for public assistance?

ANSWER: No. Payment of the fee is not a condition of eligibility for public assistance.

39. QUESTION: If a residential program holds a bed for a resident who requires hospitalization, will the program be reimbursed for those days the victim is in the hospital?

ANSWER: No. Public assistance programs will only pay for the days the victim is actually in the residential program.

40. QUESTION: Will a residential program be reimbursed for the provision of emergency shelter, services and care to illegal aliens/ undocumented victims? What is the policy regarding the use of EAF for the provision of emergency shelter and services at a domestic violence residential program for illegal aliens/undocumented victims? In addition, the question was raised why DDS funds could not be used by illegal aliens.

ANSWER: Undocumented or illegal aliens are ineligible for ADC and Home Relief. Undocumented aliens or aliens who are unable to furnish evidence that they are lawfully residing in the U.S., if they meet all other eligibility criteria for EAF, are eligible to receive EAF to meet emergency needs. Such persons must still file a completed and signed common application form. However, they do not need to complete the alien/citizenship declaration section of the application or provide a social security number in order to receive EAF. Local districts should explain to undocumented aliens or aliens unable to provide documentation that they are lawfully residing in the U.S. that EAF assistance is limited and should detail what this will mean for each specific situation (i.e., although EAF may pay for needs while in a residential program for victims of domestic violence, it will not cover recurring needs when they leave the shelter and reside in the community).

Undocumented aliens eligible for EAF are not automatically entitled to Medical Assistance and should be advised to apply separately for Medical Assistance in the event of emergency need.

Local districts should also explain to undocumented aliens who apply for EAF that one criterion for INS accepting any application for legal status is whether or not an individual is likely to become a public charge. Should an undocumented individual at some point apply for legal status, the prior use of EAF could be a determining factor in the likelihood of future public charge status.

Both Federal and State Law and regulations prohibit granting ADC or Home Relief to undocumented persons. In addition, illegal aliens are not eligible for reimbursement under the 50/50 Title XX overclaim pursuant to Department regulations 18 NYCRR Section 403.7.

41. QUESTION: When a victim was residing in another state at the time of the domestic violence incident, who is financially responsible for reimbursing the residential program?

ANSWER: For public assistance purposes, the district where the victim is found is financially responsible, if the victim is otherwise eligible for public assistance. Since there is no residency requirement for domestic violence residential services, this district also would be responsible for payment under the 50/50 Title XX overclaim for those persons who were not eligible for public assistance.

42. QUESTION: Does a residential program have authority to give a person a public assistance application, or is this solely a social services district function?

ANSWER: A person has the right to submit a completed and signed application to a social services district at any time. Where the application is obtained from does not matter. However, it is strongly recommended that each program and social services district work out procedures for obtaining/submitting applications for victims of domestic violence.

43. QUESTION: When the representative payee of an SSI recipient/victim is the batterer, should SSI income automatically be considered available when in fact the SSI recipient/victim does not have access to this income?

ANSWER: No. If the representative payee is the batterer and retains control of the money, the SSI recipient does not have access to the income and it should not be counted as available income to meet the cost of the residential program. However, either residential program staff or the social services district should assist the victim in pursuing a change in representative payee. However, until the person actually has access to the SSI check, it is not considered available.

44. QUESTION: Under what circumstances can a residential program become the designated representative for a resident of the program?

ANSWER: The residential program could become a designated representative, for PA purposes, of a resident only if the person was physically or mentally unable to make application herself or come to the face-to-face interview. If there are safety concerns about the person coming into the social services agency, the social services agency should make arrangements for an interview at an alternative site. To become a designated representative the resident would have to designate a shelter staff member as an authorized representative in writing. However, this should be a rare occurrence and should only be used in extreme circumstances, since the victim is the primary source of the information/documentation necessary to determine eligibility.

45. QUESTION: Is a victim of domestic violence who is eligible for public assistance entitled to a Personal Needs Allowance (PNA) when they enter a residential program? Is a local district required to issue Personal Needs Allowances within a certain time frame?

