New York State
Office For People With Developmental Disabilities
www.opwdd.ny.gov

PERSONAL ALLOWANCE MANUAL

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INTRODUCTION

Welcome to the Personal Allowance Manual. This manual has been created by The New York State Office For People With Developmental Disabilities (OPWDD) to serve as an educational tool and a reference guide on Personal Allowance. OPWDD is the agency that oversees programs and services for people with developmental disabilities.

Deciding how you spend your money can be a very satisfying personal decision. How you spend your money reflects your personality. How the individuals you serve spend their money, or how you spend it on their behalf based on their input, must also reflect the individuals' preferences and choice.

While you are employed in the DD service system, you may have to ensure that people have access to their personal allowance, that decisions for spending are made with input from the person and his or her advocate, that spending personally benefits the individual and that each individual receives the proper amount of personal allowance. You may also have to assist in the development of a personal expenditure plan and ensure that the person's allowance is used how she or he wants. This manual will help you perform these important responsibilities.

It will also help you manage personal allowance in accordance with both OPWDD regulations and New York State Social Services Law. Mismanagement of personal allowance carries civil and criminal punishments.

ABOUT THIS MANUAL

This manual will serve as your guide both during and after training. Issues addressed during training are covered in detail in this manual. While it will not answer every question, or solve every situation with regard to personal allowance, it will provide you with some guidance on:

- What personal allowance is
- How personal allowance should be spent
- How to comply with personal allowance rules
- How to calculate the amount of personal allowance

If you have additional questions, contact OPWDD's Revenue Support Field Offices (RSFOs). Contact information for your local RSFO and a list of training sessions on many financial topics are in Appendixes F and G at the end of this manual.

WHAT'S NEW?

The Personal Allowance regulation (14 NYCRR 633.15) was extensively revised with the changes implemented effective January 1, 2008. This manual was rewritten to support the current regulatory requirements. These changes apply to all residential facilities certified or operated by OPWDD, including family care homes, and non-residential programs entrusted with any of an individuals' personal allowance. The major changes are detailed below:

PERSONAL EXPENDITURE PLANNING

Changes include expanded requirements for personal expenditure planning:

- A Personal Expenditure Plan is required for each person receiving personal allowance (See page 10)
- A copy of the Personal Expenditure Plan must be maintained in the residential record (See page 10)
- A Money Management Assessment must be completed by each person's expenditure planning team for each person receiving personal allowance (See page 10)

NON-RESIDENTIAL PROVIDERS

The changes also include a requirement for non-residential providers to develop policies and procedures for handling an individual's personal allowance funds. (See page 65)

ADDITIONAL CHANGES

- The elimination of "training accounts" and the introduction of "person-owned" accounts (See page 62)
- The use of electronic ledger cards (See page 67)
- Updated parameters for receipts for purchases made by staff and family care providers (See page 70)
- A record retention requirement of four years (See page 70)
- A requirement for annual random internal agency audits of at least 25% of the personal allowance accounts. For Family Care, the requirement for annual random internal agency audits remains a minimum of at least 10% (See page 67)

PERSONAL ALLOWANCE

DEFINITION

According to New York State law (Section 633.15, NYCRR), personal allowance is:

> "That portion of income which is made available on a monthly basis to every person residing in a facility operated or certified by OPWDD which is intended for the personal expenditure by an individual".

Every person with a developmental disability who resides in a facility operated or certified by OPWDD who has a monthly income keeps part of the income to spend on his or her personal and recreational choices. The rest of the monthly income is used to cover the costs of room and board.

The allowance amount will vary due to the person's living arrangement and income and may have several components depending on individual circumstances. (See page 55)

Personal allowance regulations apply to all residential facilities certified or operated by OPWDD. They also apply to non-residential programs that accept responsibility for handling personal allowance of residents of the following residential facilities:

- Agency Sponsored and State Operated Family Care
- Voluntary or State Operated Individualized Residential Alternatives
- Voluntary or State Operated Intermediate Care Facilities
- OPWDD Certified Schools for the Mentally Retarded
- Developmental Centers

Important exceptions:

- Personal allowance regulations do not apply to people who live on their own or in a non-certified home with family or friends
- People without any income are not entitled to an allowance, unless they live in a state or agency operated family care home

PURPOSES

There are three guiding principles behind personal allowance:

- Community involvement
- Choice
- Personal benefit

OPWDD promotes increased **community involvement** for the DD community. People with disabilities should be out in the community and participating in daily life as much as possible.

Choice is also important. As much as we choose what we like to do with our money, so should the people we serve choose what they would like to do with their money.

Finally, what people buy with their money should have a **personal benefit**. It should not be for the benefit of their providers, agencies, or OPWDD. The items that people buy with their money are theirs to do with as they see fit.

GUIDELINES

The management and use of personal allowance is in accordance with Social Services Law, section 131-o and OPWDD Regulation 14 NYCRR 633.15. (See Appendix A) These regulations provide that personal allowance spending should:

- Reflect the preferences, choices, and needs of the person
- Involve the person
- Be planned to meet the person's wants and needs throughout the year

Personal allowance should be used to help people enhance and maximize the quality of their leisure time and the quality of their lives. As much as possible, people should be involved in their planning and spending. By involving them in the decision making process, their purchases will better reflect their preferences. They should be able to understand the purchases and indicate their preferences. People should have access to the money they need to buy what they want. Their allowance should be available to them when they ask or when it is needed. **Personal allowance may not be withheld from the individual.**

As the allowance usually comes from government benefits, it is very important the person should not lose the benefits. The representative payee (usually the residential provider) should track the person's income and assets and make sure the person remains qualified. The provider should also answer Social Security inquiries in a timely manner.

Personal allowance must **NOT** be used for:

- Expenses that the residential or day provider must pay
- Goods and services or supplies that must be provided or paid for by the government or any provider
- Necessary medical, dental and clinical services and/or supplies
- Funded items or items that must be paid for by the residence or day service provider
- Transportation to or from required services
- Staff expenses and services (except for special situations which will be discussed later)
- Any activity that is part of the Individualized Service Plan (ISP) for which the provider will be reimbursed[1]
- *Any* expenses for state employees

[1] Personal allowance monies cannot be used to support programming or treatment that are part of a person's habilitation plan or valued outcomes. In such instances, the cost for the item or activity should be coming from the reimbursement the agency receives.

PERSONAL ALLOWANCE AND SUPPORTING THE INDIVIDUALS WE SERVE

The areas covered to this point include:

- What personal allowance is
- The purpose of personal allowance
- Guidelines for the use of personal allowance

PROPER USES OF PERSONAL ALLOWANCE

An examination of the options for spending personal allowance should include a comparison to how people in general spend their money. Throughout the week, people spend money for a variety of reasons. While it may go for basic necessities, they also spend it on items that they like or want. It may be spent for admission to a concert, going to the movies, eating out, or donations to a favorite charity. People also set aside their money to save for a trip. In every instance, people are making choices about how to spend money. When people choose who will cut their hair, what to read, or whether to buy jeans instead of khakis, their purchases reveal their preferences and personalities.

People served by OPWDD and the provider community should have the same opportunity to make choices and express who they are by their purchases. New York State rules and regulations require personal allowance to be used for the benefit of people with developmental disabilities. These rules and regulations also give people the right to use their allowance as they want. What they buy should help make their life better. Their purchases should help to involve them in the local community or be for items that improve their quality of life.

A person with disabilities should be able to use his or her personal allowance in a meaningful way. This includes making choices about spending money, learning to budget, and saving for a specific item. Does the person have a special hobby? Does he like a particular type of music? Does she want to go to camp or on a special vacation? Personal allowance can be used for these purposes and more.

ENSURING CHOICE IN EXPENDITURE PLANNING

Personal allowance money belongs to the individual. The money must be available for personal spending at the individual's discretion and choice. The purchases must personally benefit the individual. When an agency manages an individual's personal allowance, the agency staff must involve the individual to the greatest extent possible. All monies must be spent throughout the year consistent with the individual's preferences, choices and interests.

Agency staff must assume that all people with developmental disabilities have some capacity for self-advocacy and can contribute to the way their personal allowance is spent. Even though people may not use words, staff can "listen" to their body language and their eyes. From these, one can tell happiness or sadness with direct eye contacts or facial expressions. Staff should watch peoples' faces. Follow their gazes. See their smiles. They can also look for other nonverbal cues such as open arms and widened eyes. People may also express their preferences for spending with their behavior. Staff should see if there is any common theme related to happy or sad behavior to determine preferred items when planning personal expenditures. They can watch to see what the person enjoys the most. Staff can observe what the person looks forward to doing. Based on the things the person enjoys, staff can help the person identify the stores and vendors where he or she can become a valued or regular customer.

If an individual uses an augmentative communication device, it should be programmed with the individual's personal allowance choices. While planning, staff should talk to those who know the individual well, such as a family member, advocate or special direct support professional. These people should continue to have input throughout the year as the individual's preferences may change.

Ensuring Choice Example

José is 40 years old and has no family who are in touch with him. He uses a wheelchair and does not use words to speak. When he moved into his current house, residence staff had a hard time figuring out what José liked. For these reasons, it was difficult to involve José in planning for the use of his personal allowance.

Over time, residence staff began to notice what interested José. Every time José saw an animal, he would stop what he was doing to watch. He seemed to enjoy the antics of the squirrels that played in front of his home. He often watched the birds that had nested in the oak tree in the front yard.

After meeting with José's service coordinator and workers at his day program, the residence staff created a plan to use José's personal allowance based on what they felt would interest him. Since José showed an interest in animals, the residence staff used his personal allowance to buy a small bird feeder that they set up outside José's window. He now enjoys sitting in his room and watching the birds and squirrels that it attracts. José goes

on outings to the park and a nearby zoo. He sees other animals and is around people in the community.

Recently, the residence staff also used José's personal allowance to buy a camera and photo albums for him. They help him write the names of the animals next to the photos he takes at the zoo and from his room. On rainy days, staff help José put together his scrapbook of animals. José's service coordinator is trying to find an Audubon volunteer with a van so that José will be able go bird watching with a member of the community.

When looking for input on choice for personal spending, the following questions should be asked:

- Where are the person's favorite places?
- Who are the most important people in the person's life?
- What are the person's unique capacities, gifts, preferences and interests?
- What are the things that make the person most happy?
- What is the person's activity level? Is she a morning person or a night person? Is he high energy or sedentary?
- What sensory situations does the person enjoy? Consider reactions to bright lights, sounds, smells and tastes.
- What does the person prefer when dining out - fast food vs. fine dining, table vs. booth? Does the person have a special diet or like special highlights from the menu?

Answers to the above questions will provide a basis for maximizing an individual's interactions with the community by helping determine:

- In which stores the person can become a valued customer
- Which community activities bring the person together with those who share similar interests
- Whether the person has a shared interest with staff from the residence or day program
- How the person can meet new people and deepen friendships and relationships with others
- Whether the person can take part in clubs, service organizations, civic events, ethnic organizations, sports, health and fitness groups, and community and personal support groups

PERSONAL EXPENDITURE PLANNING

DEFINITION

According to 14 NYCRR 633.15: “Personal expenditure planning is intended to guide those assisting the person with financial choices and must not be used to limit the person’s opportunities for personal spending. The agency, DDSO or sponsoring agency shall ensure that expenditure planning for personal allowance is conducted on at least an annual basis for each person for whom it is managing personal allowance. Documentation of the expenditure planning shall be incorporated into a Personal Expenditure Plan (PEP).”

Personal expenditure planning is a process. It starts by establishing a plan for the use of the individual’s personal allowance and resources over the next twelve months. The plan should enable the person to have as many choices as possible. The plan might include personal shopping or luxury items, entertainment, vacation, home and family visits, or other expenses. The agency, DDSO or sponsoring agency managing a person’s personal allowance is responsible for expenditure planning and designates staff or the family care provider to set up and implement the PEP. To the extent possible, this process should include the person and his or her advocate. The expenditure planning team should also include the service coordinator, staff from the individual's residence and staff from a non-residential program who will handle personal allowance for the individual.

Although the Medicaid Service Coordinator (MSC) should be a member of the team creating the PEP and the Money Management Assessment, the PEP and Money Management Assessment requirements are not Medicaid services. The MSC cannot be assigned the responsibility of writing, monitoring or auditing the PEP or Money Management Assessment.

Once a plan is finished, the agency, DDSO or sponsoring agency designates staff or family care providers who are making personal allowance expenditures for the person to monitor it throughout the year. Their job is to make sure that personal allowance expenditures are consistent with the PEP. Requests for funds that are inconsistent with the PEP should be discussed with the person and brought to the attention of the advocate, service coordinator, and other participants in the expenditure planning process.

A plan is not set in concrete; what the person likes may change and the plan can be modified at any time. However, it must be updated at least once every twelve months. It is the monitor’s job to note these changes and arrange for the alteration of the plan. The agency, DDSO or sponsoring agency managing the personal allowance decides how and who can alter the personal expenditure plan. The plan does not replace the ledger in terms of documentation of the spending, but is a guide to those helping the

person with financial choices. It must not be used to limit the person's opportunities for personal spending.

Personal expenditure planning is not only required for everyone in certified residences for whom the agency or DDSO is managing personal allowance funds, it is a best practice. Planning must involve the person and his or her Expenditure Planning Team and by following the plan, the agency, DDSO or sponsoring agency will ensure that a person's choices will be met throughout the year. Following a Personal Expenditure Plan also lessens the necessity for last minute spending to keep the person under asset limits for Medicaid or SSI.

STATUTORY REQUIREMENTS

- OPWDD regulations require an annual written Personal Expenditure Plan (PEP)
- A copy of the PEP must be included in the person's record at the residence
- The PEP should follow the habilitation/treatment plan and plans for protective oversight
- The person, his or her advocate and service coordinator must have a copy of the PEP (Information from the PEP may also be shared with other involved parties as necessary, but only after consulting with the individual and his or her advocate)

For sponsoring agencies, OPWDD's Division of Quality Management will check for evidence of expenditure planning for each person.

MONEY MANAGEMENT ASSESSMENT

Effective January 1, 2008, personal allowance regulations require that a money management assessment be completed by each person's expenditure planning team. This applies to everyone receiving personal allowance that is managed by the agency or DDSO. The assessment is completed annually with the PEP and must indicate:

- The person's ability to manage funds to which he or she has independent access
- The amounts of funds the person can manage without receipts
- The frequency with which the funds are provided (e.g. $10 per week)

The funds that the person has independent access to may include cash from personal allowance, funds retained from earnings, and funds maintained in a person-owned account.

The PEP must include a description of the person's anticipated resources, personal allowance and spending on an annual and or monthly basis. The description must be consistent with the money management assessment.

BEST PRACTICE

Compilation of a Personal Expenditure Plan (PEP) **is required:**

- It takes into account the daily as well as long-term needs of a person
- It also considers special items such as a vacation, large purchases or burial account
- It considers wages, other income and resources as sources of personal allowance
- It is an easily recognizable document that meets the legal requirements of annual financial planning

PERSONAL EXPENDITURE PLAN AND MONEY MANAGEMENT ASSESSMENT SUGGESTED FORMAT

On the next pages are suggested formats for the PEP form and the Money Management Assessment form. These forms are also available for downloading from the OPWDD Internet site (www.opwdd.ny.gov).

PERSONAL EXPENDITURE PLAN SUGGESTED FORMAT

Individual Name: Date:

I. Annual Assets Projection

Free Balance in Personal Account _____
Cash in the House _____
Person-Owned Account in Community Bank _____
Subtotal Current Available Personal Allowance Balance _____

Annual "Unearned" Personal Allowance
Monthly _____X 12 = _____
Annual "Earned" Income
Monthly _____X 12 = _____

Subtotal Annual "Unearned" and "Earned" Personal Allowance _____

II. Total Annual Assets: _____
Other Assets
Burial Account

III. Money Management Assessment Date Completed: _____
Amount/Frequency _____/_____

IV. Personal Spending Projections

Personal Shopping/Luxury Items _____
Entertainment/Diversion _____
Associational Life _____
Vacation, Home and Family Visits _____
Other Spending Considerations _____
Total Personal Spending Projections _____

V. Upper Cash Limit in Residence _____

Comments:

Signatures:
Individual _____ Date _____
Advocate _____ Date _____
Residential Designee _____ Date _____
Residential Supervisor _____ Date _____

MONEY MANAGEMENT ASSESSMENT

Individual: _____ Date: _____

	Yes/No or Prompt Level
1. Understands the concept of money – that it's exchanged for desired items	_____
2. Demonstrates an interest in purchasing desired items	_____
3. Demonstrates an interest/ability to hold money to make purchase	_____
4. Responds in some way, i.e. vocally, with gestures, physically, to indicate a desired purchase	_____
5. Recognizes the difference between the value of coins and paper money	_____
6. Recognizes the various coin and paper money denominations	_____
7. Aware that they are to receive change and what the amount of change is	_____
8. Able to do simple budgeting	_____

Conclusion: _____is capable / is not capable of handling money.
(Individual's Name) ***(circle one)***

The team reached this decision based on:

_____
_____
_____
_____
_____
_____
_____

Based on the assessment, the individual can handle the following amount of cash without receipts:

Amount $_____

Based on individual spending needs, the individual will have access to this amount of cash at the frequency recommended by the team:

Frequency_____
(i.e. weekly, upon request, daily, monthly, etc.)

Completed by: _____
(Signature / Title / Date)

----------**Prompt Level Codes:**

I = Independent GP = Gestural Prompts VP = Verbal Prompts
P = Physical Prompts HOH = Hand over hand
* = lack of interest or beyond cognitive potential to learn

HOW PERSONAL NEEDS ALLOWANCE IS USED

The next several pages address different areas where personal allowance can be spent. Questions from personal allowance training sessions are also included and Frequently Asked Questions (FAQ) on this and other topics are located in Appendix C.

ENTERTAINMENT & DINING OUT

Entertainment should be based on a person's preferences. Most people like seeing a movie and eating out with their friends. But rather than taking everyone from a residence out in one large group to see the same film, it is better if each person uses his or her personal allowance to choose a movie to see with one or two close friends. Others may prefer a live concert, a Broadway show, or a county fair.

Consider purchases that involve sensory experiences. The sights, sounds, smells and tastes of the neighborhood are a good place to start. Individuals can enjoy the fragrance of a perfume counter, and the feel of lotions and creams from bath and body stores. Going to a local bakery can involve all of the senses. Repeat trips also offer a good opportunity to become a valued customer.

People who benefit from tactile stimulation can become regulars in spas and hair salons where they can enjoy a manicure, facial, or massage. Even those who like their "own space" may enjoy the relaxation and soft touch of these experiences.

For those who like bright lights, think about going to the local arcade or dance club or to fairs and other events that offer fireworks displays. Personal allowance may cover admission fees to these places and events. Tickets can be purchased to films that offer different sights and sounds, but selection of the show should be carefully made in order to match the person's interests and preferences, and his or her ability to sit for an extended period.

People who enjoy music can attend concerts in the park and at local theaters, listen to new releases at record stores (remember the earphones), and purchase CDs for enjoyment at home. If people enjoy watching TV, look for something that can make their TV time more fun: a special chair, DVDs of their favorite shows, or special snacks for different shows. For someone who likes making music, try to arrange music lessons from a music student or local instructor.

Personal allowance can also be used for dining out for one or two people in a restaurant with preferred fare or ethnic foods and specialties. Personal allowance can also be used for meals while out shopping with friends or family and it can be used to support

people going to dinner with friends and family. They can also become regulars at a local lounge, club, café or coffeehouse.

The above listings, although not comprehensive, are all possible uses of personal allowance monies.

While personal allowance can be used for meals out, it should **NOT** substitute for the three daily meals and snacks the residence is supposed to provide. If the person needs special food because of nutritional requirements, this is the agency's responsibility. If the person is supposed to be on a low calorie diet, the agency should bear the cost of food, even if it is pre-packaged, frozen meals. If the person has no medical condition that requires low calorie or fat-free meals, but just likes a particular frozen dinner, she or he can use personal allowance to purchase his or her choice of meals.

Personal allowance is **NOT** to be used for an outing when the person has no choice. For example, if everyone living in a residence has to go on a trip to the ballpark, personal allowance may not be used. However, if a person chooses to participate in an activity that fits his or her individual interests or involves him or her in the community, then personal allowance can be used.

The following are some of the "entertainment" questions and answers from personal allowance training sessions:

Q1: A person attends public school, and his or her class is going on a trip, e.g., pumpkin picking. The person has been asked to pay a fee for the activity. Is it appropriate to use personal allowance funds?

A1: Personal allowance is an appropriate source for activity fees when a child is attending school, unless the activity is listed in the person's individualized education plan (IEP). If someone goes to bingo, on a scout outing or a field trip organized by the garden club, personal allowance can be used for fees connected with those trips. The sponsoring organization is not required to pick up the cost. Personal allowance should **NOT** be used, however, for activities in day habilitation where the fee is built into the agency rate or for an activity or service required in the individual's ISP.

Q2: If a person wants to dine out and has the ability to request it, can personal allowance be used? If a person cannot express a desire for dining out, is it appropriate to use personal funds?

A2: The guiding rule is the individual's choice. If the person chooses to dine out, and there are no dietary or medical reasons to prevent it, then it is appropriate for that person to use his or her personal allowance to pay for the meal. If the individual is incapable of expressing preferences, then the guiding principles are those of prudence and the person's best interest. Care should be taken to guarantee that there is no

inappropriate use of the individual's funds to pay for dining out. Inappropriate uses are:

- Dining out solely for the ease of the staff
- Spending the person's monies in an unequal manner (e.g. Carlos winds up paying extra to cover the costs of Sam's meal)

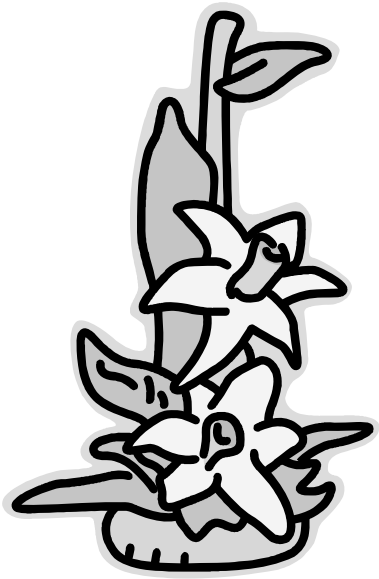
BEST PRACTICE

Anyone who administers personal accounts for individuals must keep the following in mind at all times:

Is this item in the rate my agency receives?
Will the item be used in the programming for the person?
Is the item something that the individual does not want or need?

If the answer is yes to any of these questions, the expenditure is likely to be an inappropriate use of personal allowance.

ROOM DÉCOR



Decorating a person's room is one of many ways to use personal allowance. Décor can be both a focus for community experiences and a way to help a person reflect his or her unique interests and style.

Things to think about when considering using personal allowance for room décor are:

- The person's interests
- His or her favorite color
- The types and styles of collectibles he or she has
- His or her participation in sports
- His or her hobbies

Personal allowance can be used to:

- Buy flowers from street vendors
- Start or add to a collection the person can display in his or her personal space, (e.g.: model cars or trains, figurines or baseball caps)
- Show his or her interest in a team or an artist with posters and pennants
- Purchase, enlarge, and frame photos, favorite pictures and artwork, as these can add to each individual's personal story
- Buy a DVD player or VCR for the person's room

Also, keep in mind that when the above purchases are made in the person's neighborhood, then he or she will be seen as a valued customer with purchasing power in the community.

Be sensitive to the person's ethnicity. For example, if a person responds when family or caregivers speak in Spanish, support purchases at stores with Spanish speaking vendors. Have the person shop at neighborhood bodegas.

The following questions about decoration of personal space are from personal allowance training sessions:

Q3: Can personal allowance be used for bedroom furniture?

A3: The residential agency must provide basic furniture. If the person or his or her advocate wants to buy a special item of furniture - so that the bedroom better reflects the person's likes and dislikes - personal allowance may be used. Before buying the item, factor in the cost by reviewing the person's expenditure plan. See if the furniture purchase will negatively affect the person's ability to realize his or her other preferences, interests, and choices throughout the year. When personal allowance is

used to buy furniture, the person should be involved in choosing the item in a community store and take part in the purchase.

Q4: Can personal allowance be used to buy wall hangings, window treatments and/or coordinated bed ensembles?

A4: The residential agency must provide window treatments for privacy. The agency must also provide basic bedding, including sheets, pillowcases and blankets. If the person wants his or her bedroom to show what he or she likes, personal allowance can be used to buy different accessories (e.g.: window coverings, bedspread, sheets or comforter). The person should be involved in choosing the items at a community store and take part in the purchase.

Q5: Can personal allowance be used to buy items for the common space in the residence?

A5: Personal allowance should not be used to decorate common space in the home. It should also not be used for items in the common area that are not dedicated to the person's use.

TRAVEL AND VACATIONS

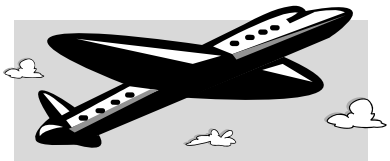
Vacations are a great way to use personal allowance when tailored to the individual's interests. You may want to consider vacations that lead to one-on-one interactions with members of the community. Vacations can also be organized around visits to families and extended family members. Some non-profit travel organizations offer vacation packages customized for people with disabilities. Personal allowance can be used to pay for a trip arranged by one of these companies.

Some of the questions about travel and vacations that have been asked in the past are printed below:

Q6: Should individuals be paying for van repairs and snacks out of their personal allowance during a vacation?

