Office for People With Developmental Disabilities

Personal Allowance Manual

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INTRODUCTION

This manual has been created by employees of the New York State Office for People With Developmental Disabilities (OPWDD) Financial Benefits & Entitlements Assistance & Management to serve as an educational tool and a reference guide for personal allowance. OPWDD is the New York State agency that oversees programs and services for people with developmental disabilities.

Choosing 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 reflectthe individuals' preferences and choices.

Your role may include any or all of the following:

- Ensure people receive the proper amount of personal allowance
- Ensure people have access to their personal allowance
- Ensure people are involved in spending decisions
- Ensure there is personal benefit from purchases
- Develop the money management assessment and personal expenditure plan
- Conduct audits

This manual will help you perform these important responsibilities and 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. While it will not answer every question, or solve every situation regarding personal allowance, it will provide you with some guidance on the following:

- What personal allowance is
- How personal allowance should be spent
- Calculating the amount of personal allowance a person should receive
- Becoming familiar with the personal allowance rules

If you have additional questions, contact your local Financial Benefits & Entitlements Assistance & Management (FBEAM). Personal allowance training opportunities are listed in the Statewide Learning Management System .

DEFINITION

OPWDD regulations in 14 NYCRR 633.15 define personal allowance as:

"…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, and who has a monthly income, keeps part of their income to spend on their personal, luxury and recreational choices. The remainder of their monthly income is used to cover the costs of room and board.

The allowance amount varies based on the person's living arrangement and income and may have several components depending on individual circumstances. Only people with income are entitled to personal allowance.

Personal allowance regulations apply to all residential settings certified or operated by OPWDD. They also apply to non-residential programs that handle the personal allowance of individuals residing in the following residential settings:

- Agency Sponsored and State Operated Family Care (FC)
- Voluntary and State Operated Intermediate Care Facilities (ICFs)
- Voluntary and State Operated Individualized Residential Alternatives (IRAs) and Community Residences (CRs)
- Developmental Centers (DC) and Small Residential Units (SRU)
- OPWDD Certified Schools and Specialty Hospitals

People who reside in certified residences and have a representative payee other than the Executive Director of the residential agency are entitled to a personal allowance. However, the representative payee is not bound by the personal allowance regulations. If the representative payee turns over funds to be managed by the residential agency, the residential agency must manage the funds and follow OPWDD personal allowance regulations.

DDSOOs and voluntary agencies may establish more restrictive personal allowance policies as long as they comply with OPWDD personal allowance regulations.

PURPOSES

OPWDD believes that ***all*** people with developmental disabilities can advocate for themselves and make decisions related to spending their personal allowance. Personal allowance funds are supposed to be used for personal, luxury, and recreational wants that enhance a person's quality of life. Personal allowance spending must benefit the person and reflect their individual choices.

There are three guiding principles behind the purpose and use of personal allowance:

- Choice
- Personal benefit
- Community involvement

Choice is important. People should choose how they spend their money to the greatest extent possible.

Items and services people buy with their money must **personally benefit** them. It should not be for the benefit or convenience of their providers, agencies, family, friends, or OPWDD. The items that people buy with their personal allowance are theirs to do with as they see fit.

OPWDD promotes increased **community involvement** for people with developmental disabilities. People should participate in the community as much as they would like.

HOW TO CALCULATE PERSONAL ALLOWANCE

If the residential agency is representative payee, it is responsible for calculating personal allowance. The type of residence in which a person lives determines the statutory minimum amount of personal allowance the person must receive.

These amounts change any time there is a Cost of Living Adjustment (COLA). If there is no COLA, the amounts remain unchanged. OPWDD posts the latest information about current benefit levels and personal allowance amounts at:
https://opwdd.ny.gov/providers/operating-information

Depending on a person's income and where they live, personal allowance laws (section 131-o of the Social Services Law) set the base amount of the allowance. This is called the statutory amount. In addition, if a person has income exemptions, they can get more personal allowance. The most common types of income exemptions are the general income disregard and earned income exclusion. See below for more information.

UNEARNED VERSUS EARNED INCOME

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

Earned income is any income received from work activity including wages, salaries, tips, and income from self-employment.

GENERAL INCOME DISREGARD

The first $20 of income other than SSI is not counted when calculating personal allowance. This is called a general income disregard because it can 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 earnings if the person works. 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. If the person gets SSI only, the $20 disregard does not apply.

An individual in a certified CR, IRA, or family care home who receives income greater than $20 from any source besides SSI is entitled to personal allowance equal to the current statutory amount plus $20.

Exception: A person who lives in an ICF, DC, SRU, specialty hospital, or nursing facility is subject to chronic care budgeting and does not get the $20 general income disregard.

EARNED INCOME EXCLUSION

A person who works is entitled to have some of their earned income excluded when calculating their personal allowance. This is called the earned income exclusion and allows individuals who work to keep a greater portion of their earnings. The earned income exclusion is applied as follows:

- The first $65 of monthly gross earned income is excluded
- One-half of the remainder (half of the amount over $65) is excluded

An individual who receives SSI and wages will have personal allowance equal to the current statutory amount plus $20 (general income disregard) plus $65 plus ½ the balance of the wages (earned income exclusion). A person with less than $65 in monthly gross wages will have the full wage amount excluded.

EXAMPLES OF CALCULATIONS

The following are some real-life examples and calculations.

Unearned Income Only

Example 1: Debbie lives in a Voluntary Operated Individualized Residential Alternative and receives only SSI each month. Her total monthly personal allowance is the statutory amount for an IRA.

Example 2: Shawn lives in a State Operated Individualized Residential Alternative and receives Social Security and SSI. Since he receives income other than SSI, he gets a general income disregard of $20 in addition to the statutory personal allowance for an IRA.

Example 3: Jon lives in a Voluntary Operated Intermediate Care Facility. He receives VA benefits and Social Security. The statutory personal allowance for an ICF is $35.Thisis Jon's full personal allowance because the general income disregard does not apply to people living in ICFs.

Unearned and Earned Income

Example 4: Jim lives in a State Operated Individualized Residential Alternative and receives SSI and earned income of $18 per month. His full earnings of $18 are excluded as part of the general income disregard and are added to his statutory personal allowance. Since Jim does not have $20 in income besides SSI, he can only exclude up to the $18 in earnings, because the $20 disregard does not apply to SSI.

Please see these additional examples.

INTEREST AND DIVIDENDS

Interest and dividends earned on resources usually belong to the individual, do not count as income and are not included in the personal allowance calculation. Contact your local FBEAM for advice with any unusual situations.

FEDERAL TAX RETURNS AND EARNED INCOME CREDITS

Federal income tax refunds and earned income tax credits are exempt as income in the month of receipt and as a resource for the following 12 months. These funds are available as personal allowance to the person and should be included in the personal expenditure plan.