ANSWER: If three meals a day are provided in the residential program, the personal needs allowance (PNA) must be included in the standard of need in addition to the per diem rate, pursuant to Department Regulations 18 NYCRR Section 352.8(c). The personal needs allowance should be paid as soon as possible. It should be noted, however, that a woman with income may not actually be provided with a PNA in cash. The PNA is taken into account in the budgeting process and may come out of person's income. If less than three meals a day are provided, the basic allowance, home energy allowance and supplemental home energy allowance must be included in the standard of need rather than a PNA.

46. QUESTION: Under the public assistance program, does a district have discretion whether or not to place a lien against a victim's home?

ANSWER: There is no mandate for a district to place a lien against a victim's home. However, a social services district may establish local policies to take a lien against real property as a condition of eligibility for public assistance, both recurring and emergency.

47. QUESTION: Are student loans, scholarships and grants exempt income for public assistance purposes?

ANSWER: UNDERGRADUATE STUDENTS: Effective from August 1, 1980 all educational grants, loans and scholarships to undergraduate students, regardless of their source, are exempt from consideration in determining eligibility (including the gross income test) and degree of need for PA or MA. Educational grants, loans, scholarships and other income that are totally exempt include, but are not limited to:

1. Pell Grants
2. National Direct Student Loans
3. Supplemental Educational Opportunity Grants
4. College Work-Study Programs
5. Tuition Assistance program Awards (TAP)
6. Educational Opportunity Program EOP)
7. SEEK
8. College Discovery Program
9. Higher Educational Opportunity Program (HEOP)
10. Regents College Scholarships
11. New York State Higher Educational Services Corporation Loans (HESC)

NOTE: The total exemption of educational grants and loans in determining need and amount of assistance does not apply to V.A. Educational Grants which are part of the G.I. Bill and provide a monthly allowance for support while veterans are enrolled in school. Only specific education related expenses such as tuition, books, school fees, transportation, etc. are exempt, and the remainder is to be considered available income.

GRADUATE STUDENTS: EDUCATIONAL GRANTS, LOANS AND SCHOLARSHIPS

As a result of the Pasternak v. Blum court decision, a special exemption of educational grants, loans, scholarships in determining eligibility or degree of need has been provided to graduate students.

NOTE: This exemption applies only if the graduate student's grant, loan or scholarship is obtained and used under conditions which preclude its use for meeting current living expenses. Consequently, any monies received by a graduate student through an educational grant, loan or scholarship which are not used for education or for education related expenses are considered income.

Whenever an applicant or recipient of ADC, HR, or MA alleges that he has received a loan or grant, such as a graduate school loan, grant or scholarship, and that he obtained and will use such grant or loan under conditions that preclude its use for meeting current living expenses, the district must give such applicant or recipient the opportunity to attest in writing to such facts.

Upon receipt of such attestation the district must not consider the relevant amounts as either income or a resource for purposes of determining eligibility (including the gross income test) or degree of need for PA or MA unless there exists reasonable grounds that the applicant/recipient has willfully attested to false information.

A copy of the signed attestation must be given to the applicant/ recipient, and a second copy must be retained in the case records.

If the school which grants the assistantship to the graduate student designates the assistantship as an educational grant the monies are treated in accordance with the rules of educational grants.

If the school which grants the assistantship to the graduate student designates it as bona fide employment the monies received are to be considered employment income (after application of appropriate earned income disregards) against the graduate student's need for PA.

NOTE: The school which issues the assistantship should be contacted to determine the designation.

48. QUESTION: What are the time frames required for a program to bring a client into the social services agency to apply for public assistance.

ANSWER: To ensure reimbursement, a program should make sure that the client applies for public assistance as soon as possible after the person enters the residential program.

49. QUESTION: If a person enters a residential program from another state and that other state has sanctioned the person from public assistance, does the New York State district which is fiscally responsible automatically treat the person as being under a sanction in New York State?