A6: Repairs are the responsibility of the owner of the van. Personal allowance can buy snacks if they were chosen and eaten by the individuals.

TRAVEL AND VACATIONS EXAMPLE 1



Rupert and Shawn live in an IRA. They took two short vacations with the agency and incurred expenses that were questioned during an audit. The expenses for the trip were equally divided by the number of people in the van. The expenses included repairs to the van, cab fare to and from the stalled van, tires, a fire extinguisher for the van, a repair to the lift cable on the trailer, oil change, etc. There were also receipts for food and snack items eaten during the ride. Some of the items may be appropriate uses of personal allowance and many others are not appropriate at all. The expenses related to the breakdown and repair of the van are the sole responsibility of the provider. Those expenses must not be shared with or spread among the individuals taking the trip. The snacks that were purchased would only be charged to Shawn and Rupert if they chose the snacks and ate them.

Q7: How are costs split in Family Care when the provider goes with the person on vacation?

A7: Generally, the amount paid by the individual is based on how much that person shares or consumes during the trip.

TRAVEL AND VACATIONS EXAMPLE 2

Carol lives in family care. Her provider, the provider's spouse, their three children and Carol go on a vacation to a theme park in Florida by automobile. The guidelines for appropriate share of costs follow. Carol should pay for her proportionate share of any items shared by all of the travelers. Anything used just by Carol, she pays for herself. Since they are all riding and sharing in the car to Florida, gas, tolls and parking expenses are split proportionally. The provider in this case would pay 5/6 of the costs and Carol 1/6. If they are sharing hotel rooms, the same holds true. If Carol has her own room, however, she pays for the room. Meals depend on the circumstances. Any restaurant meals eaten by Carol on the trip are her responsibility. Meals eaten by the provider and the family are the provider's responsibility. If the group prepares meals together (BBQ, meals in a kitchenette), the provider pays for the cost of the meals for the family and for Carol. For the admission tickets, Carol is only responsible for her ticket. The provider is responsible for tickets for herself and her family members. If Carol wants to buy a souvenir, she pays for the souvenir. The provider is responsible for souvenirs that she or her family wants. If they all rent a boat together, that cost is proportionally shared. If they rent bicycles, then Carol pays for her bike and the provider pays for the bikes used by the provider and the family.

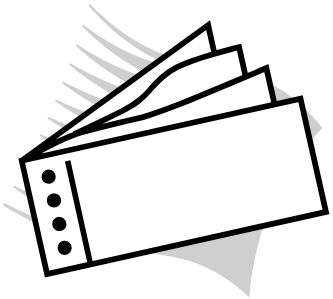
Q8: Can personal allowance be used to pay the expenses for a family member to come visit the person?

A8: Personal allowance can pay the travel expenses of family coming to see the person. You must document that the individual will benefit from seeing the family member. The costs involved must be reasonable and must not preclude the person's normal activities. If at all possible, the family member should pay the travel expenses and then submit receipts for reimbursement. Cash advances should be used only as a last resort.

Q9: What staff expenses can be paid from personal allowance?

A9: For state employees, **no** expenses can be paid from personal allowance monies. For voluntary agency employees, some expenses **may** be paid. Staff salary, benefits or fringe benefits may **not** be paid or supplemented from personal allowance. Out-of-pocket expenses for the voluntary staff can be paid from a person's conserved funds. In the past, allowable expenses have included:

- Companion tickets on transportation
- Admission tickets (this differs from family care)
- Cost of the portion of the hotel room apportioned to the staff



Payment for food and separate hotel rooms have been disallowed in the past. Remember that if the agency is using saved Social Security and/or Supplemental Security Income funds, you must obtain prior approval from Social Security for staff out-of-pocket expenses over $100 per person. See the section on the next page.

If one staff person will be overseeing two or more people on an outing or vacation, the staff out-of-pocket expenses should be divided evenly among all of the individuals.

SOCIAL SECURITY ADMINISTRATION PRIOR APPROVAL

In accordance with OPWDD regulations, conserved personal funds may not be used for the out-of-pocket expenses of staff accompanying an individual on an outing. A policy decision was made to allow two exceptions. If prior approval for large expenditures (i.e., vacation or overnight stays) from the Social Security Administration (SSA) is available, an individual's personal funds may be used to meet staff out-of-pocket expenses. If a staff person volunteers to accompany on an activity and is not "on-duty", personal allowance may be used for the staff out-of-pocket expenses as long as the individual has the ability to make an informed decision. If the situation meets the exception conditions stated above, the agency must follow the process provided below to obtain prior approval from SSA unless the staff out-of-pocket expenses are less than $100.

If it is the payee for a person's Social Security (SSA) or Supplemental Security Income (SSI) benefit, the voluntary agency must obtain written prior approval to use the person's conserved funds from SSA/SSI such funds will be used to pay for group purchases or out-of-pocket staff expenses for accompanying the person on a vacation or outing if the expenses will exceed $100. OPWDD has issued three memoranda explaining the Social Security Administration's prior approval process. These memoranda (dated March 2002, April 2003 and March 2004) are in Appendix E. With the April 2003 memo, there is a sample prior approval form that each agency can modify for their specific needs.

Prior approval requests for use of conserved funds to meet out-of-pocket staff expenses must include the following information:

- The individual's name and Social Security number
- A description of the trip or recreational activity including a list of the expected out-of-pocket expenses for the individual and accompanying staff member(s)
- A statement that the individual's current and foreseeable needs are met, payment for the staff funds will not deplete the individual's funds, and the individual's personal account balance will equal or exceed one month of the individual's full SSA/SSI benefits after the deduction for the trip

Information on prior approval requests for group purchases is contained in the group purchase section.

Printed below are some of the questions and answers about prior approval from previous personal allowance trainings:

Q10: Will the Social Security Administration grant prior approval for a voluntary agency to use an individual's conserved SSA/SSI funds to pay wages and fringe benefits while an employee is accompanying the individual on vacation or an outing?

A10: No, Social Security will only approve payment from conserved funds for an employee's out-of-pocket expenses related to the vacation or outing. Wages and fringe benefits costs remain the responsibility of the agency. In addition, OPWDD regulations prohibit the use of an individual's funds to pay wages and fringe benefits to an agency's employee.

Q11: A person who is unable to travel alone wants to go on vacation. A relative has agreed to go with him or her on vacation. Does the agency have to get Social Security's prior approval to use the person's funds to pay for the relative's out-of-pocket expenses related to the vacation?

A11: If the relative is an employee of the agency, the agency must obtain Social Security's prior approval to use the person's conserved funds. If the relative is not an employee, the agency does not have to obtain Social Security prior approval. OPWDD personal allowance regulations must be followed. The relative should obtain receipts for all expenses and give them to the agency at the end of the trip.

Q12: Two individuals will be accompanied by an agency employee on a vacation. The three will share one hotel room with two beds. A rollaway cot will be used for the third bed at no cost. How should the hotel bill be split?

A12: The bill can be split evenly between the two individuals since there is no extra charge for the third person. If there is an extra charge for a third person, that charge can be spilt between the two individuals since it is an out-of-pocket staff expense. If the total out-of-pocket staff expenses for the trip are expected to exceed $100, the agency must obtain prior approval from Social Security.

Q13: Is the $100 out-of-pocket expense threshold for prior approval a daily amount?

A13: No, the $100 level is for the entire outing whether it is an afternoon outing or a month's vacation.

Q14: Our agency is the representative payee for several people who live in their own apartments, not in certified settings. Do we have to obtain Social Security's prior approval to spend their funds on out-of-pocket staff expenses?

A14: The Social Security prior approval process only applies to certified living arrangements. Since the people live in apartments that are not congregate care settings, the prior approval process for out-of-pocket staff expenses is not necessary. However, the agency has to follow Social Security requirements for representative payees. **Since the individuals do not reside in certified settings, the OPWDD personal allowance regulations are not applicable.**

Q15: How much time should the agency allow for the processing of the SSA prior approval request?

A15: The prior approval request should be sent to the local Social Security field office at least four to six weeks before the trip.

Q16: Should a copy of the prior approval request be sent to OPWDD when the request is sent to the Social Security office?

A16: OPWDD does not have to receive a copy of the prior approval request. If the voluntary agency has trouble with the Social Security office concerning the prior approval request, contact the local OPWDD Revenue Support Field Office (RSFO) Office Manager for assistance. Contact information for the RSFOs is on the Internet at www.opwdd.ny.gov/document/medicaid/hp_rsfo.jsp

Q17: A person received a Social Security retroactive lump sum benefit that must be spent within nine months. The person wants to take a short trip to Florida and must be accompanied by an agency employee. The out-of-pocket staff expenses will exceed $100. Does the agency have to request prior approval?

A17: Yes, the agency must request prior approval.

Q18: An individual is her own payee for her SSA/SSI benefits. She wants to take a vacation and will need to be accompanied by a staff person from the voluntary agency that operates the VOIRA where she lives. Does the agency need to obtain prior approval for the out-of-pocket staff expenses?

A18: No, the agency does not have to request Social Security's prior approval since the individual is her own payee.

Q19: An individual is employed and has conserved funds from his wages. The voluntary agency is the representative payee for his SSA/SSI benefits. The conserved funds from wages are held in the same bank account as the conserved SSA/SSI funds. The bulk of the conserved funds are from wages. Does the agency have to request Social Security's prior approval to use a portion of the conserved funds for the out-of-pocket staff expenses when a staff person accompanies the individual on vacation?

A19: The agency will have to obtain prior approval since the funds are commingled. If the conserved funds from wages were in a separate bank account and those funds would be used to pay for the entire trip, the agency would not have to request prior approval.

Q20: An individual enjoys going to casinos to gamble. He wants to go to Atlantic City for his vacation and plans to gamble. The voluntary agency requested Social

Security's prior approval for this trip, but the request was denied. Does the agency have any recourse?

A20: The agency should send a letter to Social Security to explain why the trip is in the individual's best interest and request that Social Security reconsider the decision.

Q21: An individual has saved for a long time to take a vacation. She has saved enough to meet her costs for the trip as well as the out-of-pocket staff expenses. She will not have at least a full month of benefits in her personal account once the trip expenses are deducted. She is beginning to have health issues that may eventually prevent her from taking her dream vacation. Will Social Security deny the agency's prior approval request?

A21: There is a chance that Social Security will deny the request. The agency should provide Social Security with the information about the trip and an explanation of the importance of the vacation to the individual. The statement should include the information that her health is getting worse and that the trip is in her best interests. The agency might also promise to meet any unmet needs that occur prior to the individual accumulating additional conserved funds.

GIFT GIVING

Gift giving is a normal part of life. While the people we serve may want to participate in gift giving like everyone else around them, care must be taken to protect their interests.

Use of personal allowance depends on the person's ability to understand the purchase. If the person can't participate in the decision and can't consent to the gift, then his or her personal allowance money can't be used. As people communicate their assent, consent, enjoyment, and participation in various ways, staff should be aware of the individual's abilities.

Gift giving should also be included in the person's expenditure plan. When writing the expenditure plan, carefully consider the reasonable value of the anticipated gifts. There is no specific dollar amount to define "reasonable" in terms of gift giving. It depends on many factors. By involving the planning team, the individual can receive appropriate guidance on gift giving.

In previous personal allowance classes, the following questions about gift giving have been asked and answered.

Q22: Can personal allowance to be used to buy gifts for family members? What if the individual is unable to share in the decision making process?

A22: Personal allowance can be used to buy gifts for family members if the person is involved in the decision. The person must be able to give meaningful consent regarding the use of his or her personal money for a gift. Sometimes family members will ask for personal allowance to be used for presents for relatives, even when the individual can't participate in the decision. The family might give the staff a shopping list of gifts for siblings or parents, and say the person would have wanted this had she or he not been disabled. More often than not, the family is actively involved with the individual. Staff members don't want to alienate the family by rejecting the request. Staff may also believe it is inappropriate to make the purchases. The individual **must** be able to take part in the decision process in a constructive manner. If the person isn't involved in the gift giving process and can't make a decision about the spending of his or her funds, then the individual's personal allowance money must not be used for gifts.

If the family member is a state employee, the individual's funds may be used to purchase a gift as long as the family member is involved in the individual's life and the individual is able to take part in the decision process.

Q23: In family care, may personal allowance be used for gifts?

A23: Yes, provided the service coordinator or advocate is involved in the process; the provider (or their family) does not solicit the gift; the gift is not intended to gain favor with the provider; **and the provider is not a state employee.**

Some residents in family care want to give presents to the provider and their family members on birthdays and on holidays. Gift giving is a normal practice in a family; thus in family care it is not prohibited. But, because it may appear that there is undue influence of the individuals in family care, gift giving by residents to providers is not to be actively encouraged:

- The individual must not try to curry favor with the provider at the expense of others in the home
- The provider must not ask for a gift or imply one would please him or her
- The person has to be able to make the decision to give a present
- The service coordinator or advocate must be involved with the person in planning for the gift

No gift plan is to be implemented without input from the service coordinator or advocate. This is to protect the family care provider against undue and upsetting allegations and to help the individual make informed and reasonable decisions with his or her money. The service coordinator or advocate will help the person decide who will receive gifts and how much to spend. Small, not costly, gifts are allowed when the individual has been in the family care provider's home on a long-term basis.

If a person decides on his or her own to buy a gift for the provider or for a provider's family member, the provider will bring this to the attention of the service coordinator. The service coordinator or advocate, along with appropriate planning team members, will determine what action to take. Although this process appears to complicate the simple and generous act of gift giving, it serves as a guide for appropriate gift giving and protects all involved from unnecessary complications.

Q24: If a long-time staff member is departing or having a baby, may personal allowance be used to buy gifts for the employee?

A24: It depends if the staff member is a state or voluntary employee. Gifts to state employees are strictly **prohibited** by the New York State Public Officer's Law. Gifts to staff at voluntary agencies that are providing services to the person are not encouraged.

GIFT GIVING EXAMPLE

Staff at an SOIRA asked about gifts for departing employees as the residents and staff members have been at the IRA for years without turnover. They have become close friends. A staff person is leaving on maternity leave and an in-house baby shower is planned. The shower would include presents from the residents. Since gifts to state

employees are strictly prohibited by the New York State Public Officer's Law residents cannot give gifts to the state staff person. If this were at a voluntary agency, a gift from an individual to a staff person would be allowed, **IF** all of the following criteria were met:

- The person must be able to participate in the gift giving decision process
- The gift must not have been solicited by the agency or staff member
- The gift is not extravagant
- The gift cannot be intended to curry the favor of one person in care over another

ASSOCIATIONAL LIFE

Personal allowance can be used to promote community involvement via membership in associations. It can be through worship, clubs, societies, or other interest groups. If there is a club that matches the person's interests or preferences, personal allowance can pay for expenses related to those clubs and interests. This includes:

- Membership dues for the organization, including a health club
- Subscriptions to an associated newsletter or periodical
- Donations toward meeting expenses of the organization (for example: coffee and lunch donations)
- Supplies for a craft or hobby – either at a store or another location where supplies might be available
- Classes at a local high school, college, or continuing education program
- Contributions to local causes and associations where people will meet others who share their interest or hobby (e.g. houses of worship, drama club or volunteer fire department)

If a person wants to donate to a charity or organization, he or she must be capable, that is, able to participate in the decision-making process and give consent to the donation. The annual planning for spending should include these charitable donations. Donations must never be made to groups, individuals or organizations that provide services to the person. This includes staff and voluntary agencies.

If a person receives services from an agency and wants to go to a special ticketed event or fundraiser for that agency, he or she can use personal allowance to buy a ticket. The person pays an amount equal to the value he or she will receive. For example, if the ticket price to an event is $50, and $20 is the cost for dinner, the person pays $20. The individual does not receive the $30 tax deduction that donors would receive. His or her ticket should look like everyone else's and he or she should receive the same benefits at the event that everyone else does.

Q25: A voluntary agency has an annual fundraiser and sells tickets with a chance to win up to $4,000. Some individuals at the agency help plan and work on this event. They want to buy tickets and attend the fundraiser. They enjoy the chance to win. Aren't they being denied freedom of choice by only letting them buy tickets for the value they receive?

A25: While people have a choice about how they spend their personal allowance monies, the agency is still required to help develop responsible spending habits for each individual. The person's level of understanding and abilities will influence how deeply the agency is involved. The person has to choose to buy the ticket, since it is a fundraiser for the agency. The agency cannot influence the person to buy a ticket in any manner that would result in a conflict of interest for either the agency or the person.

Q26: Can personal allowance be used to pay a personal trainer?

A26: This is an acceptable use of personal funds as long as it is the person's choice and is not medically necessary.

ASSOCIATIONAL LIFE EXAMPLE

Jim's aunt is his correspondent. Over several visits, she noticed that his feet were swollen. She told Jim's MSC that she thought it was partly because Jim wasn't getting enough exercise. Jim's aunt wanted to know if a personal trainer would help Jim exercise more. She also wanted to know if his personal allowance could pay for the trainer. Jim, his aunt and his MSC talked about him exercising with someone who could make working out more fun and teach him about the equipment at the local YMCA. They looked at his expenditure plan and decided that Jim had enough funds to pay for a trainer once a week and still do the other activities in his plan. Jim and his MSC found a trainer that he liked and he is now working out more. Jim's MSC and his residence staff are also making sure he is getting appropriate medical care for his swollen feet.

TRANSPORTATION

Transportation is all about getting people to and from work, recreational sites, family visits and other events and activities in the community. Normally, the day or residential habilitation program is responsible for transportation, but what about situations outside of the ordinary? When can personal allowance be used and when can't it be used? For the most part, personal allowance **cannot** be used for transportation. Programs must pay the transportation expenses related to the program activities.

If the person works, personal allowance can be complicated because of the earned income disregard (see Earned Income, page 45). There is basically no reason for transportation costs to come out of personal allowance except for transportation to and from work.

Another aspect of transportation involves the person's moving expenses. If the person lives in a voluntary agency operated or state operated living arrangement, moving expenses are the responsibility of the agency or DDSO that the person is leaving. Costs associated with moves between living arrangements that are within the jurisdiction of an agency or DDSO are the responsibility of the agency or DDSO. If the person lives in his or her own home, moving expenses to another independent living arrangement are his or her responsibility.

Some of the rules and situations regarding transportation issues are addressed below.

Q27: If the part of the wages that is included in personal allowance can't cover all of the work-related transportation costs, can the person pay the remainder from other sources of personal allowance?

A27: No, it is the responsibility of the residential provider to pay for the excess costs.

The work related exemption of the wages that is part of the personal allowance ($65 plus ½ the remaining gross amount) is to be used for work-related expenses, such as uniforms and transportation. If that amount is insufficient to cover travel to and from work on public transportation, non-wage personal allowance funds must not be used. By regulation, these excess expenses are the responsibility of the residential provider. If the person is living in family care, then it is the sponsoring agency's responsibility to pay the excess transportation costs. If transportation to and from the program is built into the agency rate or is covered by Medicaid, these must be used before personal allowance. See page 5 for what cannot be purchased with personal allowance funds.

Q28: Can personal allowance be used if the person wants to take a taxi to work instead of public transportation? What if this will be more than the amount of the work-related exemption?

A28: Yes, personal allowance can be used, but only after the agency has sought other alternatives to help reduce the cost.

TRANSPORTATION EXAMPLE 1

Anthony works at a supportive site about five miles from his residence. Public transportation is available and he is capable enough to ride the bus. However, he does not like the bus and wants to take a taxi. The cost of the car service or taxi may be more than the work-related exemption portion of Anthony's wages. His residential provider argues that this is a matter of choice and, therefore, Anthony's responsibility. Anthony's correspondent says that the agency is responsible for the cost since Anthony is going to a supportive site.

In this situation, Anthony can pay for his choice of taxi out of his personal allowance, because public transportation is available and he is opting to use alternate transportation. The agency should try to find an alternative, such as a volunteer service or car-pooling, to help cut costs.

The answer for Anthony is different from the situation in question 27. Anthony is able to make the trip via bus but chooses to take a taxi instead. His disability has nothing to with his preference for a taxi.

However, if Anthony is unable to take public transportation **because** of his disability, he may be eligible for the costs of transportation to be counted as an Impairment Related Work Expense (IRWE) for Social Security Disability Insurance (SSDI), Supplemental Security Income (SSI), or Medicaid eligibility. The Social Security Administration would make the determination if an individual wanted transportation costs considered as an IRWE for SSDI or SSI benefits and the local department of Social Services (LDSS) would make the decision for Medicaid applicants/recipients. The individual must pay these costs to qualify as an IRWE. If SSA or the LDSS decided that the costs were not related to the person's disability and/or getting to and from work, the provider must cover the cost beyond the earned income disregard.

Q29: Can personal allowance be used for transportation repairs?

A29: Only if the person owns the vehicle.

TRANSPORTATION EXAMPLE 2

Jenny lives in a VOIRA and the agency handles her personal allowance. Her mother bought a van for the sole purpose of transporting her. The van's air conditioning broke and it will cost about $850 to repair it. According to the case manager, Jenny is willing to pay for the repairs and has enough money. She understands what money is and is capable of deciding what to buy. As much as Jenny may want to help her mother, it is inappropriate to use personal allowance to pay for the van repair because it is the responsibility of the person who holds title to the vehicle to pay for any repairs.

The following two questions and answers address moving expenses:

Q30: Who pays the moving expenses for a person from one living arrangement to another?

A30: The DDSO or agency must pay as the move is usually to place the person into a more suitable living arrangement. If no agency personnel are available to move belongings and the person has surplus funds, it is still not appropriate for the person's money to be used to pay for the move. As most moves are the result of a decision by a planning team, the agency must pay for the move.

Q31: Who pays for the moving expenses of a person transferring from one agency to another?

A31: The agency that the person is leaving is responsible for moving the person and belongings to the new agency. However, if the person is living **independently** in his or her own home or apartment and makes a **choice** to move, then personal monies may pay for moving expenses. For example, two individuals could decide to get married and move to a new home together.

CLOTHING

Clothing is one of the ways people express who they are. Each person must have "a clothing supply...which is in good repair and which ensures that he or she is outfitted daily in clean clothing, appropriate to the season, to the occasion, and to his or her age, sex, and size. Appropriate sleepwear is also required". At the very least, an individual must have sleepwear, underwear, a winter coat, and several outfits. Laundry and dry-cleaning costs for clothing must be paid by the agency or Family Care provider.

Note: Personal allowance may be used to dry-clean clothing that was chosen by the person if the item is not included in the person's clothing supply described above. An example of this is a second winter coat.

If there are no other available funds, personal allowance monies may be used to purchase a person's clothing supply, subject to the following restrictions:

- In VOCRs, VOIRAs, and Family Care homes, OPWDD provides semiannual funds for each person for clothing, recreation, and incidental expenses that must be used for clothing before personal allowance monies can be used

  Note: These semiannual funds do not belong to the person, must not appear anywhere in the personal allowance account ledger, and must not be commingled with the person's own funds

- When the person residing in an ICF, CR, IRA, OPWDD certified school for the mentally retarded, specialty hospital, or Family Care home does not have enough personal allowance to buy his or her clothes, the agency is responsible for the purchase of the person's clothing supply

  Note: When determining whether or not a person has enough personal allowance, disregard the personal allowance funds set aside for current and foreseeable future individualized needs.

- In all instances, the last $100 of a person's available personal allowance cannot be spent on his or her clothing supply

When a person shops for clothing using his or her personal allowance, he or she should be involved as much as possible in choosing what clothes to purchase. The person can use his or her personal allowance to buy clothing that is:

- Trendy or fits in with the people in the community
- From a neighborhood store where the person can interact with other members of the local community

- Indicative of the person's support for a team, a hobby, or other individual preferences
- For a special event, such as a family reunion, funeral, or party
- From a shop that expresses the person's ethnic, linguistic, and cultural heritage

CLOTHING EXAMPLE 1

If a person wants to purchase a pair of designer brand jeans from a local boutique, he or she can use personal allowance to buy the jeans. In this instance, the personal expenditure plan should show that the person prefers designer jeans.

Personal allowance can also be used for magazines, sunglasses, jewelry, hair or nail accessories, or other items that will support the person's own style and keep him or her looking good whenever he or she goes out.

Printed below is an example of a use of personal allowance for dry cleaning and a question from previous trainings.

CLOTHING EXAMPLE 2

Debbie is 25 years old and lives in a Voluntary Operated Individualized Residential Alternative (VOIRA). Her parents and sisters live nearby and visit the VOIRA often. Debbie and her sisters like clothes and she enjoys shopping with them to search out the best bargains. She often comes back to the residence with a new purchase to show off. Last week Debbie used her personal allowance to buy a new winter coat for herself. The new wool coat fits her well and is very stylish, but it will need to be dry cleaned at the end of winter.

The residence is responsible for the cost of basic clothing for all residents. Since Debbie has enough money to buy some of her clothes, buying a new winter coat is an acceptable use of her personal allowance. The residence is responsible to pay for dry cleaning for clothes the residence bought for an individual as part of the resident's basic clothing. Debbie's personal allowance may be used to pay for dry cleaning for the new winter coat she bought. Debbie chose to buy her coat and it is in addition to the coat that was purchased for her by the residence.

Q32: What is the annual clothing allowance for specialty hospitals, ICFs, IRAs and CRs?