BLIND AND IMPAIRMENT RELATED WORK EXPENSES

Blind Work Expenses and Impairment Related Work Expenses can reduce a person's countable income and result in higher SSI payments or a lower Medicaid spenddown. This will give the person additional money for personal allowance. See the Benefit Development Resource Toolkit on OPWDD's website or contact your local Social Security Office for more information on blind or impairment related work expenses.

HOW MEDICAID BUDGETING IMPACTS PERSONAL ALLOWANCE

People with special Medicaid budgeting, including Medicaid Buy-In for Working People with Disabilities (MBI-WPD); Disabled Adult Child (DAC); Pickle; and 1619(b), may have additional funds available for their personal use each month. This is in addition to the statutory personal allowance and personal allowance from wages and should be handled in the same manner.

A person who is eligible for DAC or Pickle budgeting or who is 1619(b) eligible must be otherwise eligible for SSI, meaning their countable resources cannot exceed $2,000 on the first of each month. A person participating in MBI-WPD may have countable resourcesup to the MBI-WPD resource limit. For information on any of these Medicaid programs, see the Benefit Development Resource Toolkit on OPWDD's website.

USING PERSONAL ALLOWANCE TO SUPPORT THE PEOPLE WE SERVE

GUIDELINES

The management and use of personal allowance is governed by Social Services Law section 131-o and OPWDD Regulation 14 NYCRR 633.15. These regulations state 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 the quality of their leisure time and the quality of their lives. As much as possible, people should be involved in planning and spending activities. By involving each person in the decision-making process, their purchases will better reflect their preferences. Their personal allowance should be available when it is requested or when it is needed. **Personal allowance may not be withheld from a person for any reason.**

Family care providers and sponsoring agencies that handle personal allowance funds must follow both Social Security and OPWDD regulations. Typically, family care providers manage personal allowance funds on behalf of the people they serve, unless the person can handle their own funds. The sponsoring agency must ensure that family care providers comply with regulations and must provide appropriate oversight.

Because personal allowance usually comes from government benefits, it is very important that individuals' benefits are maintained and protected to make sure personal funds are available for their spending. The representative payee, usually the residential agency, should track the person's income and resources. They must make sure the person remains qualified for the benefits they receive and report excess income or resources to the benefit paying agencies. The residential agency must also respond to requests from the Social Security Administration (SSA) in a timely manner, as Social Security benefits and Supplemental Security Income (SSI) are the main sources of personal allowance funds for most individuals. Representative payees have a big role in the management of personal allowance. The SSA website contains information about the rights and responsibilities of representative payees: www.ssa.gov/payee/index.htm.

Social Security also has several booklets available online, or you can request them by phone or mail from your local Social Security office. For general questions or information about Social Security or SSI benefits, the Office of Public Inquiries can be reached at:

Social Security Administration
Office of Public Inquiries
Windsor Park Building
6401 Security Blvd.
Baltimore, MD 21235
1-800-772-1213
https://www.ssa.gov/

APPROPRIATE USE OF PERSONAL ALLOWANCE

People spend money on many different things and for a variety of reasons. While it may be used for things they need, people also spend money on items they like or want. They may pay for admission to a concert, movie tickets, eating out, hobby related expenses, a tablet or other device, streaming services, subscriptions or personalizing their bedroom. People also set aside their money to save for a trip or other bigger ticket items suchas a TV or furniture. 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 or dress pants, their purchases reveal their preferences and personalities.

People served by OPWDD DDSOO and voluntary agencies must have opportunities to make choices and express who they are as individuals. 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 personal allowance as they choose. Their purchases should help to involve them in the local community or be for items and services that improve their quality of life.

People must be able to use their personal allowance in meaningful ways. This includes making choices about personal spending, learning to budget and saving for a specific item. Does the person have a special hobby? Are they interested in trying something new? Do they like a particular type of music? Do they want to go to camp or on a special vacation? Personal allowance can be used for these purposes and more.

PROHIBITED USE OF PERSONAL ALLOWANCE

We will discuss many opportunities to appropriately use personal allowance to enhance a person's life and pursue their interests. You also need to know when personal allowance cannot be used.

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

- Expenses that the residential, day program, or other service provider must pay; refer to the Agency Responsibilities section
- Items or services that are paid for by Medicaid, Medicare and/or third party health insurance
- Necessary medical, dental and clinical services and/or supplies
- Transportation to or from required services
- Any activity that is part of the Individualized Service Plan (ISP)/Life Plan for which the provider will be reimbursed
- Voluntary agency staff expenses and services (unless certain criteria are met)
- Any expenses for State employees
- Purchases when the individual has no choice

ENSURING CHOICE IN EXPENDITURE PLANNING

Personal allowance funds belong to the individual. Their money must be available for personal spending on items or services of their choosing. Purchases made with personal allowance must personally benefit the individual. When an agency manages personal allowance, the agency staff must involve the person as much as possible in deciding how their money will be used. All spending throughout the year should be consistent with the person's preferences, choices and interests.

Agency staff must assume that all people with developmental disabilities have some capacity for self-advocacy and can help determine the ways in which their personal allowance is spent. Even though some people may not use words to communicate, staff can pay attention to their body language, their eyes and other nonverbal communication. Eye contact or facial expressions can convey a lot about what a person may be feeling. Staff should watch peoples' faces, follow their gazes and look for smiles. They can also look for other nonverbal cues such as open arms and widened eyes. People may express their preferences for spending with their behavior. Staff should observe any common or recurring behavioral expressions of happiness or other emotions to determine preferred items and services when planning personal expenditures. They can see what the person enjoys the most and looks forward to doing. Based on the things the person enjoys, staff can help the person identify the stores and vendors where they can become a valued, regular customer.

If a person 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 person 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.

Example - Ensuring Choice

Grant is 40 years old and does not have family who are in touch with him. He uses a wheelchair and does not use words to express himself. When he moved into his current home, residential staff had a hard time figuring out what Grant liked. For these reasons, it was difficult to involve him in planning for the use of his personal allowance.

Residential staff paid attention and noticed what interested Grant. Every time he saw an animal, he would stop what he was doing to watch. He seemed to enjoy 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 Grant's care manager and staff at his day program, the residential staff created a plan to use his personal allowance based on what they felt would interest him. Since Grant showed an interest in animals and enjoyed watching birds, the residential staff used his personal allowance to buy a small bird feeder that they set up outside his bedroom window. He now enjoys watching the birds and squirrels that it attracts. Grant also spends time at the park and a nearby zoo. These activities benefit him personally and enhance the quality of his life because they interest him and involve him with other people in the community.