ANSWER: The criteria used to sanction a person in another state is not necessarily the same as that used in New York State. Therefore, the social services district would have to determine whether the victim met the criteria for being sanctioned in New York State.

PROGRAM ISSUES

50. QUESTION: What are the requirements for a domestic violence non-residential services program?

ANSWER: Non-residential services for victims of domestic violence must be provided by a not-for-profit organization and victims of domestic violence must constitute at least seventy percent of the clientele of such programs. (Social services districts meet the definition of a not-for-profit organization, pursuant to 459-a of the Social Services Law.)

51. QUESTION: When is a domestic violence non-residential services program considered an "approved" program?

ANSWER: In order for a non-residential services program to be considered an "approved" program, the program must be in compliance with Department regulations 18 NYCRR Part 462, have a contract with a local social services district for the provision of non-residential services, and be approved through the district Consolidated Services Planning process.

52. QUESTION: Can a non-residential services program subcontract for any of the core services?

ANSWER: With the exception of hotline services, each non-residential services programs must directly provide all of the core services: information and referral; advocacy; counselling; and community education/outreach. In addition, non-residential programs must provide or arrange for hotline services.

A non-residential program may subcontract for any of the optional services listed in Department regulations 18 NYCRR Part 462.4 (b). Optional services include: children's services; support groups; transportation; and translation services.

53. QUESTION: When are non-residential services for victims of domestic violence reimburseable under the Title XX overclaim.

ANSWER: The core services specified in Section 462.4 (a) (information and referral, advocacy, counselling, community education/outreach, and telephone hotline services) are reimburseable under the Title XX overclaim when they are provided directly by an approved non-residential

program. The optional services listed in Section 462.4 (b) (children services, support groups, transportation, and translation services) are reimburseable under the Title XX overclaim when provided directly by an approved program or through a subcontract with an approved program. Services not identified as core or optional services are not reimburseable under the Title XX overclaim even when such services are provided by an approved program.

54. QUESTION: Is a social services district required to contract for non-residential services for victims of domestic violence?

ANSWER: The 1991, 1992, and 1993 State Aid To Localities Budgets, Chapter 53 and Department regulations, 18 NYCRR Part 462, require social services districts to provide non-residential services for victims of domestic violence. Districts may directly provide non-residential domestic violence services or they may choose to purchase (i.e. contract for) such non-residential services.

55. QUESTION: Who should a residential program contact to resolve cross county billing issues?

ANSWER: Each social services district is required to designate a liaison to be available during regular business hours to address any program or payment issues relating to domestic violence victims. A residential program should contact the domestic violence liasion when program and payment issues arise. If for some reason this is not possible, the local district Director of Income Maintenance should be contacted for public assistance issues and the local district Director of Services should be contacted regarding Title XX Overclaim issues.

A list of district DV liaisons is attached.

56. QUESTION: If a social services district wants the ability to audit a residential program, does the district need to have a contract with the residential program?

ANSWER: Without a contract, a social services district has no authority to audit a residential program. Otherwise a social services district may have access only to that information set forth in Department regulations, 18 NYCRR 452.10 (a) (4).

57. QUESTION: If a social services district directly operates a domestic violence residential program, is the district also required to have a contract with another domestic violence residential program?

ANSWER: Social services district are required to have a contract with a residential program for victims of domestic violence for purposes of referring victims who come directly to the social services district seeking emergency shelter and services. Therefore, a social services district which operates its own domestic violence residential program will not be required to contract with another such residential program, provided the district's program has a length of stay policy of 30 days

or more. Department regulations, 18 NYCRR 408.8 (a) requires that a district have a contract with a domestic violence residential program with a length of stay of 30 days or more, to the extent there is such a residential program located within the district or within a contiguous district.

58. QUESTION: Is the local district responsible for determining that a person is programmatically eligible for admission to a residential program?

ANSWER: 18 NYCRR Section 408.4 provides that when a person goes directly to a residential program, the residential program will be responsible for determining the person's initial eligibility. When a person goes directly to a social services district, the district will be responsible for determining a person's initial eligibility or for referring the person to a residential program for an eligibility determination.