A32: The clothing allowance for ICFs and specialty hospitals is incorporated into the overall rate. The annual clothing allowance for CRs and IRAs is $250. Certified residences must use this money for basic clothing purchases before personal allowance funds can be used. The "clothing allowance" is not exclusively for clothing and can also be spent on items such as cultural events, trips and incidentals. The funds are not the individual's money nor are they counted as personal allowance. The clothing allowance should be spent for the benefit of the individual, but must not be commingled with his or

her personal funds or shown on the ledger card. If the person leaves a provider and all of the allowance has not yet been used for the year, the allowance follows the person to the new provider.

BURIAL PLANNING

As a part of an overall burial planning strategy, a person should consider the establishment of a burial fund, a pre-need burial agreement and the purchase of a life insurance policy to pay for burial expenses. Burial planning can be a part of the person's overall expenditure planning and, if all current and foreseeable needs and wants of the person are being met, it is acceptable to use personal allowance to establish a burial fund, burial agreement, or to purchase burial-related items. Burial planning is, however, one of the lowest priorities for personal allowance because bettering a person's current quality of life is more important.

There are several different ways to plan and save for funeral expenses. The Benefits and Entitlements course conducted by your local Revenue Support Field Office (RSFO) has more information on burial accounts, trusts and planning.

Burial funds are easy to establish. They can be money set aside at the residential agency or in a separate bank account. For it to be an appropriate burial fund, however, the money needs to be clearly identified as such and not commingled with other funds. In general, the residential agency's business office can help set up and add to the burial account. Up to $1,500 in principal (plus accumulated interest) is exempt from Medicaid and SSI asset regulations.

A pre-need burial agreement up to any amount is exempt from asset regulations if the agreement is set up correctly. The agreement can cover all of the details of a person's burial and funeral and is set up with the help of a local funeral home.

Burial funds and trusts should be considered when creating or revising the yearly personal expenditure plan but only after all of the person's other interests have been taken into account. Burial funds and trusts can also serve as a way to keep the person entitled to governmental benefits. Questions from our previous training sessions are printed below.

Q33: Is it acceptable to put personal allowance money into a burial fund?

A33: Yes, but only if it is part of the person's expenditure plan for his or her personal allowance and the person's other wants have been met. Then the remainder can be channeled into a burial fund or agreement.

Q34: Parents who are the representative payee for their child's SSI benefits are using part of the child's monthly personal allowance to buy life insurance. They plan to use the life insurance to cover the costs of the child's burial. The parents are the owners of the policy. The provider staff think that this is improper since it does not benefit the child. The parents claim Social Security said it was okay. Is there something in writing that will prove that the RP is in error?

A34: Essentially, the child is buying life insurance to benefit the parents upon the child's death. According to Social Security regulations, a person's current needs take priority over future considerations. The regulations allow the purchase of insurance and burial polices, as long as the purchase does not greatly reduce available funds. Furthermore, purchases may not have the appearance of a conflict of interest. The life insurance may be improper if the child's current needs are being sacrificed, the funds are being reduced, or there is a possible conflict of interest. The case should be referred to the local Social Security Administration office along with the pertinent details. The local Social Security office should be asked to advise the payee as to the proper use of the funds.

PERSONAL RESTITUTION FOR DAMAGES

Sometimes a person damages items that belong to someone else. Personal allowance can be used to help pay for damages, but only under all of the following conditions:

- The person has to understand why she or he is using personal allowance to pay for the damages
- The person has to agree to pay for the damages
- The person has to understand that he or she will have less money available for spending if personal allowance pays for the damages
- The person's planning team, advocate, residence staff, service coordinator and others involved in his or her care must talk about the situation and agree to use personal allowance for restitution
- The person's representative payee must give written agreement for the person's allowance to be used for restitution
- Each residence has a committee responsible for protecting the residents' rights, and this committee, or part thereof, must also agree that personal allowance may be used.

PERSONAL RESTITUTION FOR DAMAGES EXAMPLE

Stefan lives in a VOIRA. He has an older brother named Jamal who takes him skateboarding at a nearby terrain park. Stefan is athletic and aggressive when boarding. He likes to be able to keep up with his brother and learn new tricks.

One afternoon when Jamal came to take him skateboarding, Stefan discovered that his board was cracked and couldn't be fixed that day. Not wanting to miss a chance to be with his brother, Stefan borrowed a skateboard from another resident. While using the board to do tricks at the park, Stefan crashed and broke the rear wheel assembly.

When he returned to the VOIRA later that day, Stefan was sorry that he had broken his housemate's board. Stefan offered to pay to have the board fixed or replaced at a nearby repair shop. All of the people involved in Stefan's care had to agree that he could use his personal allowance to pay for the board. Stefan has to understand that paying for the board means that he won't have money for certain things for the rest of the month. Both his representative payee and the committee for the residence also have to agree that Stefan's personal allowance can be used.

GROUP PURCHASES

Group purchases are usually made when most of the people in a certified residence want to buy a common use item to share. Group purchases have been used to buy large screen TVs, DVD players and sewing machines. The representative payee or agency handling personal allowance must follow many requirements before using personal allowance for group purchases. Failure to follow these requirements could result in the agency being forced to make restitution to the people who bought the item. The use of group purchases is discouraged by OPWDD, but in brief, here are the rules:

- Your local Social Security field office will need to approve any decision to pool the personal funds of several beneficiaries to purchase an item that will benefit the group if any portion of the personal funds used for the purchase are from Social Security or SSI benefits

NOTE: You will need to make this request in writing and have it approved before spending the group's money. If the purchase is a group trip, refer to the memos from March 2002, April 2003, March 2004 and form titled "Sample Prior Approval Request" in Appendix E. This form can be modified by each agency for its use.

- The group purchase must meet the common needs of the entire group (not just a few members of the group), the item must meet a specific need of each person in the group, and it should help to enhance each person's life in the residence

- The cost of the item must be divided among the purchasers in proportion to their use of the item

- Everyone in the group must be able to participate in the decision making process and be willing to have his or her funds used for such a purpose

- Everyone participating in the group purchase must have a balance in his or her account equal to at least two months worth of benefits after the purchase

NOTE: Social Security may, at its discretion, waive the two-month accumulation of benefits requirement.

- If a person has unmet needs, he or she should not participate in the group purchase

- If the individual's personal allowance is needed for something else that is more important, the person should not participate in the group purchase
- Any person involved in the group purchase should not be expected to leave the residence in the near future and if he or she is planning to move, the person must

be able to benefit from the purchase to an extent at least equal to the value of his or her contribution

NOTE: If a person moves unexpectedly, the representative payee should reimburse the person's share

- The item cannot be something that the residence operator, Medicaid, Medicare, or any other service provider should be supplying

Don't forget to document that all of the provisions above have been met.

Reprinted below are some questions and answers about group purchases:

Q35: If an item is a result of a group purchase and needs repair, must the entire group pay for the repair? If someone objects to the charge for the repair, does that mean that it can't be repaired?

A35: It depends on the circumstances. Generally, if someone objects to the repair and will not use the item, then she or he cannot be coerced into helping to pay for the repair. The rest of the group, should they so desire, can share the cost of the repair among themselves.

Q36: If a participant in a group purchase is moving, how is the value of the item determined? How can the person be reimbursed for his or her share of the cost?

A36: It depends upon the timing of the purchase and the person's move from the residence. At the time of the group purchase, if it is known that the person is moving, she or he should be reimbursed his or her share. The best way to handle this would be to not include the person in the group purchase if the person is moving soon. For older items (and this is not required), staff can research the current value of the item and reimburse the proportionate value to the person.

Q37: Our agency runs an IRA. Three or four of the individuals there want to pool their funds to subscribe to an expensive cable channel for sporting events. Do we have to get prior approval from Social Security?

A37: Yes, your agency will have to get prior approval for the group purchase if the agency is the representative payee for any person in the group. This is a one-time request. While the subscription is ongoing, the agency does not have to request prior approval on a monthly or annual basis. If the individuals want to subscribe to additional premium channels after the first subscription is in place, the agency will have to submit another request for prior approval.

When prior approval for a group purchase is requested, Social Security will need to know that each participant will be in the same residence for the foreseeable future.

Social Security will also need to know that each participant is interested and will benefit equally from the purchase.

OTHER INFLUENCES ON PERSONAL NEEDS ALLOWANCE

SOCIAL SECURITY PAYMENTS AND OVERPAYMENTS

The person you care for may receive a lump sum check from Social Security for benefits that should have been paid before. Sometimes Social Security will request a repayment because the person received too much money. Either way, dealing with over and underpayments is complicated by the fact that one must follow Social Security and Medicaid rules, as well as OPWDD policies. Revenue Support offers a course entitled “Benefits and Entitlements” which briefly covers lump sum payments and underpayments.

Retroactive SSI and Social Security benefits are excluded by Medicaid and SSI as a resource for nine months after the month in which the lump sum check is received. The person can spend the retroactive payment during this period. If the sum is too large to spend during the nine months of exemption, Revenue Support encourages the use of First Party Payback Trusts with provision for the person's supplemental needs (SNT). This legal device will protect the money while still enabling the person to have access to the money for personal wants during the person’s lifetime. More about trusts and burial agreements can be found in the booklet “Planning for the Future”, available from your local RSFO. After the nine months are over, the remaining funds from the lump sum count as an available resource. Like any other resource, it must be reported to SSI and Medicaid if having it puts the person over the asset limit for either program.

In the month that the retroactive benefit is received, how it is handled depends on what type of a benefit it is.

Social Security benefits are countable income during month of receipt. The agency must give the regular personal allowance for the month and bill the regular rent. A retroactive lump sum must be reported to Medicaid as income for the month. If the person owed the agency money from previous months, the agency needs prior approval from Social Security before paying itself a debt.

SSI retroactive payments are not countable income in the month of receipt. This means that the agency cannot bill the lump sum, except in one situation. If the agency had filed for SSI recently and was not billing while waiting for the SSI payments to start, the agency could bill the normal room and care for each of the months from the date of the SSI application to the start of the standard benefit. The agency must make sure that the person’s personal allowance for that period of time is set aside before any billing can be done.

Q38: Can personal allowance be used to repay an SSI overpayment?

A38: Yes, accumulated personal allowance monies can be used to make the payment. The person must, however, receive his or her full monthly personal allowance before the repayment is made. The repayment must also not affect the person's current or foreseeable personal needs. Social Security rules also require that the person who is repaying the funds be the person who is responsible for the overpayment. In other words, if a previous RP was responsible for the overpayment or Social Security made an error, you should appeal. You can also request a waiver of the overpayment. It is suggested that you request the waiver before using conserved funds to repay.

EARNED INCOME

The DDSO or agency director is sometimes the representative payee for people who earn income from sheltered workshops, supportive employment or other jobs. If the person is her or his own payee for wages, the agency's role is to help the person manage money. There should be documentation in the file that the money management has been discussed.

If the DDSO or agency is the representative payee for Social Security, it will have to report those wages to the Social Security Administration.

If the person doesn't want to share the amount of his or her earnings with the agency, this can create many problems. The agency will not be able to report to Social Security as required. It may also not be able to properly calculate the person's allowance. If this is the case, try to obtain the information directly from the employer, although a release may be needed to do this. No matter the situation, document any problems and that money management was discussed.

Earned income exclusion: If the person works, Social Security and Medicaid don't count the first $65 of the person's monthly gross wages. If the person earns over $65, half of the rest of the gross wages also isn't counted. This exclusion is supposed to pay for work related expenses such as lunch at work, taxes, union dues, uniforms and transportation. For example, if the person earns $125 per month, the initial $65 is excluded and ½ of the remaining $60 is excluded. The person has an earned income exclusion of $95. See the calculations section of the manual for further examples.

The following questions assume that it has been determined and documented that these individuals are not capable of handling their own funds. If the person is his or her own payee, there must be documentation in his or her file.

Q39: Some people receive their wages directly. What is the agency's responsibility to help them by obtaining their wages, depositing the monies into their accounts, paying room and board and providing personal allowance?

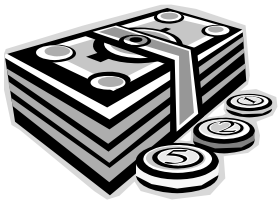
A39: Regulations require the agency to help the person as needed in managing his or her money. (See Sections 633 and 635 of NYCRR in Appendix A for details on the agency's responsibility as a representative payee.)

Q40: What are the program's obligations to document the wages the individual receives directly? Should it be deposited in the home ledger and documented in the same manner as personal allowance in the homes?

A40: The agency must document the income received by the individual that passes through the agency. For wages that the person receives directly, no documentation is required. The documentation for any sort of income that comes into the agency's hands

may be in the form of a deposit in the home ledger as mentioned. However, if the agency is the representative payee for the individuals' Social Security or Supplemental Security Income benefit, the agency has reporting responsibilities under SSA policies and regulations. This would necessitate some form of documentation regarding the amount reported to the Social Security Administration.

Q41: If the individual's benefit level was reduced because of earned income and he or she kept the wages, should the full personal allowance still be paid?



A41: The person must receive the full amount of personal allowance each month. However, there is no requirement that the allowance has to come from unearned benefits. It can come from any source, including wages.

Q42: Is there a hierarchy of sources for personal allowance? Does it matter if an individual gets the monthly personal allowance from wages or other income, rather than Social Security?

A42: This is particularly relevant when agencies have documentation of wages, but the person doesn't use his or her wages to help with the monthly cost of care. As long as the individual receives his or her full personal allowance each month (or has access to it), it does not matter which source of income actually provides the personal allowance. The provider must maintain an accounting system that records the individual's sources of income. The provider must also document that the person received the correct personal allowance. The accounting system must show all earned income and the calculation of the work related exempt wages.

BEST PRACTICE

It is critical that personal allowance be separated from unearned income at the beginning of the month and set off to the side. During the month, if the person asks for that money, the agency has to give it to him or her. At the end of the month when the agency has the wage report, if the personal allowance is still there, then the agency can use it as an offset to the countable income from the wages.

Q43: What are our options for people who are earning but do not pay rent to the family caretaker? Can we have them repay a voucher[2] from wages?

[2] Vouchering is when the state provides funds to cover the cost of care for a person without income. This program is only valid in OPWDD operated or sponsored Family Care programs.

A43: If there is income left over after setting aside the full personal allowance and current provider payment for the month, then the extra money may be used for the repayment of the voucher.

Q44: The state is vouchering most of the cost of a person who is in Family Care. She does not qualify for Social Security or SSI. She has a job with enough income to pay the Family Care provider a portion of the monthly charges after her personal allowance is given. The person has not paid her share for the past several months. The state has to voucher her portion of the payment to the provider. We would like to require the person to repay the vouchers out of future wages. Another concern is that staff has been told in the past that OPWDD individuals cannot, because of their disability, be held financially responsible for their actions. What can we do?

A44: There are some concerns about this proposal. It might conflict with the regulations about the use of personal funds. Any payment the person makes above the budgeted amount would have to come from the allowance portion of her wages. Furthermore, using personal allowance for restitution is only allowed when the person has caused damage. There is no damage in this case. If a person has enough income or resources, and has not been declared incompetent, she is legally liable for her financial support. However, if you went to court to try to legally recover the voucher, your case would probably be denied. This is because the person depends on needs-based supports (Medicaid). The agency should address the person's behavior by training and counseling. You may want to think about moving the person into a shared or into her own apartment. This may help to teach the person greater responsibility and accountability.

Q45: Can a person be forced to direct deposit outside earnings and then receive only the amount that the treatment team has determined he or she can handle?

A45: The agency is required to help the person when she or he is incapable of handling his or her own funds. That assistance doesn't allow the agency to force the individual to do particular things, such as direct deposit, with his or her money. The best form of assistance would be to teach the person proper handling of money and responsibility for paying debts and obligations.

Q46: Can an employed individual use personal allowance funds to pay the premiums on Third Party Health Insurance coverage? Does it make a difference if the person receives Medicaid, Social Security or just wages?

A46: Third Party Insurance premiums can be paid from the Individual's work related expense funds. In some instances, local Social Services district may pay for the premium if TPHI coverage will benefit the local district. If the individual is a Medicaid recipient, the agency should help the individual report the premiums to the local Department of Social Services and request that the person be reimbursed for the TPHI premium.

AGENCY RATES

It's not always clear what is covered by the agency rate negotiated with OPWDD and what can be covered by personal allowance. Each agency working with the person will have a list of the services and items covered in its rate, but we've printed some of the most frequently asked questions below. One of the largest areas of confusion is medical expenses.

MEDICAL EXPENSES

Intermediate care facilities (ICFs), community residences (CRs), OPWDD certified schools for the mentally retarded, specialty hospitals, and sponsoring agencies of family care homes are responsible for all necessary medical expenses not covered by Medicaid, Medicare or third party health insurance for individuals.

Although personal allowance expenditures should reflect the person's preferences, that rule is secondary if a specific prohibition appears elsewhere in the regulations. Regulations apply when the agency is the payee or has been asked to manage the personal allowance by the payee. These regulations do not apply to outside payees (e.g., a relative) or to people who are their own payees.

Q47: One of the residents in our CR (community residence) is enrolled in the waiver. Medicaid will only pay for a doctor for an office visit, which does not cover the cost of her annual physical. Can personal allowance be used to pay for the physical?

A47: No, the agency must pay for any necessary medical, dental or clinical services not paid by Medicare, private health insurance or Medicaid. When the agency is also the representative payee, the agency is prohibited by state regulation from using personal allowance for medical expenses, even with the person's permission. This protects the person's assets from abuse. The agency's rate for supplies and services covers necessary medical, dental and clinical services. It is a Class A misdemeanor to use personal allowance to pay for services covered in the rate.

EXCEPTION: When the individual is his or her **own** payee and is exercising free choice. See the questions below.

Q48: An individual enrolled himself in a Medicaid HMO-Managed Care program with co-payments. Is he responsible for the Medicaid co-payments on needed medical apparatuses?

A48: If the agency is managing the person's allowance, his personal funds can't be used to pay the Medicaid co-payments. The agency is responsible for the co-payments

as medical expenses are part of the negotiated rate. If the person handles his own funds and made his own free choice decision to join the HMO, then he is free to pay the co-payments himself.

Q49: A person receiving services from our agency works and receives no unearned benefits. She has third party health insurance and pays the premium out of the work-related exemption portion of her wages. Can her personal allowance be used to pay the pharmaceutical co-payment?

A49: The pharmaceutical co-pay is a medical expense and not a work related expense. As such, it is inappropriate for her personal allowance to pay it. Instead, the agency must pay this expense.

Q50: Can personal allowance funds be used for prescribed vitamins?

A50: If Medicaid won't pay for a prescription, personal allowance funds can't be used either. If the individual wants to take over-the-counter vitamins that have not been prescribed, she or he is allowed to use personal allowance funds to pay for them.

Q51: Medicaid will not pay for a prescription for dermatological cream. Can personal allowance monies be used?

A51: No, personal allowance can't be used if Medicaid won't pay for a prescription. Regulations state that the provider must pay for all necessary medical, dental and clinical supplies and services not covered by Medicaid. Whether or not the individual is a Medicaid recipient doesn't matter. The agency's rate includes necessary medical and dental expenses. The sponsoring agency is responsible for the cost of the prescription for family care individuals.

Q52: If an individual continually breaks his or her eyeglasses, can personal allowance funds be used for replacement glasses?

A52: If Medicaid will not pay for the replacement glasses, personal funds can't be used to pay for the replacement glasses either. The rationale is the same as the question above.

Q53: Medicaid will only pay for limited styles of eyeglass frames. If the individual selects a different pair of frames, can personal allowance be used to pay for his or her choice of frames?

A53: Personal allowance can't be used for any medically needed service or item not paid by Medicaid, Medicare or a third party health insurance. While in previous years, there were opticians who would bill Medicaid for the basic frame and charge the person the difference for the fancier frames from a supplier, this is no longer allowed. Medicaid should be used to pay for a pair of glasses since the glasses are medically necessary.

If the individual requires separate glasses for reading and distance, Medicaid should pay for a second pair. If the individual chooses to have an additional pair of glasses, the individual's funds may be used as to pay for the additional pair since it is not medically necessary to have a second pair of glasses with the same prescription.

Q54: One of our residents has extreme difficulty with dentists. He found a dentist he is comfortable with, but this dentist doesn't take Medicaid. Since there is a dentist in the community who accepts Medicaid, the use of the other dentist is a matter of choice. Can the person pay for the dentist with personal allowance monies?

A54: If the agency manages his personal allowance funds, because they are the payee or because an external payee asked them to, those funds can't be used for medical expenses that Medicaid, Medicare or other insurance won't pay. This is regardless of the issue of individual choice.

Q55: Who should pay for a dental apparatus called a "bite guard" which is not covered by Medicaid?

A55: Regulations require that all necessary medical and dental supplies and services not covered by Medicaid be paid for by the provider. Since the bite guard is a dental apparatus, it is paid for by the agency.

Q56: The advocate/correspondent of a person missing a tooth would like him to get a replacement dental bridge. Medicaid considers the bridge purely cosmetic and will not cover the cost. He has enough in his personal account that the bridge's $400 cost will not negatively impact ongoing needs. Can personal allowance be used?

A56: Before using personal allowance funds for the bridge, the provider should make every effort to prove that replacing the lost tooth is a medical necessity. If the tooth is not replaced, then the remaining teeth may shift, causing eating and nutritional problems. The agency must document to Medicaid that the procedure is medically necessary. If Medicaid denies the procedure or appliance, the agency should appeal the decision. If the appeal fails, the provider must pay for the appliance or procedure in all cases of medical necessity. If the appeal decides that the procedure is <u>purely</u> for cosmetic purposes, document this in the case record. In this instance, as long as the correspondent or advocate approves, the person's funds can be used based on the request and the available funds.

IMPORTANT EXCEPTIONS

The 2011 resource level for Medicaid is $13,800.00 effective 01/01/2011. If the person is ineligible for Medicaid only because his/her countable resources exceed the resource level, the excess amount of the person's accumulated personal allowance monies may be spent on medical bills. Once the individual's countable resources are reduced to the Medicaid resource level, this use of the person's personal funds must end. Keep receipts and documentation for all of these expenses as Medicaid will conduct a resource review before accepting the person. Contact the local Medicaid district for further information.

Excess countable **income** can be used for medical bills (e.g., Medicaid spenddown) because it is not personal allowance. Based on a written agreement, a person in a supportive CR or individualized residential alternative (IRA) may use excess countable income for medical expenses. Once the person has met the Medicaid spenddown, Medicaid should pay for all other medical expenses for the month. If the person receives a medical service that is not reimbursable by Medicaid **and** has already met the Medicaid spenddown, the agency/facility is responsible for paying for the service. NOTE: Detailed information regarding Medicaid spenddown is provided in the Benefits and Entitlement training course.

The current resource level for SSI is $2,000. If the person is ineligible for SSI only because his/her countable resources exceed the resource level, the excess amount of the person's accumulated personal allowance monies may be spent on medical bills. Once the individual's countable resources are reduced to the SSI resource level, this use of the person's funds must end. If the person's SSI ineligibility is a result of excess income or failure to meet other eligibility criteria, use of countable resources for medical expenses should stop when the resources are reduced to the Medicaid resource level.

Q57: If the agency is representative payee, but the family takes the individual to a doctor who does not accept Medicaid, who pays the doctor's bill?

A57: Absent the agency's prior agreement, the family is responsible for the bill.

Q58: Stacey recently received $25,900 as a retroactive lump sum, which is exempt from the SSI and Medicaid resource standards for nine months following the month of receipt. These funds may be considered accrued personal allowance funds. Some of the monies have been spent, but her total assets are still in excess of the Medicaid resource level. The agency director is the representative payee. Stacey was admitted to an outside hospital for a short stay (three days)

and her mother made arrangements for a private duty nurse at the cost of $200 per day without consulting the agency. The mother felt the nurse was necessary to ensure that Stacey was watched closely because she tends to be hyperactive. Medicaid will not pay for the private duty nurse and the mother is requesting that Stacey's assets be used to pay the provider. May her exempt resources be used to pay the $600 due to the nurse? Is the answer different if Stacey wants a private duty nurse?

A58: Stacey's assets can't be used to pay for the private duty nurse. The agency can't use personal allowance funds to pay for medical expenses that aren't covered by Medicaid, Medicare or other health insurance. If the mother was representative payee, she could use the funds to pay for the private duty nurse; or if Stacey was her own payee, she could do so. However, the agency is constrained by both OPWDD regulations and Social Services Law. Stacey's possible preference for a private duty nurse does not override the regulatory and statutory prohibitions that govern the agency's conduct. On the other hand, the agency is under no obligation to pay the bill either. Since the mother hired the nurse, she cannot make the agency pay the bill without the agency's agreement.

OTHER EXPENSES

Q59: In Family Care, who is supposed to supply and pay for toiletry items such as toothbrushes, toothpaste, razors, sanitary napkins, etc.?

A59: This issue must be addressed on a case-by-case basis while applying the very specific regulations. The regulations require that the family care provider pay for toiletry items that are commonly shared within the family. Each family is unique, especially when it comes to toiletries. Some families share one bottle of shampoo; others have separate bottles for each person. Whether or not the individual pays for a particular item depends on what is commonly shared and what is considered a personal item by the family. This does not mean, however, that because a provider chooses to have the individual use his or her own item that the individual should then be paying for that item. For the individual to pay for a toiletry item, he/she must have the capacity to make a choice and actually choose to purchase an item that is different from the one used by the rest of the household. The home liaison/service coordinator must closely monitor these situations.

Q60: An individual attends a day program that teaches cooking every Friday. She is being asked to pay $2 each week for the cost of the materials. A person attends a program that teaches basic hygiene, and he was told to bring a toothbrush or razor, but not the one used daily at home. Are these appropriate uses of personal allowance?