Residential staff also used Grant'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 park, zoo and from his room. On rainy days, staff help Grant work on his scrapbook of animals.

Grant's care manager found a volunteer with a van, and now he goes bird watching with another member of the community.

Determining a Person’s Preferences

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 abilities, gifts, preferences and interests?
- What are the things that make the person happiest?
- What is the person’s activity level? Are they a morning person or a night person? Are they high energy or sedentary?
- What sensory situations does the person enjoy? Consider their reactions to bright lights, touch, sounds, smells and tastes.
- What does the person prefer when dining out - fast food or fine dining, table or booth? Does the person have a special diet or like special items from the menu?

Answers to these questions will help in planning and to determine:

- Where the person can become a valued customer
- Which community activities bring the person together with those who share similar interests
- Ways in which 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 or cultural organizations, sports, health and fitness groups and community and personal support groups

PERSONAL EXPENDITURE PLANNING

When a certified residential agency manages personal allowance for a person, annual personal expenditure planning for that person is required. Planning must involve the person and their team. The team should include the person, their care manager, involved family members, advocates, staff from the individual's residence, staff from a non-residential program, their family care provider and anyone who will handle personal allowance for the individual. Documentation of this expenditure planning must be incorporated into a Personal Expenditure Plan (PEP).

STATUTORY REQUIREMENTS

- OPWDD regulations require an annual written Personal Expenditure Plan (PEP) that includes a Money Management Assessment (MMA)
- Copies of the PEP and MMA must be included in the person's record at the residence
- The PEP should be in accordance with the habilitation/treatment plan and plan for protective oversight
- The person, their residential agency, their advocate and the care manager must have a copy of the PEP (information from the PEP may also be shared with other involved parties if necessary, but only after asking the person and their advocate)

MONEY MANAGEMENT ASSESSMENT

Personal expenditure planning is a process. It starts with a Money Management Assessment (MMA) and creation of a PEP. Personal allowance regulations require that an MMA be completed by each person's team. This applies to everyone receiving personal allowance managed by the DDSOO or voluntary agency. The assessment is completed annually with the PEP and must show:

- The person's ability to manage funds independently
- The amount of funds the person can manage independently
- The frequency with which the funds can be provided (e.g., $10 per week)

Some items to consider when developing the MMA are:

- The person's understanding of the concept of money
- Their demonstrated interest in independently buying items or services
- Their interest or ability to hold money and make purchases
- Whether they recognize the difference between the value of coins and paper money
- Their awareness that they should receive change and the amount

PERSONAL EXPENDITURE PLAN

The PEP is a guide for the use of the person's monthly personal allowance and resources over the next 12 months for items the person currently wants or may want in the future. The plan should let the person have as many choices as possible, and might include personal shopping or luxury items, entertainment, vacation, home and family visits, or other expenses. The PEP must include a description of the person's anticipated resources, personal allowance and projected spending on an annual and/or monthly basis. If an individual has a credit card or loan that they are paying, the payments should be reflected in the PEP. The amount allocated in the PEP for the person to handle independently must be consistent with the MMA.

The PEP is an easily recognizable document that meets the legal requirements of annual financial planning and considers:

- The daily and long-term needs of a person
- Special items such as vacations, large purchases, or a burial account
- Wages, other income and resources as sources of personal funds

The DDSOO or voluntary agency assigns responsibility for monitoring the PEP to staff or family care providers who make personal allowance expenditures with the person. Their job is to make sure that personal allowance expenditures are in line with the PEP. Requests for funds that do not follow the PEP should be discussed with the person and team so that adjustments can be made to the PEP if necessary. By following the plan, the DDSOO or voluntary agency will ensure that a person's choices for spending will be carried out. Following the PEP also lessens the necessity for last-minute spending to keep the person under the resource limits for Medicaid or SSI.

Although the care manager should be a member of the team creating the PEP and the MMA, these requirements are not Medicaid services. The care manager cannot be assigned the responsibility of writing, monitoring, or auditing the PEP or MMA.

Since the person's interests may change, the plan can and should be changed at any time, but it must be updated at least once every 12 months. A change in health or family supports also may be a reason to review the plan. It is the team's job to note these changes and arrange for changes to the plan. The DDSOO or voluntary agency managing the personal allowance establishes how a personal expenditure plan can be modified and who can modify it. The plan does not replace the ledger in terms of documentation of the actual spending; it is a guide to those helping the person make financial choices. It must not be used to limit the person's opportunities for personal spending. Using the plan can help people to budget their income so that favorite activities or a vacation are not impacted by frequent impulsive purchases, but it should be flexible enough to allow them to change their mind.

OPWDD's Division of Quality Improvement will check for a PEP and evidence that expenditure planning is updated at least annually to reflect flexibility and current priorities for each person.

Personal allowance must never be withheld from an individual for any reason.

MONEY MANAGEMENT ASSESSMENT AND PERSONAL EXPENDITURE PLAN SAMPLE FORMATS

The next pages contain sample formats for the MMA and the PEP. These forms are also available for download from the OPWDD website:

MMA:
https://opwdd.ny.gov/system/files?file=documents/2020/03/money_management_0-5.pdf

PEP:

https://opwdd.ny.gov/system/files/documents/2020/02/personal-expenditure-plan-pep-form-sample.pdf

MONEY MANAGEMENT ASSESSMENT SAMPLE FORMAT

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:
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

PERSONAL EXPENDITURE PLAN SAMPLE 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 _______
Gifts (must benefit the individual) _______
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 ___________

HOW PERSONAL ALLOWANCE IS USED

This section discusses different ways in which personal allowance can be spent. This is not all-inclusive. The person may spend their personal allowance on many different items and services. This section is designed to provide some ideas and things to consider. Questions can be referred to your local Financial Benefits & Entitlements Assistance & Management (FBEAM).

ENTERTAINMENT & DINING OUT

What a person spends on entertainment should be based on their preferences. Many people like seeing a movie and eating out with their friends. Rather than taking everyone from a residence out in one large group to see the same film, it is better if each person uses their personal allowance to choose a specific movie they want to see with one or two close friends. Others may prefer a live concert, a Broadway show, a sporting event or a county fair.

Consider opportunities that involve sensory experiences. The sights, sounds, smells and tastes of the neighborhood are a good place to start. Individuals may 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 the senses. Attending local festivals and fairs can provide chances to try new foods, hear new music and meet new people. Repeat trips also offer a good opportunity to become a valued customer.

People can experience many sensory experiences when they become regular customers at spas 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. Spas and hair salons can provide sensory experience, interaction with community members, relaxation and can make a person feel good about themselves. Receiving compliments on a new hair style or manicure can make the experience even more rewarding.

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. A person can buy tickets to films or shows that offer different sights and sounds, but the event should match the person’s interests and preferences and their ability to sit for an extended period.