59. QUESTION: Can a social services district, through a contract, limit the length of stay policy of a residential program for victims of domestic violence?

ANSWER: Pursuant to Department regulations 18 NYCRR Section 408.6, the maximum length of stay of a resident in a residential program may not exceed 90 consecutive days in one or more domestic violence residential programs. A resident's length of stay may be extended for up to 45 days beyond the maximum 90 day period if neither the resident, the social services district nor the residential program is able to secure alternative housing for the resident. Based on these standards, the length of stay at a residential program is determined by specific individual circumstances as well as the residential program's length of stay policy. The social services district cannot restrict length of stay through contract language. Each individual victim's length of stay must be based on the specific safety and service needs of the victim.

If the district has a contract with the residential program, the contract can: (1) automatically authorize a length of stay of up to 90 days depending upon the length of stay policy of the program. Subsequently, the residential program will be responsible for assessing the victim's continuing eligibility; or (2) authorize a length of stay for a predetermined period of time which is redetermined at regular intervals. The social services district, in consultation with the program, will then be responsible for determining the victim's continuing eligibility.

Social services districts and residential programs must assess a victim's continuing eligibility based upon the following criteria, pursuant to Department regulations 18 NYCRR Section 408.6 (b) (2):

(1) The victim continues to be in need of a residential program because alternative housing (i.e a domestic violence transitional services program or permanent housing that reasonably assures the

victim's safety) is not available. When a victim lacks alternative housing, it is assumed that the victim is also in need of emergency service.

(2) The victim continues to meet any additional admission criteria established by the residential program; and

(3) The victim continues to abide by the residential program rules.

60. QUESTION: If a district does not have a contract with a residential program, is the district required to reimburse the residential program?

ANSWER: Yes. The social services district in which a victim of domestic violence was residing at the time of the domestic violence incident must reimburse the residential program the DVSAR established by the Department and approved by the Division of Budget, regardless of whether the social services district has a contract with the residential program.

Additionally, if a district does not have a contract with a residential program, at the time of admission, a person will be authorized to remain in the residential program for up to 90 days depending upon the length of stay policy of the residential program. The residential program rather than the social services district will be responsible for determining the victim's continuing eligibility.

61. QUESTION: What are the time frames for programs/clients to notify the social services district of an admission?

ANSWER: 18 NYCRR 408.4 (c) requires that when a residential program admits a person into the program, it must provide notice by telephone to the district where the person resided at the time of the domestic violence incident if the person is in receipt of public assistance or is planning to apply for public assistance. Telephone notice must be given on or before the first working day following the admission. Additionally, if the person is from another county and plans to apply for public assistance in the district where the residential program is located, such notice must also be given to the district where the program is located.

62. QUESTION: Is a social services district required to send one notice of eligibility or a notice from each program area when a victim enters a residential program, applies for but is deemed ineligible for public assistance, and the application is referred to services for a determination of eligibility under the Title XX overclaim?

ANSWER: A social services district must make a decision to accept or deny an application for public assistance as soon as the facts to support it have been established by investigation but no later than 30 days from the date of application for ADC or EAF and 45 days from the date of application for Home Relief, except where the applicant requests additional time or where difficulties in verification lead to unusual delay, or for other reasons beyond a social services official's

control. The applicant must be notified in writing of this decision (18 NYCRR 351.8(b)). If the decision is a denial of public assistance, the application must then be evaluated for eligibility for payment of the residential program's per diem under the Title XX overclaim.

A social services district must determine a person's eligibility for services under the Title XX overclaim within 30 days of the application pursuant to Department regulations, 18 NYCRR Part 404.1 (d) (1) (i). The social services district must notify the applicant of the determination of eligibility for services. Such written notice must include any required fees for service.

A determination on a victim's eligibility for public assistance must be made prior to a determination of eligibility for Title XX overclaim. Therefore, it is important that the public assistnce determination be done as timely as possible.