A60: No, the cooking expenses are in the day program's supply expense and it would be inappropriate for the individual's personal allowance funds to be used for this purpose. The same is true with the hygiene items – the day program funds this expense.

Q61: The person's day program is always asking the residence for money for activities. She has almost nothing left in her personal allowance fund. What do we do?

A61: First, determine why the day program is asking for funds. The monies going to the day program should follow all of the personal allowance rules – it should personally benefit the individual; help improve the person's quality of life; and reflect his or her choices. The money must not be used for items in the day program's rate. You may ask the day program to justify the use of the personal allowance before turning over money. If the day program activity is not part of the agency's rate, you may need to revise the person's expenditure plan to take into account the activities that the person wants to do at the day program.

In addition, beginning January 1, 2008, the residential program cannot transfer any personal allowance funds to the day program unless it has procedures in place for handling personal allowance. These include:

- Maintaining a ledger and receipts for each individual for whom the day program is handling any personal allowance money
- Sending a quarterly report to the residential program
- Following the individual's PEP

For example, a DDSO and a day program work together to provide personal allowance during day community outings. The residence withdraws a small sum ($20 or less) from the cash on hand and sends it to the day program. The day program gives a receipt for the cash to the residence. The day program staff keep a ledger of all expenditures, including how the money was used. Every quarter the day program sends a copy of the ledger to the residential program. This arrangement cuts down on the time and paperwork of transferring small specific amounts between the day program and the residence. OPWDD also views this as a more secure arrangement as fewer people handle money each day.

Note: This procedure should only be used for people who are incapable of handling their own funds

Q62: When can personal allowance be used for haircuts and when does the residence have to cover this expense?

A62: If a person lives in an ICF or DC, haircuts are included in the residence rate. If a person lives in an IRA, CR or family care, personal allowance may be used.

Q63: An individual has to pay child support. Can his or her personal allowance funds be used to pay child support?

A63: Yes, the individual's personal allowance may be used to pay child support. The individual's PEP should include the child support.

Q64: An individual was arrested and found guilty of a crime. He was placed on probation for a few years and has to pay a $460 fine. Can his personal allowance be used to pay the fine?

A64: The payment of a fine is an appropriate use of an individual's personal allowance. The individual's PEP should include the fine.

HOW PERSONAL NEEDS ALLOWANCE IS CALCULATED

Up to this point, the focus has been on how personal allowance can be spent by the individual. This section addresses how to calculate the amount that a person receives. The residential agency is responsible for any personal allowance calculations that need to be made. The type of residence in which a person lives determines the statutory minimum personal allowance. The amounts for 2011 are as follows:

Developmental Center (DC) or Intermediate Care Facility (ICF):	$ 35
OPWDD Certified School for the Mentally Retarded	$178
Family Care	$130
Individualized Residential Alternative (IRA) or Community Residence	$150

These amounts will change on a yearly basis. OPWDD posts the latest information at www.opwdd.ny.gov/wt/publications/msc/index.jsp .

Depending on the amount of earned and unearned income, a person may receive more than the statutory amount. The amount of the personal allowance is determined, regardless of the source of income, by using the current amount stated in section 131-o of the Social Services Law, and any and all income exemptions provided for in current regulations governing SSI and Medicaid eligibility and payment. The most common types of income exemptions or income disregards are outlined below.

Note: Personal allowance is always taken out of income first. Personal allowance must be set aside before rent can be charged.

UNEARNED VERSUS EARNED INCOME

Earned income (Supplemental Security Income definition) includes the following:

- Wages from a job, whether in cash or another form
- Net earnings from a business if the person is self-employed
- Payments for services performed in a sheltered workshop or work activities center
- Royalties earned in connection with publication of the individual's work or honoraria received for services rendered

Unearned income is that received from sources other than earned income sources. Unearned income includes Supplemental Security Income (SSI), Social Security benefits, pensions, state disability payments, unemployment benefits, interest income and cash from friends and relatives.

GENERAL INCOME DISREGARD

Anyone with income other than SSI (the person can be in receipt of SSI as well) gets a general income disregard of $20. The first $20 of that income is not counted. It is called a general income disregard because it could be applied to both unearned and earned income. If the person receives both unearned and earned income, the disregard is applied to the unearned income first. If there is any part of the $20 left over after applying the disregard to the unearned income, the rest of the disregard is applied to the earnings. If the person gets SSI and other unearned income, the disregard is applied to the other unearned income. If the person has SSI and earned income, the disregard is applied to the earned income.

EXCEPTION: A person who is subject to chronic care budgeting, such as one who lives in an intermediate care facility, developmental center, specialty hospital, or nursing facility, does not get the $20 general income disregard.

INTEREST AND DIVIDENDS

The treatment of an individual's interest and dividends depends on whether the resource is a countable or excluded resource for Medicaid and SSI. The interest and dividends are excluded income if the resource is countable or if the resource is excluded under a federal statue other than the Social Security Act. If the resource is excluded under the Social Security Act, the interest and dividends are countable income. Although the interest and dividends belong to the individual, the personal allowance calculation does not include interest or dividends.

INTEREST AND DIVIDENDS EXAMPLE

An individual residing in a VOIRA in upstate New York has $2,500 in a bank account. The interest paid by the bank amounts to $5 every month. The individual also has a net SSA benefit of $1,085 per month. He is not eligible for SSI because his gross SSDI benefit is greater than the SSI level. His monthly personal needs allowance for 2011 is $170 ($150 + $20) and the agency collects $915 per month for his cost of care even though the full monthly provider payment is $929 per month. The agency is prohibited from collecting the extra $5 per month from the person's interest payment.

EARNED INCOME EXCLUSION

The earned income exclusion is applied as follows:

- The first $65 of monthly gross earned income
- One-half the amount over $65

CALCULATION EXAMPLES

The following are some real-life examples and calculations. Always include the statutory amount (see page 55) and then apply any income disregards and exclusions.

UNEARNED INCOME ONLY EXAMPLE 1

Debbie lives in a voluntary operated IRA and receives SSI each month. She has no other income. The statutory allowance in an IRA is $150, and since she has no other income, her total monthly personal allowance is $150.

UNEARNED INCOME ONLY EXAMPLE 2

DeShawn lives in a state operated IRA and receives a Social Security check each month. He also receives an SSI check. Since he receives income other than SSI, he gets a general income disregard of $20 added to the statutory allowance for an IRA of $150. His total monthly personal allowance is $170.

UNEARNED INCOME ONLY EXAMPLE 3

Jon lives in a voluntary operated ICF. He gets a monthly check from the Veterans Administration and Social Security also direct deposits a monthly benefit to his account. The statutory allowance for ICFs is $35. Even though he is receiving two benefits, Jon only gets a total monthly personal allowance of $35. This is because the general income disregard doesn't apply to people in ICFs.

EARNED INCOME ONLY EXAMPLE 1

Darryl lives in state operated family care. His wages from the local department store average about $1,865 per month. The statutory allowance in family care is $130 whether or not Darryl has income. Since Darryl works, he gets an income disregard that is applied to his earnings. The calculations for Darryl's allowance are as follows:

Statutory allowance	$ 130.00
Add general income disregard (applied to wages)	20.00
Add the first $65 of gross wages	65.00
Add ½ remaining gross wages {($1865-$20-$65) ÷2}	+ 890.00
Darryl's total monthly personal allowance	**$1105.00**

EARNED INCOME ONLY EXAMPLE 2

T'Keyah lives in a VOIRA. She earns $975 per month at a local college cafeteria. Because T'Keyah works, she receives an earned income disregard to help with work related expenses. The statutory allowance for a person living in a VOIRA is $150.

The statutory allowance	$150.00
Add general income disregard as applied to her wages	20.00
Add first $65 of gross wages	65.00
Add ½ remaining gross wages {($975-$20-$65) ÷2}	+445.00
T'keyah's total monthly personal allowance	**$680.00**

UNEARNED AND EARNED INCOME EXAMPLE 1

Bianca lives in a VOICF. Her father used to work for the post office, so she receives a Civil Service Annuity of $381 per month. She also works in the local workshop, earning $95 per month. The statutory allowance is $35. Since Bianca lives in an ICF, she does not get the general income disregard.

Statutory allowance	$ 35.00
First $65 of gross wages	65.00
Add ½ remaining gross wages {($95-$65) ÷2}	15.00
Bianca's total monthly personal allowance	**$115.00**

UNEARNED AND EARNED INCOME EXAMPLE 2

Tom lives in a SOIRA and earns between $200 and $300 per month. The amount of his SSI payment varies depending on his wages from previous months. In November, Tom earned $215 and received SSI of $487. His statutory personal allowance is $150. The calculations for Tom's allowance are as follows:

The statutory allowance	$150.00
Add general income disregard	20.00
First $65 of gross wages	65.00
Add ½ remaining gross wages {($215-$20-$65) ÷2}	+ 65.00
Tom's total monthly personal allowance	**$300.00**

Because Tom's personal allowance will change every month depending on his SSI and his wages, the amount that he contributes towards his care and maintenance will also change every month.

BLIND & IMPAIRMENT RELATED WORK EXPENSES

The Social Security Administration calculates these disregards when sending the monthly SSI payment. As a result, these expenses will not factor into personal allowance calculations, but you should be aware of them. If you represent someone who has these expenses, you should make sure Social Security knows about the expenses too.

Blind Work Expenses (BWE) are those expenses of a blind person that are paid from his or her earned income and are reasonably attributable to earning the income. The blind person must be receiving SSI payments because of blindness and paying the BWE. The BWE exclusion is applied to earned income immediately after applying:

- Any portion of the General Income Disregard ($20) that has not been deducted from unearned income
- All other earned income exclusions except the income set aside to fulfill a Social Security Administration approved Plan to Achieve Self Support (PASS)

To qualify for Blind Work Expenses, the individual must meet the following criteria:

- Have central visual acuity of 20/200 or less in the better eye with best correction, or a limitation in the field of vision in the better eye so that the widest diameter of the visual field subtends an angle of 20 degrees or less
- Under age 65, or age 65 or older and receiving SSI payments because of blindness

The following are some examples of Blind Work Expenses:

- Service animal expenses
- Transportation to and from work
- Federal, state, and local income taxes
- Social Security taxes
- Attendant care services
- Visual and sensory aids
- Translation of materials into Braille
- Professional association fees
- Union dues

If a person is disabled, SSI may exclude certain out-of-pocket expenses paid by the person. To be excluded, the items and services must be related to the person's disability and must be needed by the person in order to work. The individual must pay for the item or service. For example, paying the costs of vehicle modifications or attendant care may qualify as impairment related work expenses (IRWEs).

If a person has impairment related work expenses, SSI excludes those expenses in determining the amount of countable earned income used to calculate the person's SSI

payment. The exclusion of impairment related work expenses is done after the $65 earned income exclusion but before the additional earned income exclusion of one-half the remaining earned income.

The following are some examples of Impairment Related Work Expenses:

- Modifications made to an automobile to allow the disabled person to drive
- Wheel chair ramps
- Special foods to maintain dietary restrictions at work
- One-handed typewriter
- Interpreter for the deaf
- Typing aids
- Transportation to and from work when the individual needs special transportation, due to his or her disability

MANAGEMENT OF INCOME AND PERSONAL ALLOWANCE

Managing personal allowance involves an accounting process that records all of the receipt and disbursement of personal allowance managed for an individual by an agency or sponsoring agency. This master record, which must be established by the agency (usually the residential agency), is known as a Personal Allowance Account. The personal allowance account shows all of an individual's monies under the oversight of an agency including deposits, withdrawals, interest and transfers between accounts.

As Personal Allowance derives from a person's monthly income, usually from government benefits, it's important that a person should have ready access to the allowance as funds become available. This should usually occur within three business days of receipt of the funds by the agency. (See Appendix A - 633.15 (i) 11, 12)

GUIDELINES FOR MANAGING INCOME AND PERSONAL ALLOWANCE

The employee in charge of the agency's financial record keeping is responsible for managing the personal allowance account using the following guidelines:

- Personal allowance must be recorded separately from countable income or Net Available Monthly Income (NAMI)

- The accounting process must clearly identify personal allowance as separate from any funds belonging to the agency, its employees, contractors, consultants, volunteers or family care providers

- The personal allowance account must reflect any and all interest earned by a person if the personal allowance has been deposited in an agency bank account

In addition to these guidelines, the agency or sponsoring agency must have procedures in place to monitor the total amount of funds to which an individual has independent access and work with the individual to ensure this total does not exceed the amount specified in the Personal Expenditure Plan. This includes:

- Cash in the possession of the individual

- Funds retained by the individual from earnings

- Funds maintained in a person-owned account

ACCOUNTS ASSOCIATED WITH PERSONAL ALLOWANCE

There are different types of accounts associated with personal allowance. While you may not work with all of them, you should be familiar with their purposes and you should also know:

- Who at your agency manages the accounts
- How your agency manages personal allowance

You should also know how to access information from the business office (by whatever name known) regarding the amount of personal allowance due any one person in any given month and the total balance in any personal allowance account(s) you work with.

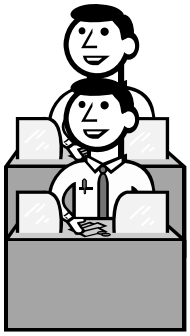
These accounts may include any and all of the following:

- A payee account
- A person-owned account
- An agency bank account
- Cash at the residence
- Cash at the person's day program

PAYEE ACCOUNT

If a person or his or her representative payee requests that a facility or agency manage the person's receipt of benefits, then the facility or agency must establish a payee account. The facility or agency must keep track of all of the person's current monthly income as well as the conserved countable income (savings). As long as the facility or agency is managing the funds, this record is kept no matter if the person has a representative payee or if the person is his or her own payee. There is no required format for this account, but it is suggested that there be columns to show the difference between current income and conserved countable income (savings).

PERSON-OWNED ACCOUNT



A person-owned account is an account in a financial institution in the community. The account can be used for people who may have some money management skills but need training, for those who need help with physically depositing and withdrawing funds, or for other reasons as documented in the PEP. It should be in the individual's name only. The account should never be in both the person's name and the name of the agency or an agency employee. If possible, the account should be interest bearing. Wages can be deposited into the account. In terms of documentation and control, direct deposit is always a good idea.

Some agencies use debit or ATM cards to better manage personal allowance. This has an advantage as money can be accessed from almost anywhere and in the same fashion as everyone else. Most ATMs have cameras, so problems can be traced. The bank statement shows withdrawals and credits, so it can be used as an internal control. It also reduces the amount of cash in the house.

The person should exercise independent control over the account, consistent with his/her money management assessment. Since the person-owned account belongs only to the person, he or she is responsible for any fees connected with the account. However, the agency has a duty to seek the best bargain for the individual and to try to get any fees waived. Sometimes local credit unions may have small fee or no fee accounts. The agency is also responsible for monitoring the account balance to make sure the person's total resources stay below the allowed limit so that the person's benefits are not reduced. (See Appendix A - 633.15 (h) 3)

AGENCY BANK ACCOUNT

If a residential agency manages someone's personal allowance, then the monies should be deposited into an agency bank account prior to any payouts. The agency bank account must be interest bearing. While the agency controls the bank account, the agency does not own the money in the account.

As the agency bank account may contain money belonging to a number of individuals, the agency must be able to tell how much belongs to each person. Interest on the account must be allocated to the people who have money in the account. Money can only be disbursed as follows:

- To the person for spending
- To the residence to keep cash on hand for the person
- To vendors to pay personal allowance expenses
- To a person-owned account

(See Appendix A - 633.15 (h) 2)

CASH AT THE RESIDENCE

In accordance with the individual's personal expenditure plan, or upon the request of the person or appropriate agency staff, cash may be kept at the residence in order to meet a person's day-to-day or incidental needs. The cash must be in a secure location, there should be limited access to the funds, and they should be made available to the person at his or her request. There must be documentation at the residence when the money is received by the individual and when it is spent. The amount of cash at the residence should reflect the person's spending needs based on his or her PEP, however, effective January 1, 2011 a maximum amount of $198 in personal allowance cash may be kept at the residence for each person. (For

exceptions on the maximum amount and for more about cash at the residence See Appendix A - 633.15 (h) 4)

CASH AT THE DAY PROGRAM

If a day program wishes to have cash from personal allowance onsite, it must agree to comply with the personal allowance regulations, including: keeping a ledger, obtaining receipts as required, making expenditures in compliance with the individual′s PEP, and sending a copy of the ledger to the residence at least once every quarter. (See Appendix A - 633.15 (h) 4)

Note: The agency or sponsoring agency is responsible for any loss of cash maintained at the residence or at the non-residential program until the cash is properly disbursed to the person.

QUARTERLY ACCOUNTING REQUIREMENT

At least once a quarter, personal allowance accounting must show the location of the personal allowance money. It should detail:

- Amount of cash at the person's residence and day program
- Amount of money in the person-owned account
- Amount in the agency bank account

If the quarterly accounting is part of the agency’s overall record, the accounting must show personal allowance money separate from other funds the agency controls.

RESPONSIBILITIES OF NON-RESIDENTIAL PROVIDERS

A non-residential provider that accepts personal allowance funds from a residential facility for a person's use assumes responsibility for those funds.

This responsibility includes:

- Establishing policies and procedures to address at a minimum:
    - The usage of the funds
    - The security of the funds
    - The accountability of all agency personnel handling the money including staff, contractors, consultants and volunteers
- Maintaining an up-to-date person-specific record or ledger detailing receipt, disbursement and balance of personal allowance funds
- Obtaining receipts in accordance with 14 NYCRR 633.15
- Ensuring that expenditures benefit the individual and that items purchased by or for the person become his or her personal property
- Ensuring that the use of personal allowance is in accordance with the individual's PEP
- Sending a copy of the ledger quarterly for each person for whom the program is holding personal allowance monies to the residential agency

NOTE:

The non-residential provider is also responsible for making the person whole if there is a loss of personal allowance funds in the non-residential provider's custody. See below for more about restitution due to loss or theft.

RESTITUTION DUE TO LOSS, THEFT OR WRONGFUL WITHHOLDING

As you've learned, mismanagement of personal allowance carries civil and criminal punishments.

Personal allowance must be managed in accordance with both OPWDD regulations and New York State Social Services Law. In addition, an agency or sponsoring agency acting as the payee for an individual for any benefits is responsible for following the program rules set forth by the benefit paying organization.

In any case where an agency or sponsoring agency is suspected of losing, misappropriating, or wrongfully withholding an individual's personal allowance, OPWDD or its designee may:

- Investigate any loss, suspected misappropriation or wrongful withholding
- Commence and/or maintain an action on behalf of any individual or group of individuals to recover any funds lost, misappropriated or wrongfully withheld

The missing, stolen or wrongfully withheld funds must be returned to the individual's personal allowance account at the earliest possible date. This is as soon as the amount is known. The agency or sponsoring agency cannot hold off the repayment of the individual until the investigation has been completed or restitution is made.

The theft of funds is a reportable incident.

LEDGERS

The agency responsible for managing personal allowance must keep a ledger card (or its equivalent) to record all transactions. The ledger should correctly show all deposits, withdrawals, transfers, expenditures, and interest. It must include a brief description of each transaction. The balance in the ledger must match the cash in the residence at any given time.

Sometimes there is more than one ledger for a person. The agency may keep one to record general transactions and the residence may keep another to record day-to-day activities with the cash on hand. The person should initial entries–either on the day-to-day ledger card at the time of transaction or on a record attached at least monthly to the PEP, unless the PEP indicates that the person is not capable of understanding the significance of initialing these records.

The individual, his or her parents, guardians, advocates and the benefit-paying associations must be able to review all records of the personal allowance account including ledgers. Copies of the ledger should be sent to all payees once a quarter.

If the agency manages money for multiple individuals, it must perform an annual review of at least 25% of the accounts for all residential types except family care. The agency or sponsoring agency shall conduct annual internal audits on at least 10% of the personal allowance accounts in family care programs.

ELECTRONIC SPREADSHEETS

Some agencies use electronic spreadsheets instead of paper ledgers. Each person has a spreadsheet with a different page for every month. The spreadsheets are set-up to automatically calculate the personal allowance balance after each transaction. The balance is also carried over from month to month, which helps eliminate errors.

For individuals who initial their ledgers the page for that month is printed at the end of the month and the individual initials and dates the spreadsheet. This way there is documentation that the person has received the amounts on the spreadsheet. Alternatively, the individual may sign a separate monthly acknowledgement of his or her approval of the ledger transactions as maintained electronically. This may eliminate the need to print the actual ledger.

As the entries are typed, it is easy for Quality Management to see how the monies were spent.

If your agency does not have an electronic spreadsheet format, you may contact your local RSFO for an example. (See Appendix G for contact information)

BEST PRACTICE

Electronic ledgers are recommended as a best practice:

- They are easy to read
- They avoid math errors
- Once set up, they are easy to use

The following page contains a sample ledger.

SAMPLE LEDGER

Form AHR 171 (5-93)

PERSONAL ALLOWANCE ACCOUNT LEDGER CARD	Resident Name:
Notes:	Manager Name:

	Date	Explanation	Deposits	W'drawals	Balance	Manager	Resident
		Balance Forward					
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
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16							
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18							
19							
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21							
22							
23							
24							

RECEIPTS

A receipt is necessary to document any spending from personal allowance. The receipt should correspond to the ledger card entry and should clearly show:

- What the item is
- Its cost
- The vendor
- The date of purchase

Receipts are required for all group purchases. The receipt should show all of the items above AND list the number of people in the group. It should show that the amount each person spent is equal to his or her use of the purchase.

Receipts are always required when staff spends personal allowance monies for purchases. Each purchase must have a receipt and the ledger item should have a reference number leading to the pertinent receipts.

EXCEPTION: If a staff member uses personal allowance to buy a recreationally related item under $15, staff may make a notation in the ledger for that small expense (e.g.: "movies – name of film - $7.50).

Agencies may be required to reimburse a person if funds were spent on his or her behalf and no receipt was obtained.

If the person himself or herself spends the monies, receipts are not needed. The entry on the ledger should be "$XX.XX for spending" and the individual should initial the entry.

RECORD RETENTION

Each agency or sponsoring agency must maintain complete records documenting all transactions involving personal allowance for four years.

MOVES BETWEEN LIVING SITUATIONS

People sometimes move from one living situation to another. During this transition it's important that they have uninterrupted access to their personal allowance money.

As you've learned, Personal Allowance money belongs to the individual and must be available for personal spending at the individual's discretion and choice.

To ensure that the person's money remains available, specific procedures have been put in place. These procedures are outlined below.

PROCEDURES FOR MONEY FROM SOURCES OTHER THAN SSA

When the person's money is derived **entirely** from sources **other** than payments made by the Social Security Administration (SSA), the balance of all personal allowance funds must be forwarded to the appropriate party at the new residence within 10 days of the person's departure. (See Appendix A - 633.15 (n) 1)

Note: When the chief executive officer of the original agency is the payee, additional funds must be forwarded within five business days of receipt to the new living situation. This arrangement continues until a new payee is designated.

PROCEDURES FOR MONEY FROM SSA

The following procedures apply when **any** of the person's money is derived from payments made by the Social Security Administration (SSA):

1. When the move is within facilities operated or sponsored by the same agency, the agency continues to manage the person's money and only personal allowance funds held in cash are forwarded to the new residence.

2. When the move is to a facility operated or sponsored by a different agency, all funds from SSA must be returned to SSA within 10 days and the new agency notified regarding the return of the person's funds.

3. When the move is to a facility operated or sponsored by a different agency **and written** permission has been received from SSA, funds must be forwarded to the new representative payee within 10 days. (See Appendix A - 633.15 (n) 1 (ii))

In addition to the procedures outlined above, the following specific requirements apply when a person has received funds from SSA and moves to another residence certified or operated by OPWDD:

- By the date of the move, the original agency must disburse a sum equivalent to one month's minimum statutory allowance or the total of the person's funds, whichever is less, prior to returning to SSA the remainder (if any) of the person's funds that were derived from SSA

- The chief executive officer of the new agency must apply to SSA to become the person's representative payee no later than three business days after the person's admission

- Upon the appointment of the chief executive officer of the new agency as representative payee by SSA and receipt of the person's funds, the new agency shall consider the funds as personal allowance money, except for any amount which is due to the new agency as a provider payment (See Appendix A - 633.15 (n) 1 (ii) (b) (3))

All funds in a burial reserve account, regardless of the origin of the funds, must be forwarded to the appropriate party at the new residence within 10 business days of the person's departure. The funds must be transferred in a manner clearly identifying them as funds from a burial account.

TEMPORARY SHORTFALLS IN INCOME

The procedures detailed above are intended to avoid shortfalls in an individual's personal allowance money when he or she moves to a new residence. If a person moves into a residence operated by a different agency and a temporary shortfall occurs because the individual's benefits are not yet being paid to the new agency, the agency may advance the individual personal allowance until the benefits are received. This is the only time an agency may advance funds to an individual (refer to Pledging, page 75).

AUDIT PROBLEMS

OPWDD's Division of Quality Management will audit how a program handles personal allowance. They will review the ledgers, the supporting documentation, and will count the cash on hand.