People who enjoy music can attend concerts in the park or local theaters and purchase music for enjoyment at home. If people enjoy watching TV, look for something that can make their TV time more fun, like 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 in the community from a music student or local instructor.

Be creative! If someone enjoys listening to music, expand on that: try attending a concert, a local production of a musical, or renting/purchasing a musical instrument to discover other ways to explore music. Someone who likes shopping may enjoy a local craft fair. Personal allowance can be used to allow someone to expand their experiences and develop new interests. It is appropriate to use personal allowance to try new things as well as pursue current interests.

CABLE SERVICE

Residential agencies are required to supply basic cable service to residents. This is typically provided in common areas, such as a living room. The cost associated with providing cable in a common area is the responsibility of the residential agency.

Individuals may also request cable service in their bedrooms. In this case, it is appropriate to use personal allowance funds to pay for the increase in cable costs (if there is one) associated with providing service in the bedrooms. When there are additional charges related to cable in a bedroom, personal allowance may typically be used to pay the additional charges. Because there are a variety of plans and cable companies statewide, this manual can't cover every possible situation. If there are no additional charges to have cable available in a bedroom, the provider may not charge the person for any portion of the service.

If several people in a house request to share the cost of additional channels, such as premium channels or sports passes, the agency must ensure that they follow the prior approval rules regarding group purchases. In that case, for premium cable channels or sports passes to be considered an appropriate use of personal allowance funds, all the criteria for group purchases must be met. These criteria are outlined in the group purchases section of this manual. The agency must be able to clearly distinguish between the fees for services and items they are required to provide and the fees individuals pay for the enhanced service.

When a person is hospitalized, they may request TV service in their hospital room. This may be an appropriate use of personal allowance, if it is the individual's choice and for their entertainment, not at the request of staff. TV for entertainment is not a medical expense, even if it is viewed in a hospital room.

As with any planned expenditure from personal allowance, the PEP should be revised as necessary to reflect a recurring expense related to cable, if applicable, so that the funds are available for paying the bills when they are needed. As a reminder, providers cannot pay the bill and reimburse themselves from an individual's personal allowance; rather, the agency should establish a method of setting aside money from the person's personal allowance each month so that the money is available when the bills are due. Any arrangement of this nature must involve the person and members of the team.

DINING

Personal allowance can be used for dining out in or ordering delivery from a restaurant with preferred or ethnic foods and specialties. Personal allowance can be used for meals while shopping with friends or family, and it can be used to support people going to breakfast, lunch, or dinner with friends and family. People can become regulars at a local lounge, club, café or coffeehouse.

While personal allowance can be used for meals out, it **CANNOT** substitute for the three daily meals and snacks the residence is required to provide. If the person needs special foods 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 a specific diet, but just likes a particular frozen dinner, they can use personal allowance to purchase their choice of meals. The residence should seek to purchase the types of foods the people living there like, but personal allowance can be used for special items that would not normally be purchased.

If a person wants to dine out and can express their desire to, it is appropriate for that person to use personal allowance to pay for the meal. If the person is unable to express preferences, 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, such as over tipping, paying for others' meals, going to an overly expensive restaurant when someone has limited funds, or a restaurant without options to meet their dietary requirements.

Personal allowance **CANNOT** to be used for dining out when the person has no choice. For example, if everyone living in a residence is going out for pizza in August because it is hot and the staff does not want to use the stove or oven due to the hot weather, personal allowance may not be used. However, if people decide to go out for pizza because that is what they want to eat for dinner and staff is prepared to provide a meal at home, then personal allowance can be used.

Inappropriate uses are:

- Dining out solely for the ease of the staff
- Spending the person's funds in an unequal manner (e.g., Carlos pays extra to cover the costs of Sam's meal)
- Reimbursing staff for money loaned to an individual to cover the cost of their meal (staff is prohibited from loaning money to individuals)
- Spending personal allowance on food or dining out that the person did not choose
- Spending personal allowance on food needed to meet a person's nutritional or dietary requirements

PARTIES

Personal allowance can be used to host a party if the individual receives a benefit from doing so. The individual should enjoy parties, invite people of their choosing and the food, entertainment, venue and decorations should reflect their preferences. Personal allowance can be used to purchase food for the person and their guests while hosting a party, not for staff. The PEP should reflect the planned expenses for parties as well. Documentation of the person's preferences and benefits from hosting a party should be maintained.

DECORATING/CUSTOMIZING PERSONAL SPACE

Decorating a person's room is one of many ways to use personal allowance. Décor can reflect a person's unique interests, style and experiences. The residential agency is responsible for the basic furnishings of the person's bedroom. The individual's personal tastes should be considered when staff selects items such as the curtains, bed linens and the bedspread, even when the agency's funds are used for the initial purchases or when replacements are needed. The individual's personal funds can be used if their taste changes after the room is furnished, not if the furnishings must be replaced because they are worn out.

The residential agency must provide basic furniture. If the person or their advocate wants to buy special furniture to better reflect the person's likes, personal allowance may be used. If personal allowance is used to purchase special furniture for outdoor use, such as a swing, the item must be portable and able to be moved if the person moves. Before buying the item, factor in the cost by reviewing the person's expenditure plan. Determine if the furniture purchase will negatively affect the other items in the person's plan. 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.

Personal allowance should not be used to decorate common space in the home. It should not be used for items in the common area that are not dedicated to the person's use. The individuals' funds cannot be used to purchase basic furniture (e.g., a couch) for the common area.

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

- The person's interests
- Their favorite color
- The types and styles of collectibles they have or want
- Their preference or participation in sports and teams
- Their hobbies

Personal allowance can be used to:

- Buy flowers
- Start or add to a collection the person can display in their personal space (e.g., model cars or trains, figurines, or baseball caps)
- Show the person’s 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 person’s story
- Buy a TV, DVD player, tablet, or computer for the person’s room

Keep in mind that when purchases are made in the person's neighborhood, they will be 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. The person may shop at neighborhood bodegas.

TRAVEL, VACATIONS AND TRIPS

Vacations are a great way to use personal allowance when tailored to the person’s interests. You may want to consider vacations that lead to one-on-one interactions with members of the community or visits to families and friends. Travel and vacations to places or attractions that the person enjoys are good options to explore. Some not-for-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 organizations.

Personal allowance can pay the travel expenses of family or friends coming to see the person where they live. You must document that the individual will benefit from seeing the family member or friend. The costs involved must be reasonable and must not negatively impact the person and their normal activities. If possible, the family member or friend should pay the travel expenses and then submit receipts for reimbursement. Cash advances should be used only as a last resort **and** the family member or friend must agree to return receipts along with any unspent money. If they do not return receipts after the trip, future requests for cash advances should not be granted.