Thus, a district may be required to send two notices, one regarding the victim's eligibility for public assistance and one regarding the victim's eligibility for Title XX overclaim. Notices regarding Title XX overclaim are <u>always</u> sent to the business address of the residential program. Notices regarding public assistance should be sent to the business address of the residential program or to the address last known to the local district.

In most, but not all, situations a victim of domestic violence who is deemed ineligible for public assistance will be eligible for funding under the Title XX overclaim during their shelter stay.

63. QUESTION: Can both partners in a gay/lesbian relationship be sheltered if the batterer is a former partner of only one of them?

ANSWER: A victim of domestic violence is defined in Section 459-a of the Social Services Law and Department regulations, 18 NYCRR 408.2(h). This definition is intended to cover persons who are battered by their spouses, partners, or significant others (former spouses, partners, etc.). Therefore, only the victim in a gay/lesbian relationship would be eligible for admission to a domestic violence residential program.

64. QUESTION: Can males receive emergency shelter and services at a residential program for victims of domestic violence?

ANSWER: Yes a residential program for victims of domestic violence can provide emergency shelter and services to males who meet the statutory and regulatory definition of a victim of domestic violence, or are the minor child of a victim of domestic violence. However, the Department permits the operation of domestic violence residential programs which limit by gender the population served when the basis for such policy is programmatic. Currently we have licensed residential programs which only serve females or females and their children. Programs may not, however, refuse to serve persons based upon race, color, creed, or national origin.

When a residential program is unable to serve males, the program must have a plan to refer such persons to other appropriate programs, including domestic violence residential programs.

Once a program chooses the population it will serve, the Department's regulatory standards for admission apply (18 NYCRR 452.9). In general, the program must serve all victims of domestic violence who fall within the program's criteria for service. An exception to this may be if the person seeking admission to the program is likely to cause danger to himself/herself or others or is likely to interfere substantially with the health, safety, welfare or care of other residents. Persons with certain other health or service needs must be excluded.

65. QUESTION: Is there a requirement for all hotlines to have a Telecommunication Device for the Deaf (TDD)?

ANSWER: There is no requirement for the telephone hotline assistance provided by residential programs to have a Telecommunication Device for the Deaf. However, programs are encouraged to have such a device.

66. QUESTION: Is there a requirement for all shelters to be handicapped accessible?

ANSWER: The Americans with Disabilities Act (ADA) does not require existing residential DV sites to undertake structural accessibility renovations, where the same will result in undue hardship. Programs receiving federal funds must offer all otherwise eligible participants the opportunity to partake of the program. Programs operating out of sites that are not accessible must provide reasonable accommodation to DV victims otherwise eligible for services. Reasonable accommodation may include, but is not limited to, referrals of the DV victim to another residential facility that is accessible. New construction or renovation to existing program sites must include handicap accessibility.

67. QUESTION: What are the regulatory requirements for programs to shelter victims of domestic violence with HIV/AIDS and domestic violence victims with substance abuse problems?

ANSWER: Department regulations 18 NYCRR Part 452.9(a) require a residential program to provide emergency shelter and services to any victim of domestice violence, to the extent that space is available. However, programs may not accept or retain any victim in the program who (1) is likely to cause danger to himself/herself or others or to substantially interfere with the health, safety, welfare or care of other residents; (2) is in need of a level of medical, mental health, nursing care or other assistance that cannot be rendered safely and effectively by the program, or that cannot be reasonably provided by the program through the assistance of other community resources; (3) has a generalized systemic communicable disease or a readily communicable local infection which could be easily transmitted under normal shelter conditions to other residents; or (4) refuses to sign the written agreement outlining the program rules and the resident's responsibilities.

Given the above regulatory requirements, a program cannot automatically exclude from admission a victim of domestic violence with AIDS or with a substance abuse problem. However, a victim with AIDS or a substance problem may be excluded from admission if the person requires, for example, special medical/nursing care or their behavior is likely to interfere with the welfare of other residents. Programs should refer such persons to any available appropriate programs.