COMMON AUDIT PROBLEMS

In the past, some common problems were found by the OPWDD Division of Quality Management during their audits. These common problems included:

- Personal allowance that was not being separated from the countable income within three days of receipt
- Missing funds
- Personal allowance that was lowered based on lowered unearned income, instead of giving the full personal allowance amount
- A failure to do an annual review of at least 10% of the agency's accounts
- Cash in the house that was over the per person cap
- Improper expenditures from personal allowance (e.g. local phone service or prescriptions), that should have been paid for by the house or Medicaid
- Not including the person's money handling skills on the ISP and not re-evaluating his or her skills periodically
- A failure to have written internal procedures on how to handle personal allowance funds

There were also problems with the ledgers, such as:

- Cash transactions that were not being entered into the ledger at the time they happened
- A failure to document whether purchases were made by staff or by the person
- Poorly maintained or non-existent ledgers
- Mathematical errors in the ledger
- Purchases without receipts
- The individual failing to initial or sign for spending money

It is in the agency's best interest to make sure that all documentation is complete. The agency should also have written policies on who can request and spend personal allowance monies. The policies should also cover how cash is secured and who has access to it.

Appendix A of this manual contains a chart of the Federal Interpretive Guidelines that the OPWDD Division of Quality Management (QM) uses when auditing personal allowance for residents of Intermediate Care Facilities (ICFs). The OPWDD regulations are the basis for the audit standards for residents in other OPWDD certified living

arrangements. If the OPWDD regulations set higher standards than the federal guidelines, QM will ensure that the higher standards are adhered to by the agencies operating the ICFs.

PLEDGING

Pledging is when the agency gives agency funds to a person and expects repayment from personal allowance monies. Lending the person agency money and getting it back later from personal allowance is forbidden by state law.

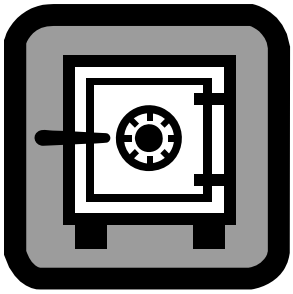
If staff at the residence do not have access to the cash at the time of request, the residence may not take funds from petty cash and replenish from personal allowance. The agency should review its procedures to ensure that there is limited cash available when the staff members with access to a safe are off duty.

The only exception allowed under the personal allowance regulations is for a newly placed individual whose benefits have not caught up with the individual. (See page 72)

SUB-LEDGERS AND MONEY ACCESSIBILITY

The following is a good example of sub-ledgering. One DDSO has worked out a procedure to avoid pledging. The procedure also helps make sure that people can get their personal allowance when they need to, even if the people with access to the safe are not available.

Ledger sheets and funds are kept locked and safe. The DDSO designates a ledger manager who has access to the ledger and to the safe. A ledger co-manager can be designated for when the manager is on vacation. A full reconciling of the ledgers and cash must be done before responsibility can shift from the manager to the co-manager.



If funds are needed when there is no access to the safe, small sums can be given to another responsible staff person. The staff person signs the ledger sheet and the funds are put in a sub-ledger envelope that shows the purpose of the funds. The employee must document how all the money is spent and collect receipts. If there is a specific purpose for the cash, the responsible employee is to shop within seven days. He or she must also get the receipt and return the sub-ledger envelope with any change during those seven days. All sub-ledgers and documentation of general spending (pocket money) are to be returned within 30 days. If more money is requested for the same person, the employee must turn in the sub-ledger before the additional funds are granted.

Whenever an employee transfers a person's funds to another employee, there must be a ledger entry. The staff person holding the funds can request a small safe or locker to keep the cash secure.

The DDSO has several policies which help safeguard the money:

- Any employee who is holding cash belonging to an individual is required to personally reimburse the person if there are any errors or irregularities between the amount being held by the employee and the ledger
- Employees are not allowed to transfer or loan money from one person to another
- Loans, gifts, or transfers from personal allowance funds to employees are prohibited
- Employees are not allowed to spend their own funds and later be reimbursed
- Mingling employee and individual funds is not allowed. Each person's funds are kept separately
- The ledger manager can audit sub-ledgers at any time

BEST PRACTICE

Sub-ledgers are recommended as a best practice becau

- Cash outside secure areas will be minimized
- It provides for accountability of funds
- People can access their cash when needed

PENALTIES

As personal allowance has such an impact on the quality of a person's life, misuse is punishable by law. Mismanagement of personal allowance can be a Class A misdemeanor. Civil and criminal punishments include:

- Up to two years in jail
- Possible fine of $10,000
- Judgments of up to twice the misused amount

CONCLUSION

The intent of this manual has been to provide you with guidance and help you fulfill your responsibilities as an employee in the DD service system. It is not intended as a replacement for training nor is it intended to answer every question you may have about personal allowance.

If you've read this manual, you should now:

- Know what personal allowance is
- Know that the funds belong to the person, not to the agency
- Know how to calculate personal allowance amounts
- Know what personal allowance may be used for
- Know how to help people with developmental disabilities make better spending decisions
- Know the guidelines for documenting the use of personal allowance

More importantly, you should now know how personal allowance can be used to improve the quality of a person's life. Your role consists of more than helping someone spend their money. You should be helping the people you serve make choices that enhance their experiences and develop their unique capabilities. When used properly, personal allowance can help people with developmental disabilities become recognized as valued members of the communities where they work and live.

Use this manual as a reference, but remember, if you can't find the information you need – ask your supervisor or residence administrators. You can also get help from your local Revenue Field Support Office. RSFO contact information can be found in Appendix G, at the end of this manual.

Your local Revenue Field Support Office can also help you identify professional development opportunities. It's important that you continue to seek out training – the better you understand your work and your work environment the more satisfaction you will get from your work and the better you will be able to serve the people under your care.

GLOSSARY OF PERSONAL NEEDS ALLOWANCE TERMS

Blind Work Expenses (BWE) - Costs a blind person pays from his or her own funds when he or she works. The expenses do not need to be related to the person's blindness. For expenses to qualify as BWEs, an individual must apply to the Social Security Administration and provide them with appropriate documentation of the expenses. The approved expenses are then deductible from the individual's earnings as BWEs.

Care and maintenance - The term sometimes used to describe the overall services an agency provides to a person in its care.

Choice, personal spending - The ability to express preferences on the use of one's personal money. When people do not use words, preferences may be expressed through body language, eye contact, facial expression, nonverbal cues and behavior. The power to exercise this act of free will is a right guaranteed by statute.

Community Residence (CR) - An OPWDD certified semi-independent living situation. There are two types of CRs: 1) Supervised: that provide housing with staffing available 24 hours; and 2) Supportive: that are limited to three people, with staff support varying according to individual need. Both types are referred to as Congregate Care Level II by the SSI program.

Developmental Center (DC) - A facility for the care and treatment of the mentally retarded and developmentally disabled (designated as a "school" in Article 13.17 of the Mental Hygiene Law) that is operated by OPWDD.

Developmental Disabilities Services Office (DDSO) - OPWDD offices responsible for providing programs in one or more counties. These offices provide specially designed person-centered assistance to each individual with developmental disabilities as requested by that person or by his or her family.

Disregard – See Income Disregard.

Earned income exclusion - The first $65 of gross monthly wages plus half the balance. The purpose of the exemption is to provide a working person with funds for work-related expenses.

Family Care - A licensed residential program that provides a structured and stable home environment within a family unit to a person with a developmental disability, offering support, guidance, and companionship. Family Care providers receive a monthly stipend to provide services within their houses or apartments. Family Care is referred to as a Congregate Care Level I setting by the SSI program.

Impairment Related Work Expenses (IRWE) - The costs of certain impairment-related items and services that a person needs to work. These costs are deducted from earnings in figuring substantial gainful activity, even if these items and services are also needed for non-work activities.

Income Disregard – certain income is disregarded and subtracted from an individual's gross countable monthly income. Disregards are established by statute or regulation based on the needs-based benefit program that the individual is eligible for (Supplemental Security Income and/or Medicaid) and the source of the income. Any remaining net monthly income is compared to the appropriate income level for the benefit program and the individual's living arrangement.

Income, earned - Medicaid Definition: Income received as a result of work activity including wages, salaries, tips, commissions, and income received from self-employment.

SSI Definition: Wages from a job, whether in cash or another form, net earnings from a business if the person is self employed, payments for services performed in a sheltered workshop or work activities center, royalties earned in connection with publication of the individual's work, and honoraria received for services rendered.

Income, unearned - Medicaid Definition: Income that is paid because of a legal or moral obligation rather than current services performed. It includes pensions, government benefits, dividends, interest, insurance compensation, and other types of payments.

SSI Definition: Income received from sources other than earned income sources. Unearned income includes Social Security benefits, pensions, state disability payments, unemployment benefits, interest income, and cash from friends and relatives

Individualized Residential Alternative (IRA) - A certified home for one to14 people that provides room, board and individualized protective oversight. This is a type of Community Residence.

Individualized Service Plan (ISP) - The Individualized Service Plan (ISP) is a readable and usable written personal plan. It summarizes the help a person who has developmental disabilities wants and needs to achieve his or her own goals in life. These personal goals are known as the person's valued outcomes.

Intermediate Care Facility (ICF) - Provide a residential treatment option in the community for persons with specified medical and/or behavioral needs. ICFs provide 24-hour-on-site assistance and training, intensive clinical and direct care services, professionally developed and supervised activities and a variety of therapies. ICFs are designed for individuals whose disability severely limits their ability to be independent.

Living arrangement - Settings licensed by OPWDD to provide housing and related services, operated by either OPWDD or not-for-profit agencies. These settings include supervised group living (a home with 24-hour staffing and supervision), semi-independent (or "supported") group living (a home with less-than-24-hour staffing and supervision), and other residential options (typically, homes for 15 or more people with 24-hour staffing and supervision.

Medicaid - An assistance program for low-income individuals who are unable to pay for needed medical services such as care in a hospital, nursing home, intermediate care facility; services provided by physicians and other enrolled medical/dental providers; day treatment; transportation to medical services; medication, medical supplies; services provided through OPWDD's Home and Community Based Services waiver services, and Medicaid Service Coordination services.

Medicare - Federal health insurance program for people aged 65 years or older, those with disabilities, and those with End-Stage Renal Disease. It provides hospital and medical insurance protection to those who might not otherwise be able to afford health insurance. It also provides prescription drug coverage.

Net Available Monthly Income (NAMI) - For persons residing in ICF/DCs and specialty hospitals, the combined amount of earned and unearned income, other than that classified as incidental income, which remains on a monthly basis after the calculation of personal allowance. This is the amount to be paid to the provider for cost of care.

OPWDD Certified School for the Mentally Retarded - A residential facility for the mentally retarded and developmentally disabled under the jurisdiction of the Office For People With Developmental Disabilities or a facility for the residential care treatment training, or education of the mentally retarded and developmentally disabled which has been issued an operating certificate by the commissioner of people with developmental disabilities.

Overpayment - An overpayment occurs when a person receives more SSI or Social Security benefit money for a month than was due to him or her. The amount of the overpayment is the difference between the amount received and the amount due.

Payee, own - A person who receives his or her benefits directly instead of through a representative payee.

Payee, representative - A person, agency, institution, or organization the Social Security Administration selects to manage a recipient's payments when the recipient is physically or mentally unable to do so.

Planning team - Members of a group of persons, acting as a unit, responsible for identifying an individual's needs; for developing, implementing, evaluating the plan of services for that person; and ensuring that he or she is appropriate to remain in the current setting. See the regulations for specific types of facilities.

Pledging - The forbidden practice of advancing money to an individual with the expectation of repayment from personal allowance monies.

Pre-need burial agreement - A contract in which money is paid to a funeral firm, undertaker, cemetery or other entity in return for furnishing specified services/merchandise upon the death of the person to whom the agreement pertains. Since January 1, 1997, in order to be considered exempt for Medicaid and SSI regulations, the agreement must be irrevocable, meaning the individual pre-paid and now owns the services and items in the contract.

Rent - What the individual pays for a portion of his or her care. The rent is based upon the amount remaining from income after personal allowance has been deducted.

Revenue Support Field Office (RSFO) - Part of OPWDDs Division of Administrative Solutions and Revenue Support. There are nine RSFOs in New York State and each office develops and maintains benefits and entitlements for individuals served by their local DDSOs. The RSFO is responsible for various revenue related support functions for individuals in state operated programs.

Service coordinator - A person who provides assistance to people with developmental disabilities in gaining access to necessary services and supports appropriate to their needs and life goals. Qualified service coordinators use a person-centered process to develop, implement and maintain an Individualized Service Plan (ISP).

Sheltered workshop - A sheltered workshop is a nonprofit organization or institution operating a recognized program of rehabilitation for disabled workers and/or provides such individuals with work for pay or other occupational training. The objective is

competitive employment if the potential exists or long-term employment within a sheltered workshop if competitive employment is not feasible.

Supplemental Needs Trust (SNT) - Is a legal document that details specific use of some of a person's money or some of the money of a friend, relative, or other interested party. SNT money is set aside to provide for the supplemental needs of an individual with disabilities. It is a trust that limits the trustee's discretion as to the purposes of the distribution.

Social Security - These are benefits authorized by Title II of the Social Security Act. There are several categories of Social Security benefits through which a worker or certain family members of the worker may be paid benefits. These categories are Social Security Disability Insurance (SSDI), Social Security Retirement, and Social Security Survivors.

Sponsoring agency - The administrator of one or more family care homes. In the case of family care homes operated under state supervision, the DDSO is considered to be the sponsoring agency.

Substantial Gainful Activity (SGA) - This is the performance of significant and productive physical or mental work for pay or profit.

Supplemental Security Income (SSI) - A program established under Title XVI of the Social Security Act and administered by the Social Security Administration to provide monthly payments to adults who are blind, disabled, or age 65 or older, and who have limited income and resources. SSI benefits are financed from the general tax revenues of the United States Treasury.

Supported employment - This is a way of helping an individual with a disability work in a mainstream setting rather than in the sheltered workshop environment. The individual is placed in a series of jobs, given intensive job coaching and/or counseling to reach stabilization, then given ongoing support.

Third Party Health Insurance (TPHI) - A contract or agreement whereby an individual, institution, corporation, public or private agency is or may be liable to pay all or part of the cost for medical care or services furnished to a person.

Underpayment - An underpayment occurs when monthly benefits were due and not received or the benefit payment is less than the amount due.

APPENDIX A

APPLICABLE REGULATIONS AND LAW

Title 42 Code of Federal Regulations

§483.420(a)(4) Condition of Participation: Individual Protections

> (a) Standard: Protection of clients' rights. The facility must ensure the rights of all clients. Therefore, the facility must-

(4) Allow individual clients to manage their financial affairs and teach them to do so to the extent of their capabilities;

Federal Interpretive Guidelines

INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION

TAG NUMBER	REGULATION	GUIDANCE TO SURVEYORS
	STANDARD: Protection of Client's Rights The facility must ensure the rights of all clients. Therefore, the facility must:	
W126	(4) Allow individual clients to manage their financial affairs and teach them to do so to the extent of their capabilities;	§483.420(a)(4) – FACILITY PRACTICES: Individuals receive instruction (either as part of a formal program or a more general, informal series of activities) on handling their money which is geared to the individual's functional level. Individuals have opportunities to hold and manage their own money to the maximum extent of their capabilities. §483.420(a)(4) – GUIDELINES: Since the use of money is a right, determine if the facility demonstrated, based on objective data, that the individual was unable to be taught how to use money before the decision was made to restrict that right. §483.420(a)(4) – PROBES: How many individuals does the facility report manage their own funds? Through interview and observation of staff and individuals served, are there individuals who are able to manage their own money with assistance, if needed? Are individuals allowed to spend funds as they choose? Are there spending opportunities? Do they have cash? Does staff, in fact, make financial decisions for use of individual funds which the facility reports are managed by the individual? Does staff work closely with particular individuals to participate in decisions about spending their money? For those individuals who manage their financial affairs, are they knowledgeable of their income source and amount? What evidence is manifest by individuals that they know what to do with personal finances? To what extent do individuals know how to conduct bank transactions? How are individuals paid? Cash? Check? Vouchers? Tokens?

Article 16, Section 16.31 (a) of NYS Mental Hygiene Law

Monthly personal allowances.

(a) All persons residing in facilities for which an operating certificate is required pursuant to this article shall be entitled to an exemption from income as a personal needs allowance in the following amounts:

1. For persons residing in family care, community residences or schools for the mentally retarded, the amount specified in subdivision one of section one hundred thirty-one-o of the social services law.
2. For persons residing in intermediate care facilities, the amounts set forth in subparagraph ten of paragraph a of subdivision two of section three hundred sixty-six of the social services law.

Article 5, Title 1, Section 131-o of NYS Social Services Law

Personal allowance accounts.

1. Each individual receiving family care, residential care or care in a school for the mentally retarded, or enhanced residential care as those terms are defined in section two hundred nine of this chapter, and who is receiving benefits under the program of additional state payments pursuant to this chapter while receiving such care, shall be entitled to a monthly personal allowance out of such benefits in the following amount:

(a) in the case of each individual receiving family care, an amount equal to at least $116.00 for each month beginning on or after January first, two thousand six.

NB Effective until December 31, 2007

(a) in the case of each individual receiving family care, an amount equal to at least $120.00 for each month beginning on or after January first, two thousand seven.

NB Effective December 31, 2007

(b) in the case of each individual receiving residential care, an amount equal to at least $135.00 for each month beginning on or after January first, two thousand six.

NB Effective until December 31, 2007

(b) in the case of each individual receiving residential care, an amount equal to at least $139.00 for each month beginning on or after January first, two thousand seven.

NB Effective December 31, 2007

(d) for the period commencing January first, two thousand seven, the monthly personal needs allowance shall be an amount equal to the sum of the amounts set forth in subparagraph one and two of this paragraph:

(1) the amounts specified in paragraphs (a) and (b) of this subdivision; and

(2) the amount in subparagraph one of this paragraph, multiplied by the percentage of any federal supplemental security income cost of living adjustment which becomes effective on or after January first, two thousand seven, but prior to June thirtieth, two thousand seven, rounded to the nearest whole dollar.

NB Effective until December 31, 2007

(d) for the period commencing January first, two thousand eight, the monthly personal needs allowance shall be an amount equal to the sum of the amounts set forth in subparagraph one and two of this paragraph:

(1) the amounts specified in paragraphs (a) and (b) of this subdivision; and

(2) the amount in subparagraph one of this paragraph, multiplied by the percentage of any federal supplemental security income cost of living adjustment which becomes effective on or after January first, two thousand eight, but prior to June thirtieth, two thousand eight, rounded to the nearest whole dollar.

NB Effective December 31, 2007

(e) in the case of each individual receiving enhanced residential care, (i) an amount equal to at least $150.00 for each month beginning on or after January first, two thousand six, and (ii) an amount equal to $159.00 for each month beginning on or after January first, two thousand seven. On and after January first, two thousand seven, the amount set forth in subparagraph (ii) of this paragraph shall be annually increased by the same percentage of any federal supplemental security income cost of living adjustment which becomes effective on or after January first, but prior to June thirtieth, of each calendar year, provided that there has been an increase in state supplementation pursuant to subparagraph (ii) of paragraph (g) of section two hundred nine of this chapter.

NB Effective until December 31, 2007

(e) in the case of each individual receiving enhanced residential care, (i) an amount equal to $164.00 for each month beginning on or after January first, two thousand seven. (ii) On and

after January first, two thousand eight, the amount set forth in subparagraph (i) of this paragraph shall be annually increased by the same percentage of any federal supplemental security income cost of living adjustment which becomes effective on or after January first, but prior to June thirtieth, of each calendar year, provided that there has been an increase in state supplementation pursuant to subparagraph (ii) of paragraph (g) of section two hundred nine of this chapter.

NB Effective December 31, 2007 until December 31, 2009

(e) in the case of each individual receiving enhanced residential care, an amount equal to at least $144.00 for each month beginning on or after January first, two thousand six, and an amount equal to $159.00 for each month beginning on or after January first, two thousand seven.

NB Effective December 31, 2009

2. The personal allowance described in subdivision one of this section shall be made directly available to the individual for his own use in obtaining clothing, personal hygiene items, and other supplies and services for his personal use not otherwise provided by the residential facility. Any waiver of the right to a personal allowance by an individual entitled to it shall be void. The facility shall, for each such individual, offer to establish a separate account for the personal allowance. Each individual electing to utilize such an account shall be entitled to a statement upon request, and in any case quarterly, setting forth the deposits and withdrawals, and the current balance of the account. A facility shall not demand, require or contract for payment of all or any part of the personal allowance in satisfaction of the facility rate for supplies and services and shall not charge the individual or the account for any supplies or services that the facility is by law, regulation or agreement with the individual required to provide or for any medical supplies or services for which payment is available under medical assistance, pursuant to this title, medicare pursuant to title XVIII of the federal social security act, or any third party coverage. Any service or supplies provided by the facility, charged to the individual or the account shall be provided only with the specific consent of the individual, who shall be furnished in advance of the provision of the services or supplies with an itemized statement setting forth the charges for the services or supplies. Whenever a resident authorizes an operator of a facility to exercise control over his or her personal allowance such authorization shall be in writing and subscribed by the parties to be charged. Any such money shall not be mingled with the funds or become an asset of the facility or the person receiving the same, but shall be segregated and recorded on the facility's financial records as independent accounts.

3. Any individual who has not received or been able to control personal allowance funds to the extent and in the manner required by this section may maintain an action in his own behalf for recovery of
any such funds, and upon a showing that the funds were intentionally misappropriated or withheld to other than the intended use, for recovery of additional punitive damages in an amount equal to twice the amount misappropriated or withheld. The department may investigate any suspected misappropriation or withholding of personal allowance funds and may maintain an action on behalf of any individual to recover any funds so misappropriated, including any punitive damages. Any funds obtained as a result of such an action shall be disregarded in determining such individual's eligibility for or amount of benefits available pursuant to this chapter, to the extent permitted by federal law and regulation.

4. Each facility subject to the provisions of this section shall maintain in accordance with department regulations complete records and documentation of all transactions involving resident personal allowance accounts, and shall make such records available to the department and to any other agency responsible for the inspection and supervision of the facility upon request, with respect to any individual who is receiving additional state payments.

5. Any agency having supervisory responsibilities over any facility subject to the provisions of this section shall, at the time of any inspection of such a facility, inquire into the furnishing of and

accounting for resident personal allowances, and shall report any violations or suspected violations of this section to the department.

The department shall have primary responsibility for monitoring the personal allowance requirements of this section; provided, however, that the department may by cooperative agreement delegate such monitoring and enforcement functions, in whole or in part, with respect to any facility, to any other state agency having supervisory responsibilities over such facility.

6. At the time an individual ceases to be a resident at the facility maintaining a resident personal allowance account on his behalf, the funds in such account shall be transferred to such individual or another appropriate individual or agency for use on his behalf, in accordance with department regulations.

7. Any facility subject to the provisions of this section shall assure that any income of an individual residing therein that not considered in determining such individual's eligibility for or amount of benefits under the program of additional state payments pursuant to title six of article five of this chapter, other than unearned income paid from non-public sources for the purpose of meeting the cost, in part or in whole, of such person's care and maintenance in such a facility, is treated in the same manner as the personal allowance required to be made available to the individual pursuant to this section.

8. In any case in which a person receives a payment of additional state payment benefits for a month other than the month in which the payment is received, the full monthly personal allowance for the months to which the payment is attributable shall be made available to the individual at such time as the payment has been received; in no event shall the facility be found to have failed to comply with the provisions of this section solely by reason of having failed to make such monthly personal allowance available prior to the time such payment is actually received.

9. In addition to any damages or civil penalties to which a person may be subject;

(a) any person who intentionally withholds a resident's personal allowance, or who demands, beneficially receives, or contracts for payment of all or any part of a resident's personal allowances in satisfaction of the facility rate for supplies and services shall be guilty of a class A misdemeanor;

(b) any person who commingles, borrows from or pledges any personal allowance funds required to be held in a separate account shall be guilty of a class A misdemeanor.

New York State Codes, Rules and Regulations 633.4 Rights and Responsibilities of Persons Receiving Services

(a) Principles of compliance.

(1) No client shall be deprived of any civil or legal right solely because of a diagnosis of developmental disability (see Glossary, section 633.99 of this Part).

(2) All persons shall be given the respect and dignity that is extended to others regardless of race; religion; national origin; creed; age; gender; ethnic background; sexual orientation; developmental disability or other handicap; or health condition, such as one tested for or diagnosed as having an HIV infection. In addition, there shall be no discrimination for these or any other reasons.

(3) The rights set forth in this section are intended to establish the living and/or program environment that protects individuals and contributes to providing an environment in keeping with the community at large, to the extent possible, given the degree of the disabilities of those individuals. Rights that are self-initiated or involve privacy or sexuality issues may need to be adapted to meet the needs of the certain persons with the most severe handicaps and/or persons whose need for protection, safety, and health care will justify such adaptation. It is the responsibility of the agency/facility or the sponsoring agency to ensure that rights are not arbitrarily denied. Limitations of client rights must be on an individual basis, for a specific period of time, and for clinical purposes only.