If a person goes on vacation with a certified family care provider, the amount paid by the individual is based on how much that person shares or consumes during the vacation (see example 2 – Travel and Vacation).

If a person attends public school, and their class is going on a trip, personal allowance is an appropriate source for activity fees 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 their garden club, personal allowance can be used for fees connected with those trips. Personal allowance should not be used for activities in day habilitation where the fee is built into the agency rate or for an activity or service required in the person's ISP/ Life Plan.

For State employees, no expenses can be paid from personal allowance funds.

A voluntary residential agency may be able to use the person's saved Social Security and/or SSI funds for out-of-pocket staff expenses. You must obtain prior approval from Social Security for expenses over $100 per person. Staff salary, benefits or fringe benefits **cannot** be paid or supplemented from personal allowance.

In the past, allowable expenses have included:

- Companion tickets on transportation
- Admission tickets
- Cost of the portion of the hotel room apportioned to the staff

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 equally among all participating individuals.

Example 1 - Travel and Vacation

Ron and Shawn live in an IRA. They took two short vacations with the voluntary agency in an agency-owned van and paid 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 rides. Some of the items may be appropriate uses of personal allowance and many others are not appropriate. The expenses related to the breakdown and repair of the van are the sole responsibility of the owner of the van – in this case, the voluntary agency. Those expenses must not be shared with or spread among the individuals taking the trip. The snacks that were purchased may be an appropriate use of Shawn's and Ron's personal allowance if they chose the snacks and ate them.

Example 2 - Travel and Vacation

Carol lives in a family care home. Her family care provider, spouse, three children and Carol go on a vacation to a theme park in Florida by car. The guidelines for an appropriate share of costs follow. Carol should pay for her proportionate share of any items shared by all the travelers. Anything used by Carol only, she pays for herself. Since they are all riding and sharing in the car to Florida, gas, tolls and parking expenses are split equally. The provider would pay 5/6 of the costs and Carol 1/6. If they are sharing hotel rooms, the same applies. If Carol has her own room, she pays for her 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 own ticket. The provider is responsible for tickets for themselves and their family members. If Carol wants to buy a souvenir, she pays for the souvenir. The provider is responsible for souvenirs that they or their family want. If they all rent a boat together, that cost is proportionally shared (Carol pays 1/6 and the provider pays 5/6 of the cost). If they rent bicycles, Carol pays for her own bike and the provider pays for the bikes used by her family.

TRANSPORTATION

Transportation is all about getting people to and from work, recreational sites, family visits and other events and activities in the community. Typically, 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 it not be used?

For the most part, personal allowance **cannot** be used for transportation. Programs must pay the transportation expenses related to program activities. Vacations and day trips that are not included as part of a formal plan are an exception, as these transportation activities are not related to program activities.

Generally, only personal allowance derived from the exempt portion of wages can be used for transportation to and from work. The earned income exclusion ($65 plus half the remainder of gross wages) 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, **personal allowance funds must not be used**. These excess expenses are the responsibility of the residential provider. If the person is living in a family care home, it is the sponsoring agency's responsibility to pay the excess transportation costs. However, if an individual does not want to use the transportation that the residential agency provides and chooses different transportation, the individual's personal allowance funds may be used. The agency must seek alternatives to reduce the cost.

Another aspect of transportation involves the person's moving expenses. Costs associated with moves between living arrangements that are within the jurisdiction of the DDSOO or residential agency are the responsibility of the DDSOO or agency. The residential agency a person is moving from is responsible for moving expenses when someone moves to a certified living arrangement with a different agency.

If the person lives in a certified living arrangement and is moving into a non-certified living arrangement, moving expenses are the responsibility of the DDSOO or residential agency that the person is leaving. Moving Assistance and/or Community Transition Services (CTS) funding may be available to assist with expenses for setting up housing for individuals who are HCBS Waiver enrolled. Funds under these waiver programs are limited; and after being used for other allowable expenses, there may not be enough remaining to cover all moving expenses. Therefore, if waiver funds are not available to the individual or if the person's moving expenses exceed the amount of funds available to the person, the DDSOO or residential agency the person is leaving is responsible for paying the balance.

Example 1 - Transportation

Anthony works about 5 miles from his residence in a certified program. The program provides transportation by bus, which he can use. However, he does not like the bus and wants to take a taxi. The cost of the taxi may be more than the earned income exclusion portion of Anthony's wages. His residential provider argues that this is a matter of choice and that it is Anthony's responsibility. Anthony's advocate says that the certified program is responsible for the cost.

In this situation, Anthony can pay for the taxi out of his personal allowance because transportation is available, he is able to use the bus and he is opting to use alternate transportation. His preference to use a taxi has nothing to do with his disability. The agency should try to find an alternative, such as a volunteer service or car-pooling, to help cut costs.

Example 2 - Transportation

James is employed at a local bakery. There is a local taxi service that provides accessible transportation. James is unable to take public transportation **because** of his disability. James can use the amount of his earned income disregard ($65 plus half of the reminder of gross wages) to pay for his transportation costs to work. His residential provider must cover the cost in excess of the earned income exclusion.

The cost of his transportation may be considered as an Impairment Related Work Expense (IRWE) for Social Security Disability Insurance (SSDI), Supplemental Security Income (SSI), or Medicaid eligibility. The Social Security Administration makes the determination for SSDI or SSI benefits, and the Medicaid district makes the decision for Medicaid applicants/recipients. The person must pay these costs out of pocket to qualify as an IRWE. Information on IRWEs can be found in the Benefit Development Resource Toolkit available on OPWDD's website.

Example 3 - Transportation

Jenny lives in a certified residence 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. Per the care manager, Jenny is willing to pay for the repairs and has enough money. She understands what money is and can decide 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 the title to the vehicle to pay for any repairs.

GIFT-GIVING

Gift-giving is a normal part of life. While the people we serve may want to give gifts like others around them, care must be taken to protect their interests.

Use of personal allowance for gifts depends on the person's ability to understand the purchase. If the person **cannot** participate in the decision and cannot consent to the gift, personal allowance money **cannot** be used unless it is clear that the individual will benefit in some way from the gift-giving as described below. As people communicate and participate in decision making in various ways, staff should be aware of the individual's abilities. How a person is involved in gift-giving and how they agree to the gift must be documented.

Gift-giving should be included in the person's expenditure plan. When writing the PEP, carefully consider the reasonable value of the anticipated gifts. There is no specific dollar amount to define "reasonable" in terms of gift-giving. The sample PEP includes gift-giving so the team and person can consider this use of personal allowance. By involving the planning team, the person can receive appropriate guidance for gift-giving.