(4) No person shall be denied:

(i) a safe and sanitary environment;
(ii) freedom from physical or psychological abuse;
(iii) freedom from corporal punishment (see Glossary);
(iv) freedom from unnecessary use of mechanical restraining devices;
(v) freedom from unnecessary or excessive medication;
(vi) protection from commercial or other exploitation;
(vii) confidentiality with regard to all information contained in the person's record, and access to such information, subject to the provisions of article 33 of the Mental Hygiene Law and the commissioner's regulations. In addition, confidentiality to HIV-related information shall be maintained in accordance with Article 27-F of the Public Health Law, 10 NYCRR Part 63 and the provisions of section 633.19 of this Part;
(viii) a written individualized plan of services (see Glossary) which has as its goal the maximization of a person abilities to cope with his or her environment, fosters social competency (which includes meaningful recreation and community programs and contact with others who are not handicapped), and which enables him or her to live as independently as possible. Such right also includes:

(a) the opportunity to participate in the development and modification of an individualized plan of services, unless constrained by the person ability to do so;
(b) the opportunity to object to any provision within an individualized plan of services, and the opportunity to appeal any decision with which the person disagrees, made in relation to his or her objection to the plan; and
(c) the provision for meaningful and productive activities within the person's capacity although some risk may be involved, and which take into account his or her interests;

(ix) services, including assistance and guidance, from staff who are trained to administer services adequately, skillfully, safely and humanely, with full respect for the individual's dignity and personal integrity;
(x) appropriate and humane health care and the opportunity, to the extent possible, to have input either personally or through parent(s), or guardian(s), or correspondent to participate in the choice of physician and dentist; or the opportunity to obtain a second medical opinion;
(xi) access to clinically sound instructions on the topic of sexuality and family planning services and information about the existence of these services, including access to medication or devices to regulate conception, when clinically indicated. This right includes:

(a) freedom to express sexuality as limited by one's consensual ability to do so, provided such expressions do not infringe on the rights of others.
(b) the right to make decisions regarding conception and pregnancy pursuant to the mandates of applicable State and Federal law.
(c) the right of facilities to reasonably limit the expression of sexuality, including time and location thereof, in accordance with a plan for effective facility management.

(xii) observance and participation in the religion of his or her choice, through the means of his or her choice, including the right of choice not to participate;
(xiii) the opportunity to register and vote and the opportunity to participate in activities that educate him or her in civic responsibilities;
(xiv) freedom from discrimination, abuse or any adverse action based on his or her status as one who is the subject of an HIV-related test or who has been diagnosed as having HIV infection, AIDS or HIV-related illness;
(xv) the receipt of information on or prior to admission, regarding the supplies and services that the facility will provide or for which additional charges will be made, and timely notification of any changes thereafter;
(xvi) the use of his or her personal money and property, including regular notice of his or her financial status and the provision of assistance in the use of his or her resources, as appropriate;
(xvii) a balanced and nutritious diet, served at appropriate times and in as normal a manner as possible, and which is not altered or totally denied for behavior management or disciplinary (punishment) purposes;
(xviii) individually owned clothing which fits properly, is maintained properly, and is appropriate for age, season and activity; and the opportunity to be involved in the selection of that clothing;
(xix) adequate, individually owned, grooming and personal hygiene supplies;
(xx) a reasonable degree of privacy in sleeping, bathing and toileting areas;
(xxi) a reasonable amount of safe, individual, accessible storage space for clothing and other personal belongings used on a day-to-day basis;
(xxii) the opportunity to request an alternative residential setting, whether a new residence or change of room, and involvement in the decisions regarding such changes;
(xxiii) the opportunity, either personally or through parent(s), guardian(s) or correspondent (see Glossary), to express without fear of reprisal grievances, concerns and suggestions to the chief executive officer of the facility; the commissioner of OPWDD; the Commission on Quality of Care; for people in developmental centers, and in the community on conditional release from a developmental center, the Mental Hygiene Legal Service and the board of visitors; and for people in developmental centers, the ombudsman;

(xxiv) the opportunity to receive visitors at reasonable times; to have privacy when visited, provided such visits avoid infringement on the rights of others, and to communicate freely with anyone within or outside the facility;

(xxv) the opportunity to make, or have made on his or her behalf, an informed decision regarding cardiopulmonary resuscitation (see Glossary), in accordance with the provisions of Article 29-B of the Public Health Law, and any other applicable law or regulation. Each development center (see Glossary) shall adopt policies/procedures to actualize this right; or

(xxvi) the opportunity, if the person is residing in an OPWDD operated or certified facility, to create a health care proxy (see Glossary) in accordance with 14 NYCRR 633.20.

(5) Implementation of many of the above rights entails inherent risks. To the extent reasonable, foreseeable and appropriate under the circumstances, such risks shall be described to individuals and/or their parents, guardians or correspondents. However, these individuals assume responsibility for those risks typically associated with participation in normal activities, to the extent the person's abilities permit such participation.

(6) Staff, volunteers, and family care providers shall be advised of the previously listed rights.

(7) None of the foregoing rights shall be limited for disciplinary (punishment) purposes, retribution or for the convenience of staff.

(8) Each person, and his or her parent(s), guardian(s), or correspondent, prior to or upon admission to a facility and subsequent to any changes that occur thereafter, shall be notified of his or her rights at the facility and rules governing conduct, unless the person is a capable adult who objects to such notification to a parent or correspondent. Such information shall be conveyed in the person's and/or the parent's, guardian's, or correspondent's primary language if necessary to facilitate comprehension. There shall be agency/facility or sponsoring agency policies/procedures to implement this process as well as the process whereby individuals can be made aware of and understand, to the extent possible, the rights to which they are entitled, how such rights may be exercised and the obligations incurred upon admission to and participation in the programs offered by the facility. (Note: Also see paragraph (b)(4) of this section.)

(9) Individuals or his or her parent(s), guardian(s) or correspondent may object to the application, adaptation or denial of any of the previously stated rights made on his or her behalf in accordance with section 633.12 of this Part.

(10) Pursuant to section 33.16 of the Mental Hygiene Law, and subject to the limitations contained therein, a person (see glossary, subdivision (bw)), or other qualified party (see glossary, subdivision 633.99(bs)), may make a written request for access to the person's clinical record.

(i) If the facility denies such access in whole or in part, it shall notify the requestor of his or her right to obtain, without cost, a review of the denial by the OPWDD Clinical Record Access Review Committee.

(ii) The Clinical Record Access Review Committee shall consist of an OPWDD attorney, an OPWDD practitioner, and a representative of the voluntary agency provider community. The chairperson shall be the OPWDD attorney, and requests for review of denial of access shall be addressed to the Office of Counsel for OPWDD.

(iii) The Clinical Record Access Review Committee shall conduct its deliberations and reach its determinations in accordance with section 33.16 of the Mental Hygiene Law. If

the committee upholds the facility's decision to deny access to the clinical record, in whole or in part, the chairperson shall notify the requestor of his or her right to seek judicial review of the facility's determination pursuant to section 33.16 of the Mental Hygiene Law.

(11) An agency/residential facility, and the sponsoring agency of a family care home, shall:

(i) help ensure that each adult person who formulates a health care proxy while residing at the facility does so voluntarily and without duress; and

(ii) if provided with a person's duly executed health care proxy, ensure that the health care proxy or a copy thereof, becomes part of the medical portion of that person's clinical record; and

(iii) if, for any reason, is of the opinion or has brought to its attention, that there is reason to believe that a person did not understand the nature and consequences of a health care proxy and/or did not execute a health care proxy willingly and free from duress, bring this to the attention of MHLS; or take action as set forth in section 633.20(a)(21) and (22) of this Part.

(12) There shall be a means to advise individuals and their parents, guardians or correspondents, on admission and as changes occur, of the availability of the following parties to receive complaints and concerns, with current addresses and telephone numbers:

(i) The director of the B/DDSO.

(ii) The commissioner of OPWDD.

(iii) The Commission on Quality of Care for the Mentally Disabled (see Glossary).

(iv) The Mental Hygiene Legal Service (see Glossary), for developmental center residents and persons in the community on conditional release from developmental centers only.

(v) The board of visitors, for developmental center residents and persons in the community on conditional release from developmental centers only.

(vi) The commissioner or the commission may be contacted at the following locations:

(a) Commissioner
Office For People With Developmental Disabilities
44 Holland Avenue
Albany, NY 12229
(518) 473-1997;

(b) Bureau of Quality Assurance
Commission on Quality of Care for the Mentally Disabled
99 Washington Avenue, Suite 1002
Albany, NY 12210
(518) 473-4090

(13) For those persons admitted to a facility prior to the implementation date of this Part, the facility shall ensure that such required information is shared with the person, and/or parents, guardians or correspondents within a reasonable time frame, if the facility has not already done so.

(14) In developmental centers, a statement summarizing the rights, duties and requirements regarding cardiopulmonary resuscitation is to be posted in a public place.

(15) Meeting the communication needs of non-English speaking persons seeking or receiving services.

(i) Section 13.09(e) of the Mental Hygiene Law requires the commissioner to promulgate regulations to address the communications needs of non-English speaking individuals seeking or receiving services in facilities operated, certified or funded by the Office For People With Developmental Disabilities. For the purposes of this paragraph, "non-English speaking" refers to persons who do not speak English well enough to be reasonably understood, persons who are deaf or hard-of- hearing, and persons without speech capacity who use alternative means of communication.

(a) No facility shall deny care and treatment to, or otherwise discriminate against, persons who are non-English speaking.

(b) Each facility shall facilitate access to services by persons who are non-English speaking when such persons seek, or are referred for services, and when such persons are in actual receipt of services.

(c) In addressing the communication needs of persons who are non-English speaking, each facility shall take reasonable steps to ensure that:

(1) the overall quality and level of services are equal to that made available to all other persons or referrals;

(2) necessary steps are taken to provide information in appropriate languages;

(3) interpreters are provided in a timely manner when necessary for effective communication;

(4) parties serving as interpreters are sufficiently competent to ensure effective communication. Such interpreters may include, but are not limited to, facility staff, community volunteers or contractors. In no event shall service recipients or their families be charged for the use of interpreter services.

(d) The clinical record for persons who are non-English speaking, shall identify any significant related effect on such persons' functioning and treatment, and identify associated recommendations for treatment including any reasonable accommodations.

(e) The non-English speaking person's adult family member, significant other, correspondent, or advocate may serve as an interpreter for the person if he/she and his/her family member, significant other, correspondent or advocate agree to the arrangement, the arrangement is deemed clinically appropriate, and the parties have been informed of the option of using an alternative interpreter identified by the provider. Providers shall not condition service delivery on the use of family members or significant others as interpreters.

(ii) Effective communication with non-English speaking persons shall be provided in accordance with Title VI of the Civil Rights Act of 1964 (42 USC 2000d). Said law is published by the West Publishing Company, St. Paul, Minnesota and is available for review at:

(a) The Department of State, Office of Information Services, 41 State Street, Albany, NY 12231; and

(b) The Office For People With Developmental Disabilities, Office of Counsel, 44 Holland Avenue, Albany, New York 12229.

(iii) Effective communication with persons who are deaf or hard-of- hearing shall be provided in accordance with the Americans with Disabilities Act of 1990 (Public Law 101-336). Said law is published by the West Publishing Company, St. Paul, Minnesota and is available for review at:

(a) The Department of State, Office of Information Services, 41 State Street, Albany, New York 12231; and

(b) The Office For People With Developmental Disabilities, Office of Counsel, 44 Holland Avenue, Albany, New York 12229.

(b) Standards of certification.

(1) There are written policies/procedures on notifying individuals and/or parents, guardians or correspondents of the person's rights:

(i) on (or prior to) admission; and

(ii) as changes are made.

(2) OPWDD shall verify (see Glossary) that the following information was provided to each individual and/or his or her parents, guardians or correspondents (unless the person is a capable adult and objects to such information being provided to a parent or correspondent):

(i) rights and responsibilities;

(ii) the availability of a process for resolving objections, problems or grievances relative to the person's rights and responsibilities;

(iii) the availability of the following parties to receive complaints and concerns:

(a) the director of the B/DDSO;

(b) the commissioner of OPWDD;

(c) the Commission on Quality of Care for the Mentally Disabled;

(d) the Mental Hygiene Legal Service, for residents of the developmental centers and persons in the community on conditional release from developmental centers only; and

(e) the board of visitors, for residents of developmental centers and persons in the community on conditional release from developmental centers only.

(3) Such information as required in paragraph (2) of this subdivision has been provided to all appropriate parties as follows:

(i) For persons admitted to the facility prior to implementation of this Part, OPWDD shall verify, at the first survey after implementation, that the information was provided to all appropriate parties.

(ii) For those persons admitted to the facility since the last survey, OPWDD shall verify that the information was provided to all appropriate parties.

(iii) When changes have been made, OPWDD shall verify that the information was provided to all appropriate parties.

(4) OPWDD shall verify that staff are aware of the rights of persons in the facility.

(5) OPWDD shall verify that affirmative steps have been taken to make persons at the facility aware of their rights to the extent that the person is capable of understanding them.

(6) For the person who has had limitations placed on any rights, there is documentation in the person's plan of services as the clinical justification and specific period of time the limitation is to remain in effect.

Section 633.15 Management of Personal Funds

(a) Applicability.

(1) The provisions of this section apply to all residential facilities certified or operated by OPWDD (including family care homes), and non-residential programs which accept responsibility for handling the personal allowance of residents of residential facilities.

(2) The implementation date for compliance with this section with the exception of subdivision (j) and any other references to personal expenditure planning and the personal expenditure plan is April 1, 2008.

(3) The implementation date for compliance with subdivision (j) and any other references to personal expenditure planning and the personal expenditure plan is January 1, 2009.

(4) Prior to the implementation of subdivision (j), the upper limit on the amount of cash that should routinely be maintained under the control of staff at the residence for each resident shall not exceed the monthly personal allowance amount established in Section 131-o of the Social Services Law for individuals receiving enhanced residential care (Congregate Care Level III), plus $20. However, this routine upper limit may be exceeded by any amount, so long as documentation of the specific amount, time and purpose for the excess amount is included in the cash account record. Cash in excess of the routine upper limit for each resident may only be held at the residence for a period not to go beyond 14 calendar days.

(b) Definitions. The following definitions apply to terms used in this section:

(1) Account, agency fiduciary personal allowance. An account, established by an agency/sponsoring agency, that contains personal allowance funds for which the agency is responsible. Access to any monies deposited in this account shall be accessible only to authorized employees and family care providers in conformance with agency policies and procedures.

(2) Account, burial reserve. An account that is established for the express purpose of reserving an amount of money to be set aside for the burial of the individual named on the account. The account shall be separate and distinct from an agency fiduciary personal allowance account and a person-owned account. The maximum dollar amount may not exceed that established by section 131-o of the Social Services Law. Any account or money which is held in trust by a funeral director, funeral firm or other party, firm or corporation under General Business Law section 453 shall not be considered a burial reserve account under this regulation and is not governed by this regulation.

(3) Account, payee. A record maintained by a person who is his or her own payee, or by a payee for earnings, a representative payee, or a designated payee to receive and maintain monies from a benefit paying organization.

(4) Account, person-owned. An account that is established at a local financial institution into which some or all of an individual's funds including personal allowance may be deposited, when an agency is managing such personal allowance. Such an account shall reflect the beneficiary's ownership and be in accordance with the personal expenditure plan (PEP).

(5) Account, personal allowance. The accounting record maintained by the agency or sponsoring agency as part of the process for managing an individual's personal allowance.

(6) Agency fiduciary personal allowance account. See *Account, agency fiduciary personal allowance.*

(7) Allowance, personal. The monthly personal allowance is that portion of income which is made available on a monthly basis to every person residing in a facility operated or certified by OPWDD which is intended for the personal expenditure by an individual.

(8) Assessment, money management. An assessment by the person's expenditure planning team of the person's ability to independently manage money.

(9) Burial reserve account. *See Account, burial reserve.*

(10) Choices, personal spending. Preferences which persons may be able to express, either through words or other methods or gestures, on the use or expenditure of personal monies.

(11) Countable Income. *See Income, countable.*

(12) Excess resources. *See Resources, excess.*

(13) Group purchase. *See Purchase, group.*

(14) Incidental income. *See Income, incidental.*

(15) Income, countable. The combined amount of earned and unearned income that remains (on a monthly basis) after the calculation of personal allowance.

(16) Income, incidental. Irregular or infrequent income which is not received on a scheduled basis; or is received no more than quarterly, even if scheduled; and does not exceed $30 in a given quarter if earned, or $60 in a given quarter if unearned.

(17) Income, net available monthly (NAMI). For persons residing in ICF/DDs and specialty hospitals, the combined amount of earned and unearned income, which remains on a monthly basis after the calculation of personal allowance. This is the amount to be paid to the provider for cost of care.

(18) Management. As used in this section, this term is used to cover the process mandated in Social Services Law section 131-o which requires that an offer be made on behalf of a residential facility to a resident to establish a separate

accounting process [illegible] personal allowance, thereby exercising control over an individual's personal allowance. For the purpose of consistency, the use of the term management or manage in this section shall refer to this oversight and supervisory responsibility.

(19) Money management assessment. *See Assessment, money management.*

(20) Net available monthly income (NAMI). *See income, net available monthly.*

(21) Payee. Anyone who receives a person's income from the payment source (i.e., the benefit paying organization). The types of payees are:

(i) Designated payee. Someone designated to receive a person's income (other than a party designated by the Social Security Administration, who is referred to as a "representative payee") from a benefit paying organization other than the Social Security Administration (e.g., Veterans Administration) to handle such income for a person who is deemed incapable of handling his or her benefits by reason of mental or physical incapacity.

(ii) Own payee. A person who has been deemed capable of handling unearned income and so receives this income directly.

(iii) Payee for earnings. An employed person who receives his or her own wages regardless of whether he or she has achieved "own payee" status for unearned income.

(iv) Representative payee. That party specifically designated in accordance with the provisions of 20 CFR 404 and/or 416 by the Social Security Administration (SSA) to handle benefits payable to a beneficiary who is deemed, by the SSA, incapable of handling his or her benefits by reason of mental or physical incapacity. Benefits covered include Social Security and Supplemental Security Income (SSI) payments.

(22) Payee account. *See Account, payee.*

(23) Payment, provider. The maximum monthly amount a person is expected to pay f[illegible] the cost of care.

(i) For community residences (including Individualized Residential Alternatives (IRAs) - the Level II SSI combined payment level minus the minimum personal allowance stated in section 131-o of the Social Services Law.

(ii) For intermediate care facilities and specialty hospitals - the net available monthly income (NAMI).

(iii) For family care - the family care SSI combined payment level minus the minimum personal allowance stated in section 131-o of the Social Services Law.

(iv) For private schools - the Level III SSI combined payment level minus the minimum personal allowance stated in section 131-o of the Social Services Law.

(24) Person-owned account. *See Account, person-owned.*

(25) Personal allowance. *See Allowance, personal.*

(26) Personal allowance account. *See Account, personal allowance.*

(27) Personal Expenditure Plan (PEP). *See Plan, personal expenditure.*

(28) Personal spending choice. *See Choice, personal spending.*

(29) Plan, personal expenditure (PEP). Documentation of the expenditure planning for an individual that includes a money management assessment, a description of resources, spending options and the general parameters for personal spending.

(30) Provider payment. *See Payment, provider.*

(31) Purchase, group. The purchase of an item for the collective benefit of the contributing persons by the pooling of their personal allowance money.

(32) Resources. All real or personal property, other than current monthly income, which is owned by a person individually or jointly with others.

(33) Resources, excess. Resources accrued in the name of a person that exceed the maximum resource limit established by the Supplemental Security Income (SSI) program or Medicaid. For persons who are potentially SSI eligible, excess resources are resources above the resource limit applied by the Social Security Administration in establishing SSI eligibility. For persons who are not potentially SSI eligible (e.g., do not meet the SSI disability criteria), excess resources are those resources above the resource limit applied by the Department of Health in establishing Medicaid eligibility.

Note: Definitions for terms used generally in Part 633 may be found in section 633.99.

(c) General provisions.

(1) Every person with a developmental disability who resides in a facility operated or certified by OPWDD and who has an income shall receive a personal allowance.

(2) The management and use of personal allowance shall be in accordance with the provisions of Social Services Law, section 131-o, for recipients of State-supplemented SSI who reside in residential facilities.

(3) The amount of personal allowance received shall be calculated based on the formula in subdivision (e) of this section.

(4) The function of personal allowance is to permit an individual to have funds to meet his/her personal and recreational wants and desires.

(5) The expenditure of personal allowance must personally benefit the person and reflect his/her personal spending choices.

(6) The person shall be involved in all decisions regarding the use of his/her personal allowance funds. OPWDD assumes that all people with developmental disabilities have some capacity for self-advocacy and decision making related to the expenditure of personal allowance.

(d) Policies and procedures. Each agency or sponsoring agency operating a residential facility (see section 633.99) shall develop and implement policies and procedures which reflect compliance with this section.

(1) Each agency which operates a residential facility or sponsors a family care home and manages personal allowance; or operates a non-residential facility or service and accepts responsibility for handling the personal allowance of residents of residential facilities; shall develop and implement policies and procedures to ensure safeguarding and accurate accounting of such personal allowance.

(2) Policies and procedures shall reflect and implement the responsibility of the agency to maintain resident's funds in a fiduciary capacity in accordance with subdivision 33.07(e) of the Mental Hygiene Law, when the agency assumes management responsibility over the funds of a resident pursuant to this section.

(3) Policies and procedures shall address, at a minimum: security; accountability of staff, volunteers, and/or family care providers; record keeping both on paper and electronically; usage; and monitoring of all personal allowance monies and other income of residents received by the agency. Policies and procedures shall include specific measures that will be taken to safeguard cash, including location maintained and restrictions on access.

(4) Policies and procedures shall indicate that the use of personal allowance is to benefit the person only and shall reflect the person's personal spending choices in expenditures made. Policies and procedures shall include a process for individual personal expenditure planning and the implementation of a personal expenditure plan (PEP).

(e) Personal allowance. Monies accrued from the monthly portion of income made directly available to an individual that is intended for his/her personal expenditure. The monthly personal allowance is that portion of income which is made available on a monthly basis to every person residing in a facility operated or certified by OPWDD.

(1) For persons residing in family care homes, community residences, Individualized Residential Alternatives (IRAs) and private schools, the amount will be determined, regardless of the source of income, using the current amount stated in section 131-o of the Social Services Law, and any and all income exemptions provided for in current regulations governing SSI and Medicaid eligibility and payment.

(i) Personal allowance may have several components, depending on individual circumstances. On a monthly basis, these include, but are not limited to:

(*a*) the minimum statutory allowance - for all persons.

(*b*) a $20 income disregard - for all persons with any income other than SSI.

(*c*) a work-related exemption of up to the first $65 of gross wages plus one-half of earnings above $65 - for all employed persons. The work-related exemption of $65 is intended to be used to pay for costs incurred because a person works. Examples are: union dues, health insurance, uniforms, lunches purchased while at work, and transportation costs incurred because the person works.

(*d*) incidental income - for all persons, whenever it exists. Incidental income is irregular or infrequent income which is not received on a scheduled basis; or is received no more than quarterly, even if scheduled, and does not exceed $30 in a given quarter if earned, or $60 if unearned.

(2) For persons residing in ICF/DDs and specialty hospitals, the amount will be determined by using Medicaid law and the Social Services Law and regulations (18NYCRR).

(i) On a monthly basis the components of personal allowance include but are not limited to:

(*a*) for non-working persons, either:

(*1*) the statutory personal allowance as specified in Section 366 of the Social Services Law; or

(*2*) the full monthly SSI payments for individuals residing in title XIX (Medicaid) certified facilities.

(*b*) for working persons:

(*1*) the first $65 of gross earnings plus one half the earnings above $65; and

(*2*) an amount up to the statutory personal allowance from:

(*i*) the balance of earnings; and

(*ii*) all unearned income; and

(*c*) incidental income for all persons, whenever it exists.

(f) Income. A person's monthly income is separated into personal allowance and countable income or net available monthly income (NAMI).

(1) Personal allowance, as calculated according to the formula in subdivision (e) of this section, shall be maintained in a personal allowance account.

(2) The remaining amount is the countable income or NAMI, which is maintained in a payee account.

(3) The agency shall ensure that accounts containing both personal allowance and countable income or NAMI can distinguish clearly between them. Conserved countable income must be clearly identifiable so that no more than the portion of resources that is countable conserved income may be collected from resources in the event of a shortfall.

(4) Only countable income or NAMI shall be used to make the provider payment, along with any conserved countable income and excess resources. Any countable income not used for the provider payment in the month of receipt may be conserved and used for provider payment shortfalls in future months. Such conserved countable income is part of the individual's resources and may be used by the individual for personal spending at any time.

(g) Resources. Resources are cash and any other personal and real property and assets, other than current monthly income, that an individual owns, has the right, authority or power to convert to cash, and is not legally restricted from using for his/her support and maintenance.

(1) Resources include but are not limited to:

(i) savings and checking accounts, which may include countable income from a previous month that was not used to meet the provider payment in the month of receipt;

(ii) stocks, bonds, and other negotiable instruments;

(iii) real estate, automobiles, jewelry, and other valuables; and

(iv) life insurance with cash value.

(2) Resources which are derived from a person's income are separated into conserved countable income and accrued personal allowance.

(i) The payee is responsible for the management of conserved countable income.

(ii) Accrued personal allowance is managed in the same manner as personal allowance.

(iii) At the time a person commences residency, the agency or sponsoring agency shall determine the portion of a person's resources which is

accrued personal allowance as opposed to conserved countable income or other resources. If such a determination cannot be made, the entire resource amount shall be treated as personal allowance.

(3) Resources other than those derived from benefit payments shall be handled by the person or a party with duly appointed fiduciary authority.

(4) In no case shall a financial arrangement be made which implies current or future ownership of a person's resources or current income by an agency/facility or sponsoring agency or its employees, consultants, contractors, volunteers; or family care providers.

(h) Accounts. When an agency or sponsoring agency has the responsibility of overseeing personal allowance funds, it shall use the following accounts to maintain those funds:

(1) Personal allowance account. A personal allowance account shall be established for each person for whom the agency or sponsoring agency manages personal allowance.

(i) The personal allowance account consists of an accounting process which results in a record of the receipt and disbursement of all personal allowance.