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 personal money for a gift. Sometimes family members will ask for personal allowance to be used for presents for other relatives, even when the individual cannot participate in the decision. Family may give residential staff a shopping list of gifts for family members, stating the person would want this if they were able to participate in the decision. Often, the family is actively involved with the individual, and staff members don't want to offend the family by saying no. For gift-giving to be appropriate, the individual must benefit from the gift-giving process and should participate in the gift selection as much as possible. One way to tell if the person is benefiting from giving gifts is by the person's facial expressions or other nonverbal communication when the gift is given and opened. The person's personal allowance funds should not be used if there is no benefit to the individual.

Some people residing in family care homes want to give presents to the provider and their family members on birthdays and holidays. Gift-giving is normal in a family; thus, it is not prohibited in family care homes. However, gift-giving by individuals to providers is not encouraged. Gifts to State employees are **strictly prohibited** by the New York State Public Officer's Law.

Personal Allowance may be used for gifts when:

- The Care Manager or advocate is involved in decision making
- The provider does not ask for the gift
- The gift is not intended to gain favor with the provider
- The provider is **not** a State employee

If a person is close to a long-term voluntary agency staff member, using personal allowance for a gift may be allowed, **IF** all the following criteria are met:

- The person must be able to participate in the gift-giving decision process
- The gift must not have been solicited or encouraged by the voluntary agency or staff member
- The gift is not extravagant
- The gift cannot be intended to gain favoritism of a staff person and result in different treatment from peers
- The staff person is not a State employee working for OPWDD

ASSOCIATIONAL LIFE

Personal allowance can be used to promote community involvement via membership in associations and societies through worship and participation in clubs 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 an organization, including a health club
- Subscriptions to an associated newsletter, magazine or periodical
- Donations toward meeting expenses of an organization (e.g., coffee/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., house of worship, drama club or volunteer fire department)

If a person wants to donate to a charity or organization to support a cause, they must be able to participate in the decision-making process and agree to the donation. The annual personal expenditure plan should include these charitable donations. Donations must never be made to groups, individuals, or organizations that provide services to the person. This includes staff, State agencies 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, they can use personal allowance to buy a ticket. The person must pay an amount equal to only the value they will receive. For example, if the ticket price to an event is $50, and $20 is the cost for dinner, the person pays only $20. The individual does not receive the $30 tax deduction that donors who paid $50 would receive. Their ticket should look like all other tickets, and they should receive the same benefits at the event that everyone else does.

Example 1 - Associational Life

Jim’s aunt is his advocate. She told Jim’s care manager that she thought 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. This is an acceptable use of personal funds if it is Jim’s choice and it is not medically necessary. Jim, his aunt and his care manager 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 would still have enough for the other activities in his plan. Jim and his care manager found a trainer who he liked and he is now enjoying working out more.

Example 2 - Associational Life

Sheila is a staff person working at Stephanie’s day habilitation program. She also operates a dog rescue foster home. Stephanie loves dogs but can’t have one since her roommate is allergic. She always asks Sheila about her dogs and wants to see pictures. Sheila is prohibited from accepting monetary donations from Stephanie and other people to whom she provides services. Stephanie can volunteer time helping to care for the dogs at Sheila’s or donate to another dog rescue.

CLOTHING

Clothing is another way people can express their unique style and personality. Personal allowance may be used to buy clothing that reflects a person’s individual tastes. Before shopping for clothes with personal allowance, the provider needs to ensure that the basic requirements have been met.

Every person in a certified residential setting must have a clothing supply which is in good repair and ensures that they are outfitted daily in clean clothing, appropriate to the season, to the occasion and to their age, sex and size. Appropriate sleepwear is also required. The residential agency is required to pay for or provide laundry and dry cleaning of the basic clothing supply that the agency bought. Clothing purchased by the residential service provider is the responsibility of the agency. Items bought with personal allowance can be dry-cleaned using personal allowance.

Funds for clothing in ICFs, DCs, SRUs, OPWDD-certified schools and specialty hospitals are incorporated into the overall rate.

In Voluntary Operated Community Residences, Voluntary Operated Individualized Residential Alternatives, and both State and Agency Sponsored Family Care homes, OPWDD provides funds twice a year for each person for clothing, recreation and incidental expenses. This money must be used for clothing 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. These funds:

- Do not belong to the person
- Must not appear anywhere in the personal allowance account ledger
- Must not be commingled with the person's own funds
- Must be accounted for on a ledger separate from the individual's personal allowance ledger
- Must be forwarded to the new provider if a person moves to another certified residence and there is a balance remaining
- Must be returned to OPWDD's Central Operations unit if the person is unable to use them

Personal allowance funds may be used to purchase clothing for a person, subject to the following restrictions:

- All current and foreseeable future needs are met
- If the person resides in a Voluntary Operated Community Residence, Voluntary Operated Individualized Residential Alternative, or Family Care home, the funds provided by OPWDD must have already been used
- In all instances, the last $100 of a person's available personal allowance **cannot** be spent on clothing

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

- Trendy or fits in with people in the community
- From a neighborhood store where the person can interact with other members of the local community
- Shows the person's support for a team, a hobby or other individual preferences
- For a special event, such as a family reunion, funeral, wedding or party
- From a shop that expresses the person's ethnic, linguistic and cultural heritage
- A souvenir from a vacation or event

Personal allowance can also be used for sunglasses, jewelry, hair or nail accessories, handbags or other items the person chooses that support their own style and make them happy with how they look when they go out.

Example 1 - Clothing

Lucy wants to purchase a pair of designer brand jeans from a local boutique. She has a supply of clothing, including a pair of jeans, but likes how she looks in the trendy designer jeans and enjoys shopping at this boutique. She has sufficient funds to make this purchase and can use her personal allowance. In this instance, the PEP should reflect that Lucy prefers designer jeans and enjoys shopping locally at this boutique.

Example 2 - Clothing

Debbie lives in a certified residential setting. Her parents and sisters live nearby and visit Debbie often. Debbie and her sisters like clothes, and she enjoys shopping with them to search out the best bargains. She often comes home with a new purchase to show off. Last week, Debbie used her personal allowance to buy a new winter coat for herself, even though one was already purchased for her by the residential agency. The new wool coat fits her well and is very stylish, but it will need to be dry-cleaned at the end of winter. Debbie's personal allowance may be used to pay for dry-cleaning for the new winter coat she bought with her own money, because she chose to buy her coat in addition to the coat that was purchased for her by the agency.

Example 3 - Clothing

Ray has been invited to a family member's wedding and he wants to attend. The wedding is formal and he wants to purchase a new suit to wear to the event. There is a local store where he prefers to shop, and Ray finds a suit he likes there. Ray can use his personal allowance to buy the suit; and after the wedding, pay for the dry-cleaning costs to keep his suit in good condition.