(ii) Monies in a personal allowance account shall be maintained in agency fiduciary personal allowance accounts and/or in person-owned accounts and/or in cash at the person's residence and/or other service provider. The transfer of funds between the four forms of personal allowance account shall be documented.

(iii) On at least a quarterly basis, the personal allowance account will indicate the amount of personal allowance cash held in a person's place of residence, cash held by other service providers, the amount of personal allowance on hand in a person-owned account, and the amount of personal allowance in an agency fiduciary personal allowance account.

(2) Agency fiduciary personal allowance account.

(i) Agency fiduciary personal allowance accounts may contain the personal allowance of a number of persons. In such instances the agency's or sponsoring agency's bookkeeping procedures shall provide adequate identification of the personal allowance belonging to each person.

(ii) Agency fiduciary personal allowance accounts shall be interest bearing, and each person shall receive the full amount of interest based on the amount of his or her personal allowance on deposit.

(iii) Access to personal allowance monies deposited in an agency fiduciary personal allowance account shall be limited to authorized employees of the agency or sponsoring agency or family care providers, functioning in accordance with agency policy/procedure; people who reside at the

facility shall not have direct access to the agency fiduciary personal allowance account in which such monies may be deposited.

(3) Person-owned account. Personal allowance may not be moved from an agency fiduciary personal allowance account to any other type of account except to one which reflects the beneficiary's sole ownership in accordance with the PEP, which shall be known as a person-owned account.

(i) A person shall exercise independent control of a person-owned account consistent with his/her money management assessment.

(ii) The use of a person-owned account shall not relieve the agency of its responsibility pursuant to the PEP.

(iii) Funds in a person-owned account are resources of the individual, and as such, the agency shall be responsible for monitoring the account balance to ensure the individual's total resources remain below the applicable resource limit so that the individual's benefits are not reduced.

(iv) Though highly desirable, person-owned accounts need not be interest bearing.

(4) Cash accounts - residence. Cash to meet the person's day-to-day and/or incidental needs may be maintained at the place of residence in accordance with agency or sponsoring agency policies and procedures.

(i) There shall be an up-to-date person-specific cash account ledger card or equivalent maintained at the residential facility that documents the receipt, disbursement, and balance of all cash.

(ii) A portion of this cash may be transferred by the residential facility to a nonresidential program providing services to the person, for the use of the person while he or she is receiving those services. If such program accepts responsibility for handling the personal allowance of the resident, it shall establish policies and procedures to ensure safeguarding and accurate accounting of the resident's personal allowance and to ensure that the program adheres to the requirements of this section regarding disbursements, including record keeping and receipts, as if such disbursement occurred from cash at the residential facility. A copy of relevant records shall be given to the residential facility no less frequently than on a quarterly basis.

(iii) The Personal Expenditure Plan shall specify an upper limit on the amount of cash that should routinely be maintained under the control of staff at the residence for each resident. The routine upper limit specified in the PEP and/or the cash actually maintained at the residence for any individual shall not exceed the monthly personal allowance amount established in Section 131-o of the Social Services Law for individuals receiving enhanced residential care (Congregate Care Level III), plus $20. However, this routine upper limit may be exceeded by any amount, so long as documentation of the specific amount, time and purpose for

the excess amount is included in the cash account record. Cash in excess of the routine upper limit for each resident may only be held at the residence for a period not to go beyond 14 calendar days.

(iv) The agency/sponsoring agency is responsible in all instances for any loss of cash maintained at the residence or at the non-residential program until the cash is properly disbursed to the person.

(5) For the purposes of this section, cash shall mean currency, coins, or anything that can be easily converted into cash (e.g. checks).

(i) Management of income and personal allowance.

(1) The employee with overall fiscal responsibility for the agency or sponsoring agency shall be responsible for the management of the personal allowance account.

(2) The accounting process shall be such that personal allowance shall be recorded separately from countable income or NAMI.

(3) The accounting process shall clearly identify personal allowance as separate from any funds belonging to the agency, its employees, contractors, consultants, volunteers or family care providers.

(4) The personal allowance account shall reflect any and all interest accrued for each person if the personal allowance has been deposited in an agency fiduciary personal allowance account.

(5) The agency or sponsoring agency, in accordance with its own policies and procedures**,** shall ensure that there is one or more up to date personal allowance account ledger cards or equivalents for each person showing deposits, withdrawals and disbursements, with a general description of the purpose of such transactions, interest, and balances. Ledgers that are maintained electronically shall comply with all agency policies and procedures concerning security and record keeping for the equivalent paper records.

(6) Entries made on the individual's cash account ledger card or equivalent shall be initialed by the individual either on the ledger itself or as an acknowledgement endorsed by the individual at least monthly in a record attached to the PEP, unless there has been a determination as indicated in the PEP that such action would not substantiate the person's understanding.

(7) The agency or sponsoring agency shall have procedures in place to monitor the total amount of funds to which an individual has independent access and work with the individual to ensure this total does not exceed the amount specified in the personal expenditure plan. This includes:

(i) cash in the possession of the individual;

(ii) funds retained by the individual from earnings; and

(iii) funds maintained in a person-owned account.

(8) All records of the personal allowance account, including ledger cards or their equivalents, shall be available for review upon request by the person, his or her guardian, his or her advocate(s) (as defined in Section 635-99.1 of this Part), the payee, and the benefit paying organization.

(9) On a quarterly basis, the agency or sponsoring agency shall send a copy of each person's personal allowance account ledger card or equivalent to payees, other than the chief executive officer or a payee for earnings.

(10) In order to assure the proper management of personal allowance accounts, the agency or sponsoring agency shall conduct annual internal agency audits, on a random basis, of at least 25% of the personal allowance accounts for which they are responsible in all residential types of facilities except family care. The agency or sponsoring agency shall conduct annual internal agency audits on at least 10 % of the personal allowance accounts in family care programs. These audits shall demonstrate compliance with the requirements of this section.

(11) When the chief executive officer is the payee, the appropriate amount of personal allowance shall be credited to the personal allowance account within three business days of receipt of income which includes personal allowance monies.

(12) When the payee is other than the chief executive officer, the personal allowance received from that payee shall be credited to the personal allowance account within three business days of receipt by the agency or sponsoring agency.

(13) Once credited to the personal allowance account, there is no requirement the funds be sent to, or maintained in, the residence cash account except as in accordance with the individual's personal expenditure plan, or upon the request of the person or appropriate agency staff.

(14) Notwithstanding any other provision of this section, a residential agency may advance a person personal spending money in a sum up to the monthly statutory personal allowance amount, in the expectation that the advanced monies will be recouped to the agency from a retroactive payment made by a benefit paying organization that covers the month of the advance(s). Said advance may only occur in those situations where the person's temporary shortfall in income is directly caused by his or her recent movement into the agency's residential program.

(15) Staff expertise. Staff who have responsibility for anyone's personal allowance shall be knowledgeable about:

(i) methods used for the management of personal allowance by the agency; and

(ii) how to access information from the business office (by whatever name known) regarding:

(*a*) the amount of personal allowance due any one person in any given month; and

(*b*) the total balance in a personal allowance account.

(j) Personal expenditure planning.

(1) The agency or sponsoring agency shall ensure that expenditure planning for personal allowance is conducted on at least an annual basis for each person for whom it is managing personal allowance. Documentation of the expenditure planning shall be incorporated into a personal expenditure plan (PEP).

(2) Expenditure planning shall be done by an individual's expenditure planning team which includes the person, his or her advocate and service coordinator, if applicable; and relevant agency staff and the family care provider.

(3) A person's PEP shall contain the following elements:

(i) a money management assessment by the person's expenditure planning team of the person's ability to independently manage money. At a minimum, this assessment must indicate:

(a) the ability to manage funds to which he/she has independent access. The funds include cash from personal allowance, funds retained from earnings, and funds maintained in a person-owned account;

(b) a specific amount of funds the person can safely manage without the need for receipts; and,

(c) the frequency with which the funds are provided to the person, (e.g. $10 per week, $2 per day).

(ii) a description of the person's resources and personal allowance projected for the month/year, and anticipated spending on an annual and/or monthly basis, which shall be consistent with the money management assessment.

(iii) spending options which reflect the person's needs, preferences and personal spending choices, such as entertainment/diversion, hobbies, vacation experiences, family contacts, personal shopping and/or luxury items, weekly activities, and other activities that promote inclusion in the community. Where choices cannot be expressed verbally, preferences may be expressed through body language, eye contact, facial expression, and other non-verbal cues and behavior. Input from others who know the person best, such as family members, advocates, and specific direct care support professionals regarding choice is optimal during the expenditure planning process.

(iv) general parameters for personal spending. This aspect of the PEP does not duplicate or replace the personal allowance ledger(s) or equivalent

that reflect actual receipt and disbursement for personal allowance. The PEP is intended to guide those assisting the person with financial choices and must not be used to limit the person's opportunities for personal spending.

(4) Maintenance of the PEP.

(i) A copy of the current PEP is to be maintained with the person's residential plan of services and distributed to the person, his/her advocate, and service coordinator.

(ii) Information from the PEP may be given to involved parties as necessary after consultation with the individual and his/her advocate.

(5) The PEP shall be reviewed annually and as needed to insure flexibility in spending on behalf of the person. A revised PEP should be developed to reflect updated priorities in spending.

(6) The agency or sponsoring agency shall designate staff or the family care provider to coordinate the development and implementation of the PEP. The designated staff shall:

(i) be knowledgeable about the person's PEP;

(ii) be prepared to work with and assist the person as needed to develop the PEP and to spend their personal allowance consistent with the PEP;

(iii) be knowledgeable about the person's choices, needs, desires, and aspirations.

(iv) monitor the use of personal allowance on an ongoing basis throughout the year;

(v) ensure that expenditures occur and are consistent with implementation of the PEP;

(vi) review the amount of personal spending and the balance of personal allowance available on a routine basis; and

(vii) ensure that current needs are accommodated within the balance.

(7) Agency staff or family care providers who are making personal allowance expenditures on the person's behalf must involve the person in decisions about those expenditures and must monitor whether those expenditures are consistent with the PEP.

(8) Personal allowance is required to be provided to the person upon request. Requests for funds which are inconsistent with the PEP should be discussed with the person and brought to the attention of the advocate, service coordinator, and other participants in the expenditure planning process.

(k) Access to personal allowance.

(1) Personal allowance funds shall be made readily accessible to the person.

(2) Funds in the personal allowance cash account in the residence must be given to the person as soon as possible, but not to exceed 24 hours after the person's request for the funds, consistent with the money management assessment in the personal expenditure plan.

(3) Personal allowance that is under the control of the agency that is not maintained at the residence must be sent to the residence as soon as possible, but not to exceed three business days after receiving a duly authorized request for the funds.

(l) Receipts.

(1) Documentation with receipts is required if personal allowance monies are used to purchase any items or services by agency/facility or sponsoring agency staff or family care providers acting upon their own discretion. However, receipts are not required for expenditures under $15 per person for, and related to, routine recreational activities. In such cases, the expenditures shall be noted in the ledger or other record.

(2) Receipts are not required for expenditures made by the person from a cash distribution that he or she receives from personal allowance monies. The amount of the cash distribution, however, must be noted on the ledger card or cash account record and be consistent with the individual's money management assessment.

(m) Restitution.

(1) OPWDD may investigate any loss or suspected misappropriation or wrongful withholding of personal allowance funds and may commence and/or maintain an action on behalf of any individual or group of individuals to recover any funds so lost, misappropriated or withheld.

(2) In any case where the agency or sponsoring agency is suspected of losing, misappropriating, or wrongfully withholding an individual's personal allowance, OPWDD or its designee may investigate and where appropriate, take the steps necessary to recover or secure release of resident funds. Funds recovered in this manner shall be given to the respective individual or credited to his/her personal allowance account at the earliest possible date.

(3) If the agency or sponsoring agency is acting as the payee for an individual for any benefits including but not limited to Social Security or Supplemental Security Income benefits, the agency or sponsoring agency is responsible for following the program rules set forth by the benefit paying organization in addition to following the requirements of this section.

(n) Transfer of funds.

(1) When an individual is moving to another living situation, the balance of all personal allowance managed by the agency or sponsoring agency shall be forwarded to the officially designated party for the new residential setting within 10 business days of the person's departure. This includes the money in the personal allowance account, including any personal allowance in cash at the residential site, and all money in a burial reserve account. However, if the person's monies (personal allowance, accrued personal allowance, countable income or NAMI, and conserved countable income) were derived, in total or in part, from payments made by the Social Security Administration (SSA), and the chief executive officer is the representative payee, the following procedures apply:

(i) If the person is moving to a facility operated or sponsored by the same agency, the agency shall retain all monies and the chief executive officer of the agency shall continue to serve as the person's representative payee. Personal allowance monies maintained in cash at the residential site shall be forwarded to the new residential facility.

(ii) In all other cases, the monies derived from payments made by SSA must either be returned to SSA within 10 business days of the person's departure or, if specifically permitted by SSA, forwarded to the new representative payee. Any encumbered funds shall be retained by the agency and appropriately disbursed. Monies derived from other sources shall be forwarded to the officially designated party for the new residential setting within 10 business days of the person's departure. If monies derived from SSA have been combined with monies from other sources, then the amount returned to SSA shall be the percentage of the current total which represents the SSA portion. The percentage shall be calculated based on the historical portions received over the last six months of monies from SSA and non-SSA sources.

(*a*) The original agency shall notify the new agency regarding the return of the person's monies to SSA at the time of such return or transfer of monies.

(*b*) If the person is moving to another residence certified or operated by OPWDD:

(1) on or before the date of the move, the original agency shall disburse a sum equivalent to one month's minimum statutory allowance or the total of the person's monies, whichever is less, prior to returning to SSA the remainder (if any) of the person's monies that were derived from payments made by SSA;

(2) the chief executive officer of the new agency shall apply to SSA to become the person's representative payee no later than three business days after the person's admission;

(3) upon the appointment of the chief executive officer of the new agency as representative payee by SSA and receipt

of the person's accrued monies, the new agency shall consider the monies to be accrued personal allowance, except for any amount which is due and payable to the new agency for the provider payment(s) derived from the SSA payment at the time of the receipt of monies; and

(4) the new agency shall monitor the person's resources.

(*c*) All funds in a burial reserve account, annotated as such, regardless of the origin of the funds, shall be forwarded to the officially designated party for the new residential setting within 10 business days of departure.

(2) Except for monies received from SSA, when the chief executive officer of the original agency is the payee, the ongoing monthly personal allowance shall be forwarded within five business days of receipt of the benefit check to the new living situation. This arrangement shall continue until a new payee is designated.

(o) Record retention. Each agency or sponsoring agency shall maintain complete records documenting all transactions involving personal allowance for four years.

(p) Prohibitions. An agency or a sponsoring agency shall not:

(1) withhold personal allowance for any reason, or use personal allowance to reward or punish a person;

(2) charge a fee to anyone to manage the resident's personal allowance;

(3) borrow from, or pledge, any personal allowance;

(4) demand, require, beneficially receive, or contract for all or any part of anyone's personal allowance to pay for expenses or supplies and services which the agency is mandated to provide in accordance with Subpart 635-9. In no case shall personal allowance be used to:

(i) compensate agency staff, sponsoring agency staff, or family care providers for services rendered at any time; or

(ii) pay any expenses of agency staff, sponsoring agency staff, or family care providers for activities or transportation while providing mandated services; or

(iii) pay for any medical/dental/clinical supplies and services not paid by Medicaid/Medicare/private insurance unless excess resources are available; or

(iv) purchase any item or service for which public funds, including local, State or Federal funds, are provided, or for which reimbursement is made through a rate, fee, price, or grant-in-aid, or any goods or services which are paid for or reimbursed through public or private insurance.

This includes educational services mandated for children by the Education Law; or

(v) make restitution for damages caused by that person unless, as documented in the person's plan of services:

(*a*) the agency has addressed the person's inappropriate behavior;

(*b*) the expenditure planning team has determined that financial restitution is appropriate and has meaning for the person;

(*c*) the payee (if other than the agency chief executive officer), has provided written approval for the use of a portion of the personal allowance for such purpose; and

(*d*) a committee, or part of the committee, charged with protecting the rights of persons in the facility, has approved the time limited use of that person's personal allowance for such purposes.

(q) Purchases.

(1) Purchases made with personal allowance are the personal property of the individual.

(2) Personal allowance may be used to make a group purchase in accordance with requirements of the Social Security Administration.

(r) Payee designation and responsibilities.

(1) Anyone who receives an individual's income from a benefit paying organization or other payment source is called a payee. The types of payees are:

(i) Own payee. A person who has been deemed to be capable of handling unearned income and so receives this income directly.

(ii) Payee for earnings. An employed person who receives his or her own wages regardless of whether he or she has achieved "own payee" status for unearned income.

(iii) Representative payee. A party specifically designated in accordance with the provisions of the Social Security Administration (SSA) to handle benefits payable to an individual who is deemed, by the SSA, to be incapable of handling his or her benefits by reason of mental or physical incapacity. Benefits covered include Social Security and Supplemental Security Income (SSI) payments.

(iv) Designated payee. A party, other than a representative payee, who is designated to receive a person's income from a benefit paying organization other than SSA to handle such income for a person deemed incapable of handling his or her benefits by reason of mental or physical incapacity.

(2) When the payee is the chief executive officer, the agency or sponsoring agency is mandated by Social Services Law, section 131-o, to manage the personal allowance portion of that income. No fee may be charged by the agency or sponsoring agency for managing personal allowance. No documentation of the arrangement is required.

(3) When the chief executive officer serves as payee, a record of all monies received shall be maintained, and reports of these monies shall be made to the benefit paying organizations, as required. This includes earned income received by an individual as payee for earnings.

(4) When the chief executive officer serves as payee, a record of all resources with current values shall be maintained to meet all benefit paying organization reporting requirements and to ensure that the entitlement is not jeopardized by an individual's resources exceeding regulatory limits. This record shall include personal allowance.

(5) When the individual is his or her own payee, the agency or sponsoring agency shall offer assistance in:

(i) reporting both earned and unearned income to benefit paying organizations, as required;

(ii) reporting resource amounts to benefit paying organizations, as required;

(iii) monitoring resource amounts to ensure that the individual's entitlement is not jeopardized through having excess resources.

(6) When the payee is other than the chief executive officer, the agency or sponsoring agency shall extend an offer to manage the individual's personal allowance. The offer shall be made in writing and within three business days of admission or change in payee.

(s) Non-residential provider responsibilities. If a non-residential provider accepts responsibility for handling personal allowance monies transferred to it by a residential facility for a person's use, the following shall apply:

(1) Policies and procedures shall be established to address at a minimum: usage, security, record keeping, accountability of staff, contractors, consultants and volunteers, and monitoring of all personal allowance monies received by the provider.

(2) There shall be an up-to date person specific record or ledger maintained detailing receipt, disbursement, and balance of personal allowance monies.

(3) Receipts shall be required in accordance with subdivision (l) of this section.

(4) Expenditures shall benefit the person and items purchased by or for the person shall be his or her personal property.

(5) Use of personal allowance shall be in accordance with the individual PEP.

New York State Codes, Rules and Regulations 635.9 Provision of Required Supplies and Services

635.9.1 Requirements for residential facilities.

(a) Principles of compliance.

(1) Intermediate care facilities for persons with developmental disabilities (ICF/DDs), community residences, private schools, and specialty hospitals shall assume the cost of:

(i) Any item or service for which local, state, or federal funds are provided; or for which reimbursement is made through a rate, fee, or grant-in-aid.

(ii) All staff personal service costs and staff expenses incurred in the provision of services and activities which are specified in a person's plan of service or part of the facility's recreation program.

(iii) Physical plant maintenance and improvements.

(iv) All utilities including heat, light, power, water, and sewer.

(v) Phone service. Persons at the facility shall not be charged for local phone calls. Long distance calls made by a person residing in the facility may be paid for from his or her personal allowance.

(vi) The purchase, operation, and maintenance of all equipment and furniture necessary to operate the facility in accordance with regulations of the applicable facility class, and any other applicable regulations.

(vii) Special equipment necessary to meet the developmental needs of persons at the facility.

(viii) Items required to meet the special, clinically determined, individual needs of persons where such items are costly and/or are used on an ongoing basis (e.g., adult diapers) and are not covered by Medicaid, Medicare or other health insurance.

(ix) Environmental adaptions made to the facility to meet the needs of persons at the facility.

(x) Three well-balanced meals, or equivalent, and an appropriate number of snacks and any special foods required to meet the nutritional needs of persons in the facility. An exception to the meal/snack requirement is made where a person attends a day program which receives specific funds to cover the cost of a specified daily meal and/or snack.

(xi) Basic bedding and towels (see glossary).

(xii) The purchase, operation, and maintenance of all laundry equipment and supplies, as well as laundromat and laundry service charges and the cost of basic dry cleaning (see glossary).

(xiii) Hygiene supplies and services.

(a) ICF/DDs and specialty hospitals are responsible for all basic grooming and personal hygiene items and services. This includes, but is not limited to toilet paper, tissues, soap, deodorant, shampoo, paper cups, band-aids, and other first aid supplies, as well as such personal items as shaving equipment, toothbrush, comb and brush, haircuts, and sanitary napkins. The exception to this would be when a preference for personal selection is indicated by a resident (see section 633.15(c)(5) of this Title).

(b) Community residences and private schools are responsible for those grooming and personal hygiene items customarily shared by a family. This includes, but is not limited to, toilet paper, tissues, soap, shampoo, a supply of sanitary napkins, band-aids, and other items for home first aid. The exception to

this would be when a preference for personal selection is indicated by a resident (see section 633.15(c)(5) of this Title).

(xiv) For persons who are Medicaid recipients, all necessary medical/dental/clinical supplies and services (see glossary) not available under Medicaid.

(xv) For persons who are not Medicaid recipients, all necessary medical/dental/clinical supplies and services not available under Medicare or other health insurance. An exception is made where a person has excess resources (see glossary) which, based on a medical/dental payment review (see glossary), have been determined to be available for this use.

(xvi) Basic clothing (see glossary).

(a) ICF/DDs, private schools, and specialty hospitals assume the cost of basic clothing, except where the following funds are available:

(1) Personal allowance (see glossary) not required for a person's current and foreseeable future individualized needs. In all cases, a $100 personal allowance balance must be reserved for purposes other than basic clothing purchases.

(b) Community residences assume the cost of basic clothing, except where the following funds are available:

(1) section 41.36(n) funds (see glossary); and

(2) personal allowance not required for a person's current and foreseeable future individualized needs. In all cases, a $100 personal allowance balance must be reserved for purposes other than basic clothing purchases.

(xvii) Travel expenses, except those:

(a) covered by Medicaid

(b) payable from a person's work-related exemption (see glossary) for the month; and

(c) associated with a person's individual participation in social or recreational activities, where such activities are neither specified in his or her plan of services, nor part of the facility's recreational program.

(xviii) Materials and all other expenses associated with the facility's programmatic recreational activities, whether conducted in-house or out in the community.

(xix) All items required to meet treatment needs specified in a person's plan of services.

(xx) Work-related expenses (e.g., taxes, union dues, health insurance, uniforms, lunches and transportation) not covered by the person's work-related exemption for the month.

(xxi) Damage caused by a person residing in a facility, other than that portion of the expense:

(a) covered by insurance; and

(b) received from a person as part of a meaningful restitution process as devised by the program planning team (see glossary); approved in writing by the person's payee, if any; and approved by a committee, or part thereof, charged with protecting the rights of persons residing in the facility.

(2) A supportive community residence or an individualized residential alternative (IRA) may meet the above obligations in a different manner. Based on a written agreement, a person may retain all or a portion of countable income (see glossary) to purchase specified supplies or services which the agency/facility would otherwise purchase in fulfillment of the requirements of subdivision (a)(1) of this section. Such an agreement must specify:

(i) those supplies and services the person will purchase with countable income;

(ii) that any and all countable income remaining after such purchases, up to the amount of the community residence provider payment (see glossary), will be paid to the agency/facility; and

(iii) that if, in any given month, a person's countable income is such that the person cannot pay for the specified supplies and services, the agency/facility shall make up the difference. In no instance shall personal allowances be used to make up this difference.

(3) Family care.

(i) The sponsoring agency (see glossary) shall assume the cost of:

(a) Any item or service for which the sponsoring agency has been paid or will be reimbursed from local, State, or Federal funds.

(b) All staff personal service costs and staff expenses incurred in the provision of services and activities provided by the sponsoring agency.

(c) Special equipment necessary to meet the developmental needs of persons in family care homes.

(d) Environmental adaptations made to family care homes to meet the needs of persons residing in the home.

(e) Items required to meet the special individualized needs of persons residing in the home where such items are costly and/or are used on an ongoing basis (e.g., adult diapers, tube feeding supplies) and are not covered by Medicaid, Medicare, or other health insurance.

(f) For Medicaid recipients, all necessary medical/dental supplies and services not available under Medicaid.

(g) For persons who are not Medicaid recipients, all necessary medical/dental supplies and services not available under Medicare or other health insurance. An exception is made where a person has excess resources which, based on a medical/dental payment review, have been determined to be available for this use.

(h) Basic clothing (see glossary), except where the following funds are available:

(1) Family care client payment (FCCP) (see glossary) funds, other than that amount designated for recreational transportation.

(2) Personal allowance not required for a person's current and foreseeable future individualized needs. In all cases, a $100 personal allowance balance must be reserved for purposes other than basic clothing purchases.