PERSONAL GROOMING

The type of residential setting a person lives in determines whether personal allowance can be used to pay for haircuts.

If a person lives in an ICF, DC or SRU, haircuts are included in the residential program's rate. If a person lives in an IRA, CR or family care home, personal allowance may be used.

If a person needs to go to a podiatrist for foot care such as trimming nails, personal allowance cannot be used. Someone who chooses to go to a salon or spa for a pedicure may use personal allowance.

BURIAL PLANNING

Burial planning can be a part of the person's overall expenditure planning. If all current and upcoming wants of the person are being met, it is acceptable to use personal allowance to establish a burial fund, burial agreement, or purchase burial space items.

Burial planning is one of the lowest priorities for personal allowance because improving a person's current quality of life is more important.

There are several different ways to plan and save for funeral expenses. Additional information is available in the Benefit Development Resource Toolkit available on OPWDD's website.

Burial funds are easy to establish. They can be comprised of money set aside at the residential agency or in a separate bank account for burial-related expenses. Burial funds, up to $1,500 in principal (plus accumulated interest), are exempt resources for Medicaid and SSI. For the burial fund to be exempt from countable resources, it must be clearly identified as a burial fund and cannot be commingled with other funds. Typically, the residential agency's business office can help set up and add to the burial fund.

A pre-need funeral agreement, also called an irrevocable burial trust (IBT), has no maximum exemption amount for Medicaid and SSI if the agreement is set up correctly and contains specific language related to Medicaid. The agreement can cover all the details of a person's burial and funeral and is arranged with the help of a funeral home. If additional funds are available in the future, pre-need funeral agreements can be amended to include additional burial items and services. If the agreement is not paid in full upon the death of the person, consider including a statement that the services and items will be renegotiated.

Certain burial space items are exempt as a resource for Medicaid (e.g., plot, vault, casket, headstone, urn).

Burial funds, burial agreements and burial space items should be considered when creating or revising the annual PEP, but only after all the person's other interests have been considered. Burial funds, burial agreements and burial space items can also help to maintain a person's entitlement to governmental benefits as a way of protecting their resources.

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 if it is included in the PEP and documented that:

- If the damage was caused by inappropriate behavior, the residential agency has addressed the person's inappropriate behavior; and
- The expenditure planning team has determined that financial restitution is appropriate and has meaning for the person; and
- The person's representative payee, if other than the director of the residential agency, has given written agreement for the person's personal allowance to be used for restitution; and

- A human rights committee formed under 14 NYCRR 633.16 (f), or a part of the committee, responsible for protecting the person's rights, has approved the time-limited use of the personal allowance for restitution.

Restitution for damages caused by an individual is not a legal obligation.

Example - Personal Restitution for Damages

Stefan lives in a Voluntary Operated Individualized Residential Alternative. He has an older brother, Joe, who takes him skateboarding at a nearby terrain park. Stefan is athletic and aggressive when skateboarding. He likes to be able to keep up with his brother and learn new tricks.

One afternoon, when Joe 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 individual. While using the board to do tricks at the park, Stefan crashed and broke the rear wheel assembly.

When he returned home 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 the people involved in Stefan's care had to agree that he could use his personal allowance to pay for the board. Stefan needed to understand that paying for the board meant that he wouldn't have that money available for other things for the rest of the month. Both his representative payee and the committee for the residence also had to agree that Stefan's personal allowance could be used.

LEGAL EXPENSES

Personal allowance may be used for legal expenses in certain situations. It can pay for guardianship fees, but the fees must be such that the person still has enough money to meet other current and foreseeable wants. SSA guidelines on guardianship fees are valid for all guardianship situations (not just where personal funds are due to saved Social Security or SSI funds). These guidelines allow fees if 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 person's funds will be depleted by fees to the point where there are unmet personal wants

Personal allowance can be used to meet legal obligations such as child support and fines imposed by a court of law.

Personal Allowance may be used to support an individual's dependents if 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 SSA to use personal allowance from SSI to support a dependent.

Anyone with the capacity to do so can execute a Last Will & Testament and choose what will happen to their property. If a person wants to establish a Will, documentation should support their ability to make this decision and be reflected in the PEP. If they name an agency that serves them in their Will as a beneficiary, there should be strong documentation of the person's capacity and choice. The agency cannot encourage or solicit the person to include them as a beneficiary in their Will. The circumstances associated with the creation of the person's Last Will & Testament may be subject to scrutiny.

GROUP PURCHASES

Group purchases are usually made when most of the people in a certified residence want to buy a certain 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 making a group purchase. Failure to follow these requirements could result in the agency being forced to pay back the people who bought the item.

If any portion of the personal allowance funds to be used are from Social Security or SSI benefits, your local Social Security Field Office must approve the decision to pool the personal funds of several people to purchase an item for the group. Requests for prior approval must be made in writing and must be approved before spending the group's money.

It is important to document that all the requirements below have been met before a group purchase can be made:

- The group purchase must meet the common desires of the entire group (not just a few members of the group), the item must meet a specific want of each person in the group, and it should help to enhance each person's life
- 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 their funds used for such a purpose
- Everyone participating in the group purchase must have a balance in their account equal to at least 2 months' benefits after the purchase (SSA may, at its discretion, waive the 2-month requirement)
- If a person has unmet needs, they should not participate in the group purchase
- If an individual's personal allowance is needed for something else that is more important, the person should not participate in the group purchase

- The item cannot be something that the residential agency, Medicaid, Medicare or any other service provider should be supplying
- Any person expected to leave the residence soon should not participate in the group purchase or must be able to benefit from the purchase to an extent at least equal to the value of their contribution

SSA recommends that if a person moves unexpectedly, the representative payee should pay back the person a reasonable amount based on how much they paid toward the item. If an item purchased by the group needs repairs, it is the responsibility of all individuals involved if everyone still uses the item and agrees to the repairs. If someone doesn't want to use the item anymore, they can request not to pay their share of the repairs; however, they no longer can use theitem.

Group purchases are not encouraged by OPWDD. Although they are not prohibited if the above criteria are met, the practice can result in vulnerabilities for the people we serve and risks to OPWDD service provider agencies.

Example - Group Purchase

Greg, Nick and Jordan all live in the same Voluntary Operated Individualized Residential Alternative. They all share a common interest in video games. They decide to purchase a gaming system which allows multiple people to play at once. One year after the system is purchased, it starts to overheat, and staff realize the fan on the system is not working. The fan must be replaced, which will cost $60. House staff consult with Greg, Nick and Jordan to let them know it must be fixed to continue playing and will cost them each $20. Greg informs the staff that he no longer enjoys playing video games and doesn't want to pay for the repairs. Nick and Jordan agree to pay $30 each for the part to be fixed. Going forward, Greg no longer uses the gaming system, but Nick and Jordan are still able to play.