(i) Travel expenses, except those:

(1) Covered by Medicaid

(2) Payable from a person's work-related exemption for the month.

(3) Associated with a person's individual participation in social or recreational activities, except where such activities are specified in his or her plan of services.

(4) Provided for in the family care client payment funds for recreational transportation.

(j) Work-related expenses (e.g., taxes, union dues, health insurances, uniforms, lunches, and transportation) not covered by the person's work-related exemption for the month.

(k) Damage caused by a person residing in a family care home, other than that portion of the expense:

(1) Covered by insurance.

(2) Received from a person as part of a meaningful restitution process as devised by the program team, approved in writing by the person's payee, if any, and approved by a committee, or part thereof, charged with protecting the rights of person's residing in family care homes.

(ii) The family care provider shall assume the cost of:

(a) Any item or service for which the family care provider has been paid or will be reimbursed from local, State, or Federal funds.

(b) Physical plant maintenance and improvements.

(c) All utilities including heat, light, power, water, sewer, and phone service. Local phone service must be both available for the people residing in the home and free of charge to them. Long distance calls made by a person residing in the home may be paid for from his or her personal allowance.

(d) The purchase, operation, and maintenance of all equipment and furniture necessary to operate the home in accordance with the family care and other applicable regulations.

(e) Three well-balanced meals, or equivalent, and an appropriate number of snacks and any special foods required to meet the nutritional needs of individuals other than those that would be the responsibility of the sponsoring agency, as required in clause (3)(ii)(e) of this subdivision. An exception to the meal/snack requirement is made where a person attends a day program which receives specific funds to cover the cost of a specified daily meal and/or snack.

(f) Basic bedding and towels (see glossary).

(g) Basic grooming and personal hygiene items customarily shared by a family. The exception to this would be when a preference for personal selection is indicated by a resident (see section 633.15[a][5] of this Title).

(h) The purchase, operation and maintenance of any laundry equipment.

(i) Normal laundromat and laundry service charges and basic dry cleaning costs (see glossary).

(j) General use recreational materials used in the home by the people residing there.

(4) Reimbursement of costs by OPWDD are subject to the applicable reimbursement methodology.

635.9.2 Requirements for nonresidential facilities.

(a) Principles of compliance.

(1) Nonresidential facilities shall assume the cost of:

(i) Any item or service for which local, State, or Federal funds are provided; or for which reimbursement is made through a rate, fee, or grant-in-aid.

(ii) All staff personal service costs and staff expenses incurred in the provision of services and activities which are specified in a person's plan of service or are part of the facility's recreational program.

(iii) Physical plant maintenance and improvements.

(iv) All utilities including heat, light, power, water and sewer.

(v) The purchase, operation and/or maintenance of all equipment, furniture, or supplies necessary to operate the facility in accordance with the regulations for the class of facility or any other applicable regulations.

(vi) Special equipment necessary to meet the developmental needs of persons at the facility.

(vii) Environmental adaptations made to the facility to meet the needs of persons while there.

(viii) Any item required to meet treatment needs at the facility as specified in a person's plan of services.

(ix) Damage caused by a person other than the portion of the expense:

(a) Covered by insurance.

(b) Received from a person as part of a meaningful restitution process as devised by the program planning team, approved in writing by the person's payee, if any, and approved by a committee, or part thereof, charged with protecting the rights of the person at the nonresidential facility.

APPENDIX B
SOCIAL SECURITY ADMINISTRATION INFORMATION

Representative payees have a large say in the management of personal allowance. The Social Security Administration website contains information about the rights and responsibilities of a representative payee: www.ssa.gov/payee/index.htm.

Social Security also has several booklets that you can request by phone or mail from your local Social Security office or from their headquarters:

Social Security Administration
Office of Public Inquiries
Windsor Park Building
6401 Security Blvd.
Baltimore, MD 21235
1-800-772-1213

APPENDIX C
OTHER PERSONAL ALLOWANCE QUESTIONS

Q65: Can personal allowance pay for corporate guardianship arrangements and for ongoing services?

A65: Personal allowance can pay for guardianship fees, but the fees must be such that the person is able to meet other current and foreseeable needs and wants. Social Security Administration guidelines on guardianship fees are valid for all guardianship situations (not just where personal allowance is composed of saved Social Security or SSI funds). These guidelines allow fees as long as the guardianship is in the best interest of the person. Fees are not allowed if any of the following are true:

- The guardianship is for the convenience of the provider
- The guardianship petition is denied by the court
- The individual's funds are depleted by fees to the point where there are unmet personal needs

Q66: A person living in a voluntary supportive apartment ran up a phone bill of over $1,300 calling a chat line. Can personal allowance, over a period of time, be used to repay the agency? The agency contacted the long distance carrier to get the bill reduced, but the carrier would not reduce it. The person thought the calls were free because the advertisement said the first 30 minutes were free. The individual thought that meant the first 30 minutes of each call, when in fact it meant the first 30 minutes in a given date range. The individual receives Social Security and SSI.

A66: The agency should try again to get the bill reduced or eliminated. The agency should request that "900" calls be blocked from this individual's phone and any other places where this is a potential problem. The agency can also ask for advice and help from the FCC (1-888-CALL FCC) and the New York State Consumer Protection Board (518-474-8583). After all other avenues are exhausted, the agency may apply to the Social Security Administration for permission to pay the bill out of the person's funds.

Q67: If someone is using personal allowance monies in a self-destructive way, can we withhold that person's allowance?

A67: Personal allowance must never be withheld from an individual. Even though people may use their personal allowance for drugs or alcohol, their money may not be withheld. Their illegal or self-damaging actions must be dealt with from a clinical or behavioral perspective. Social Security rules do allow you to distribute small amounts of spending money over time instead of turning over the entire balance, but this should be reflected in the person's ISP.

Q68: Can someone "will" money to an agency that serves him or her?

A68: Anyone with the mental capacity to do so can execute a will and choose what will happen to his or her property. Nevertheless, if the agency is named as beneficiary, there should be strong documentation of the person's capacity. The circumstances associated with the drawing up of the person's will may be subject to close scrutiny.

Q69: Can personal allowance be used to support an individual's dependents?

A69: Yes, as long as all current needs are met for the individual. Title II Social Security benefits allow for the support of dependents. For SSI recipients, the agency should get prior approval from the Social Security Administration to use SSI to support a dependent.

Q70: Our agency is the representative payee for a few people in the ISS (Individualized Support Services) program. Should we be managing personal allowance and determining countable income as we do for certified residential settings?

A70: The representative payee responsibilities (per Section 633.15) would apply in ISS programs only if the ISS contract specifically references Part 633. If not, the Social Security Administration would oversee the agency's handling of the benefits. For Willowbrook class members, OPWDD recommends incorporating Section 633 references on all class members' ISS contracts.

Q71: Can the family care provider manage personal allowance with agency oversight, or does the sponsoring agency manage it?

A71: If the agency is handling the person's funds, the agency is responsible under both Social Security and OPWDD regulations. Normally family care providers manage personal allowance funds, except for people who can handle their own funds. This does not absolve the agency of its responsibility to ensure that family care providers obey regulations. The chief fiscal officer of the sponsoring agency is responsible for such oversight.

APPENDIX D
WEBSITES OF INTEREST

www.opwdd.ny.gov
New York State Office of People with Developmental Disabilities

www.health.state.ny.us
New York State Department of Health

www.state.ny.us
State of New York Home Page

www.public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS
Laws of New York State

http://government.westlaw.com/linkedslice/default.asp?SP=nycrr-1000
Guide to New York State Agency Rules and Regulations

www.ssa.gov
Social Security Administration

www.medicare.gov
Medicare

APPENDIX E

OPWDD MEMOS CONCERNING PRIOR APPROVAL

George E. Pataki
Governor

Thomas A. Maul
Commissioner

STATE OF NEW YORK
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES
44 HOLLAND AVENUE
ALBANY, NEW YORK 12229-0001
(518) 473-1997 • TDD (518) 474-3694

ATTACHMENT B

MEMORANDUM

TO: Executive Directors
Chief Fiscal Officers
OMRDD Certified Residential Programs
Provider Associations

FROM: Lisa M. Kagan
Associate Commissioner
Revenue Support, OMRDD

DATE: March 11, 2002

SUBJECT: Representative Payees and SSA Prior Approvals

POLICY

The purpose of this memorandum is to ensure that you are aware of the Social Security Administration (SSA) requirement for prior approval of the use of a resident's personal allowance funds for out-of-pocket expenses of voluntary agency staff accompanying the resident on a vacation or a recreational outing. The SSA policy applies to a resident's personal allowance funds conserved from Social Security (SS) or Supplemental Security Income (SSI) benefits for which the voluntary agency serves as Representative Payee (RP). **This does not represent a change in SSA's policy.** We sought clarification of this policy from the SSA Region II Office when some of our providers who were attempting to follow the SSA prior approval policy, did not receive responses from their local SSA Offices.

Voluntary agency staff handling a resident's personal allowance funds or arranging a vacation or recreational outing for a resident must be aware of the need for prior approval from SSA when there are anticipated out-of-pocket expenses for accompanying staff. The Office of Mental Retardation and Developmental Disabilities (OMRDD), Quality Assurance staff will look for documentation of SSA prior approval of such expenses when there is an OMRDD audit of a voluntary agency's personal allowance records for residents for whom the voluntary agency serves as RP.

Please share this with your residential staff who manage the use of resident personal funds.

RESIDENT'S PERSONAL ALLOWANCE FUNDS

Personal allowance is a portion of personal income that is made available on a monthly basis to every person residing in a facility certified by OMRDD. Personal allowance derived from a resident's SS or SSI benefits may be used to meet out-of-pocket staff expenses only when SSA has "pre-approved" these staff expenses.

If the resident has current or foreseeable future needs that will go unmet as a result of the use of the conserved personal allowance funds for vacation-related out-of-pocket staff expenses, SSA will not give approval.

ALLOWABLE STAFF EXPENSES

The resident's personal allowance funds may only be used to cover staff expenses that are not normally reimbursed by the voluntary agency. A resident's personal allowance funds may not be substituted for any item or service for which local, State or Federal funds are provided or for which reimbursement is made through a rate, fee or grant.

OMRDD cannot provide a list of staff expenses that will be allowed by SSA. SSA has approved expenses such as staff entry fees to amusement parks and transportation costs in past requests.

WRITTEN REQUEST FOR PRIOR APPROVAL

Written requests for prior approval of staff expenses should be sent to the local SSA office. These written requests should include:

- The resident's name and Social Security number
- A description of the trip or recreational activity including a list of the anticipated out-of-pocket expenses for the resident and accompanying staff member(s); and
- A statement noting that:
  a) the resident's current and foreseeable needs are met;
  b) payment for the staff expenses will not deplete the resident's funds; and
  c) the resident's personal account balance will equal or exceed one month of the resident's full SS/SSI benefits after the deductions for the trip.

It is anticipated that if the request for prior approval includes all the information stated above, the local SSA office will be able to forward the request to SSA Region II and SSA Region II staff will respond to the request in writing. The SSA response should be retained in the resident's file for documentation purposes. The documentation should be retained in the file for six years as stipulated in 14 NYCRR 681.12 and 14 NYCRR 686.13.

It is recommended that the vacation and/or recreational plans be made well in advance of the actual trip to allow adequate time for the review of the plan by SSA Region II.

TECHNICAL ASSISTANCE

Any questions concerning this memorandum may be addressed to Deirdre Dugan of my staff either via e-mail (deirdre.dugan@omr.state.ny.us) or at (518) 402-4339 or by contacting your local OMRDD Revenue Support Field Office (RSFO). If you need the telephone number of your RSFO, Ms. Dugan can provide it.

C: A. Kaplan
J. Abelseth
P. Pezzola
P. Kietzman
K. Broderick
G. Lind
K. Patricia
D. Dugan
RSFO Managers
RSFO District Managers
R. Downes Higginson, SSA Region II

George E. Pataki
Governor

Thomas A. Maul
Commissioner

STATE OF NEW YORK
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

44 HOLLAND AVENUE
ALBANY, NEW YORK 12229-0001
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www.omr.state.ny.us

Memorandum

To: Executive Directors, OMRDD Voluntary-Operated Certified Residential Programs, Provider Associations

From: Lisa M. Kagan
Associate Commissioner
Revenue Support

Date: April 1, 2003

Subject: SSA Prior Approvals for Use of Personal Allowance for Staff Expenses on Resident Vacations

---

This is to transmit correspondence from the Social Security Administration (SSA) on representative payee use of resident personal allowance to pay for staff expenses on a resident's vacation (see Attachment A). Also included, for your convenience, is a March 11, 2002 memorandum from me on this topic (see Attachment B).

Please share the information attached with your staff involved in resident personal allowance management in OMRDD certified residences. Note that in personal allowance reviews by OMRDD, Quality Assurance (QA) may monitor conformance with the attached SSA requirements.

Voluntary agency staff handling a resident's personal allowance funds must obtain SSA prior approval whenever resident funds in excess of $100 are to be used for expenses of staff accompanying a resident on a vacation or an outing. If SSA written approval is not received within six weeks of the request, contact the Office Manager of the SSA office to which the request was submitted. The SSA written prior approval must be retained on file for QA review.

Any questions concerning the SSA prior approval process may be addressed to Deirdre Dugan of my staff either via e-mail (Deirdre.dugan@omr.state.ny.us) or at (518) 402 - 4339 or by contacting your local OMRDD Revenue Support Field Office (RSFO). If you need the telephone number of your RSFO, Ms. Dugan can provide it.

Attachments

cc: Dr. Abelseth
Ms. Downes-Higginson, SSA Region II

OMRDD Providing supports and services for people with developmental disabilities and their families.

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OMR26.104 (1/50)

ATTACHMENT A

SOCIAL SECURITY

26 Federal Plaza
New York, NY 10278

March 10, 2003

Lisa Kagan
New York State
Office of Mental Retardation and
Developmental Disabilities
44 Holland Avenue - 5th Floor
Albany, NY 12229

Dear Ms. Kagan:

Last year, you addressed the Social Security Administration (SSA) Prior Approval procedure for Representative Payees in your memorandum. The memorandum, which was approved by SSA, provided the voluntary agencies which act as Representative Payees for individuals residing in their residential settings with the procedure to be followed for requesting SSA prior approval of staff expenses for individuals' outings and vacations. The prior approval requests are submitted to the SSA field office with which the agency normally deals and forwarded to me for review. In the months since the memorandum was issued, there have been several issues identified that we would like to clarify.

1. Some voluntary agencies are submitting their requests without allowing enough time for processing. The agencies should allow at least four to six weeks for the review process and response.

2. The agencies do not have to submit requests for taking individuals to dinner and a movie, play, or performance even when the individual(s) will pay for the staff admission as long as the cost is *less* than $100. Each beneficiary's file should be documented with receipts, vouchers, for every cost/expense deducted from personal funds.

3. Several of the requests are providing more information that is required. Attached is a sample request form that meets all the SSA requirements. The agencies may use this sample to create an agency-specific form. If there are several individuals taking the trip, one form can be used to provide the information for all the individuals as long as each individual's name and Social Security number is provided. Each beneficiary's file should be documented with receipts or vouchers for every cost/expense deducted from his/her personal funds.

4. If the beneficiary is using funds from a source other than SSI or SSA to pay for a vacation or outing and funds are not co-mingled with funds from SSI and/or SSA, prior approval from

SSA is not necessary. If the funds are co-mingled, the prior approval process must be followed.

5. Agencies should not be faxing the requests directly to me. All requests should be sent to the appropriate SSA field office to the attention of the office manager. The SSA field office will send the request to me. Neither the field offices nor my office are set up to receive large amounts of faxed materials. The requests should be sent through regular mail whenever possible.

If a voluntary agency has questions concerning the prior-approval process, they can either contact Deirdre Dugan, OMRDD, at (518) 402-4339, the Office Manager at the local OMRDD Revenue Support Field Office or the Office Manager of the SSA field office.

Please share this letter with the OMRDD provider agencies and/or voluntary agencies.

We expect to make some changes to Step 5 above in the near future. And at that time we will notify your office. In the meanwhile, if you or a member of your staff have a question, please contact Renée Downes-Higginson at (212) 264-1752.

Sincerely,

Janet Mullarkey, Director
Program Operations Center

cc: Deirdre Dugan

SAMPLE PRIOR APPROVAL REQUEST

(Name and Address of Voluntary Agency)

Request for Pre-Approval

Date:

Resident's Name:

Resident's Social Security Number:

Description of Activity/Trip:

Anticipated Out-of-Pocket Expenses:

Resident

Staff

Total Cost to Resident:

Explanation:

Example: How activity/trip would be to the "best interest" of the resident. Payment for the above expense will not deplete the resident's funds. After the deduction for the trip, the resident's personal account balance will equal or exceed one month's SSA/SSI benefit. All of the resident's current and foreseeable needs have been and will be met.

George E. Pataki
Governor

Thomas A. Maul
Commissioner

STATE OF NEW YORK
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

MEMORANDUM

TO: Executive Directors – OMRDD Voluntary-Operated Residential Programs
Provider Associations
DDSO Directors

FROM: Lisa M. Kagan
Associate Commissioner

DATE: March 17, 2004

SUBJECT: **REVISED:** Use of Special Needs Trust Monies for SSI Recipient Vacation Expenses

The purpose of this memorandum is to share Social Security Administration (SSA) Region II clarification on use of a Supplemental Security Income (SSI) recipient's Special Needs Trust (SNT) funds for vacation expenses.

Background

The Office of Mental Retardation and Developmental Disabilities (OMRDD) learned that some Social Security Administration (SSA) field offices have penalized Supplemental Security Income (SSI) recipients residing in OMRDD certified residences where the resident's SNT was used to pay vacation expenses. The SSA field offices were "counting" vacation hotel and restaurant expenditures as income. This resulted in a reduction in the consumer's monthly SSI check. To address this issue, OMRDD asked for a policy clarification from SSA Region II, which oversees the various SSA field offices.

OMRDD
Providing supports and services for people with developmental disabilities and their families.
CONFIDENTIALITY MANDATED BY LAW—The fact that an individual is served by an Office of Mental Retardation and Developmental Disabilities facility may not be divulged to any other person.
recycled paper
OMR 26.05 (9-96)

SSA Region II Clarification

SSA Region II clarified that where an individual residing in an OMRDD certified residence is temporarily absent from the residence for a vacation, SNT expenditures for hotels and restaurants do not constitute "In-kind Support and Maintenance" and are therefore not considered income. Consequently, there should not be a reduction in the resident's SSI monthly check. SSA Region II's clarification is based on the vacationing resident's continued responsibility to pay for room and board at the certified residence during this period of "temporary absence."

It should be noted that when an individual temporarily leaves the certified residence to visit family or friends, the provision of food and shelter by the family or friends also should not result in a reduction in the monthly SSI benefit.

SSA Requirements

To use SNT funds for vacation expenses, including hotel, restaurant and out-of-pocket expenses for staff who accompany the resident, there are SSA requirements, which must be met. These requirements are as follows:

- The individual must meet SSA requirements for "temporary absence" from the residence. Per the SSA Program Operations Manual System (Section SI 00835.040), the individual must have been in his permanent living arrangement for at least one full calendar month prior to the "temporary absence." Further, the person must intend to and actually return to the permanent living arrangement he leaves in the same calendar month or in the next.
- Money taken from the trust may not be given directly to the individual to pay for vacation expenses. Rather, the SNT trustee must directly pay hotel and restaurant charges, etc.
- Lastly, the resident can use a credit card for the vacation expenses, so long as the SNT trustee pays the credit card bill.

Social Security Administration Prior Approval Requirement

In March 11, 2002 and April 1, 2003 memoranda sent to executive directors of voluntary agencies operating OMRDD certified residences, we notified you that SSA must prior approve use of SSI monies to pay for out-of-pocket expenses of voluntary provider staff accompanying a resident on a vacation. Please be aware that this prior approval process does not apply where all the funds used for this purpose come from the SNT.

Any questions concerning this memorandum or the SSA prior approval process may be addressed to Deirdre Dugan via e-mail (Deirdre.Dugan@omr.state.ny.us) or via telephone at (518) 402-4339. Your local OMRDD Revenue Support Field Office (RSFO) can also answer these questions. If you need the telephone number of your RSFO, the information is available on the Internet (address noted below) or you may contact Ms. Dugan for this information.

http://www.omr.state.ny.us/document/medicaid/hp_rsfo.jsp

km

cc: J. Moran
J. Abelseth
P. Pezzolla
K. Broderick
P. Kietzman
G. Lind
K. Patricia
D. Dugan
RSFO Managers
RSFO District Managers
A. Briloff, SSA Region II
L. Sobieski, SSA Region II
R. Downes-Higginson, SSA Region II

APPENDIX F
REVENUE SUPPORT FIELD OFFICES

The Revenue Support Field Office (RSFO) develops and maintains benefits and entitlements for individuals served by OPWDD's Developmental Disabilities Services Offices (DDSO). There are nine RSFOs in New York State; each associated with one or more DDSOs.

As part of OPWDD's Division of Fiscal & Administrative Solutions and Revenue Support, the RSFO is responsible for various revenue related support functions for individuals in certified programs operated by OPWDD including:

- Conducting financial investigations and developing payors for services
- Examining potential eligibility for funding programs and income awards for individuals in residential programs
- Billing for services
- Protecting assets and income of individuals in residential programs
- Acting as a consumer advocate
- Assisting DDSO and voluntary agency staff with financial and benefit concerns associated with the placements of individuals
- Acting as liaison to local social services districts regarding individuals' Medicaid eligibility issues and Medicaid coding issues
- Acting as the Medicaid district for certain individuals in OPWDD certified residential programs
- Entering codes in the Medicaid system that allow waiver and Medicaid service coordination (MSC) providers to receive Medicaid payments for services

As a result of these traditional responsibilities for benefit development and billing for individuals in OPWDD-operated programs, RSFO staff are in a unique position to share their expertise with DDSO and voluntary provider agency staff, individuals with disabilities, their families, advocates and other representatives by providing:

- Ad hoc training sessions focused on the specific needs of a group or agency
- Training sessions included in the OPWDD Training Catalog, such as "Benefits and Entitlements" and "Personal Allowance" for service coordinators and other DDSO and voluntary provider agency staff
- Technical assistance and support on Medicaid and benefit eligibility issues to:
    - DDSO staff
    - Staff of voluntary provider agencies in filing benefit applications and recertifications, appealing benefit denials and other negative determinations, and determining personal allowance
    - Individuals with disabilities and their families or representatives in dealing with individuals' eligibility and benefit payment issues

RSFO CONTACT INFORMATION

Address/Phone/Fax	Service Area	RSFO Manager
BROOME RSFO 229-231 State Street – 3rd Floor Binghamton, NY 13901 Phone: (607) 771-7210 Fax: (607) 771-1098	**Broome DDSO** For the counties of: Broome Otsego Chenango Tioga Delaware Tompkins	Carol Lurenz
CAPITAL DISTRICT RSFO O. D. Heck DC – Bldg. #12 Balltown & Consaul Roads Schenectady, NY 12304 Phone: (518) 370-2010 Fax: (518) 370-2297	**Capital District DDSO** For the counties of: Albany Schenectady Fulton Schoharie Montgomery Warren Rensselaer Washington Saratoga	Scott Boyce
CENTRAL/SUNMOUNT RSFO 101 West Liberty Street P.O. Box 388 Rome, NY 13440 Phone: (315) 339-3440 Fax: (315) 336 0407	**Sunmount DDSO** Central New York DDSO For the counties of: Cayuga Jefferson Cortland Lewis Clinton Madison Essex Oneida Franklin Onondaga Hamilton Oswego Herkimer St. Lawrence	Daryk Macrina
FINGER LAKES RSFO 509 Vienna Street Newark, NY 14513 Phone: (315) 331-7141 Fax: (315) 331-0182	**Finger Lakes DDSO** For the counties of: Chemung Seneca Livingston Steuben Monroe Wayne Ontario Wyoming Schuyler Yates	Bob Wells

Address/Phone/Fax	Service Area	RSFO Manager
HUDSON VALLEY RSFO 3 Wilbur Road P.O. Box 470 Thiells, NY 10984-0470 Phone: (845) 947-6250 Fax: (845) 947-6161	**Hudson Valley DDSO** For the counties of: Orange Sullivan Rockland Westchester	Linda DeLaCruz
LONG ISLAND RSFO 415 Oser Avenue Hauppauge, NY 11788 Phone: (631) 434-6109 Fax: (631) 434-6085	**Long Island DDSO** For the counties of: Nassau Suffolk	Elena DeStefano
NEW YORK CITY RSFO 75 Morton Street, 5th Floor New York, NY 10014-5798 Phone: (212) 229-3343 Fax: (212) 229 3095	**Metro New York DDSO** B. Fineson DDSO Brooklyn DDSO Staten Island DDSO Institute Basic Research For the counties of: Bronx Queens Kings Richmond Manhattan	Milton Erdfarb Mitchell Kevy
TACONIC RSFO 36 Firemen's Way Poughkeepsie, NY 12603-6519 Phone: (845) 473-8210 Fax: (845) 473-8204	**Taconic DDSO** For the counties of: Columbia Putnam Dutchess Ulster Greene	Jeffrey Gross
WESTERN NEW YORK RSFO West Seneca DC Building #70 – 2nd Floor 1200 East and West Road West Seneca, NY 14224 Phone: (716) 675-8666 Fax: (716) 675-8919	**Western New York DDSO** For the counties of: Allegany Genesee Cattaraugus Niagara Chautauqua Orleans Erie	Peter Williams