SOCIAL SECURITY ADMINISTRATION PRIOR APPROVAL

SSA Prior Approval must be obtained to use Social Security or SSI benefits for group purchases or for voluntary agency out-of-pocket staff expenses exceeding $100 to accompany a person on a vacation or outing. The $100 level is for the entire outing, whether for an afternoon or a month's vacation. Information on prior approval requests for group purchases is contained in the group purchases section.

OUT-OF-POCKET VOLUNTARY AGENCY STAFF EXPENSES

This information does not apply to State staff. Personal allowance cannot be used for any State staff expenses.

Per OPWDD regulations, personal allowance funds may not be used for the out-of- pocket expenses of voluntary agency staff accompanying an individual on an outing, unless the following two criteria are met:

- Prior approval for large expenditures (e.g., vacation or overnight stays) from the Social Security Administration (SSA) has been granted, and
- The person is able to make this decision

If the situation meets the exception conditions stated above, the voluntary agency must follow the process provided below to obtain prior approval from SSA unless the voluntary agency staff out-of-pocket expenses are less than $100.

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

- The person's name and Social Security Number (SSN)
- A description of the trip or recreational activity, including a list of the expected out-of-pocket expenses for the person and accompanying staff member(s)
- A statement that the person's current and foreseeable needs are met, payment for the staff expenses will not deplete the person's funds, and their personal account balance will equal or exceed 1 month of the individual's full Social Security/SSI benefit amount after the deduction for the trip

The requests must be sent to the manager of the SSA Field Office that oversees the residential agency. The request should be sent at least 4 to 6 weeks prior to the trip. If a request must be made under time constraints, the request should include an explanation of the need for a quick decision. Please be aware that SSA staff may not be able to handle rush requests.

SSA prior approval is at the discretion of the Social Security Administration (SSA) and if SSA does not approve, the voluntary agency can submit a written request for reconsideration, including an explanation, to SSA.

The SSA written prior approval must be retained on file. Each person's file should be documented with receipts and/or vouchers for every amount deducted from personal funds. If the person is using funds from a source other than Social Security or SSI, prior approval from the SSA is not necessary. If funds are co-mingled with Social Security or SSI, the prior approval process must be followed. This prior approval process also does not apply when all the funds used for the vacation come from a Supplemental Needs Trust (SNT); however, money taken from an SNT may not be given directly to the individual to pay for vacation expenses. The trustee must directly pay hotel and restaurant charges, or a credit card can be used if the trustee pays the credit card bill from the SNT.

SAMPLE PRIOR APPROVAL REQUEST

(Name and Address of Voluntary Agency)

<u>Request for Pre-Approval</u>

Date:

Individual's Name:

Individual's Social Security Number:

Description of Activity/Trip:

Anticipated Out-of-Pocket Expenses:

Individual

Staff

Total Cost to Individual:

Explanation:

Example: How activity/trip would be in the "best interest" of the individual. Payment for the above expenses will not deplete the individual's funds. After the deduction for the trip, the personal account balance will equal or exceed one month's Social Security*/SSI benefit. Provide the personal account balance after proposed expenditures. All the individual's current and foreseeable needs will be met.*

OTHER INFLUENCES ON PERSONAL ALLOWANCE

SOCIAL SECURITY PAYMENTS AND OVERPAYMENTS

Retroactive Payments
A person may receive a lump sum from SSA for benefits that the person was eligible for in prior months. This is called a retroactive Social Security or SSI benefit due to an underpayment. Sometimes SSA will request a repayment because the person received too much money, called an overpayment. Addressing overpayments and underpayments is complicated by SSA and Medicaid rules, as well as OPWDD policies. Financial Benefits & Entitlements Assistance & Managementoffers a series of courses entitled “Benefits and Entitlements,” which briefly covers lump sum payments, overpayments and underpayments. Training information and registrationis available through the Statewide Learning Management System at https://nyslearn.ny.gov/.

In the month that a retroactive benefit is received, how it is handled depends on the type of benefit. Social Security retroactive benefits **are** countable income during the month of receipt. SSI retroactive benefits **are not** counted as income during the month of receipt.

For Social Security retroactive benefits, the agency must provide the correct personal allowance for the month and bill the appropriate rent. If the person owed their residential provider agency money from previous months **and** the retroactive payment was due to **administrative delay,** the agency may request prior approval from SSA to repay the past-due debt. Retroactive payments due to administrative delay may be used to repay past-due debt without prior approval from SSA if the individual lives in a Title XIX facility (ICF, DC or SRU). The retroactive payment must be reported to the person’s Medicaid district, which will determine the Net Available Monthly Income (NAMI) for the month it is received. Mental Hygiene Law establishes special rules for people who live in State Operated residential settings. Local Financial Benefits & Entitlements Assistance & Management can provide advice in these instances.

For SSI retroactive payments, the agency can only bill the lump sum if they recently applied for SSI or a change in representative payee and could not bill for rent until the SSI payments started (administrative delay). In this case, the agency can request **prior approval from SSA** to bill the standard rent amount for each month from the date of the SSI eligibility or admission into the residence, whichever is later. The agency must make sure that the individual’s personal allowance for that period is set aside *before*any billing can occur.

Retroactive Social Security and SSI benefits are excluded by Medicaid and SSI as a countable resource for 9 months after the month in which the lump sum is received. The person can spend or protect the retroactive payment during this period. If the sum is too large to spend during the 9-month exemption period, OPWDD encourages the use of a First Party Payback Trust with provisions for the person's supplemental needs (Supplemental Needs Trust or SNT). This legal device will protect the resource while allowing the person to have access to the money for their personal wants during their lifetime. More about trusts and burial agreements can be found in the Benefit Development Resource Toolkit available on OPWDD's website. After the 9-month exemption period ends, if the remaining funds from the lump sum have not been protected in an exempt resource, they become a countable resource. Like any other resource, it must be reported to SSI and Medicaid if it puts the person over the resource limit for either program.

SSI Overpayments
Sometimes, a person is paid more SSI than they are entitled to receive. This is called an overpayment. Saved personal allowance funds can be used to repay an SSI overpayment. The person must receive their full monthly personal allowance amount for the month before the repayment is made and the repayment must not affect the person's ability to meet their current or foreseeable future personal wants. If the person or their representative payee believes they were not overpaid, an appeal should be filed with the Social Security office. Social Security rules require that the person who is repaying the funds be the person who is responsible for the overpayment; therefore, if a previous RP was responsible for the overpayment or Social Security made an error, you should file an appeal with the Social Security office. If the person or RP cannot afford to repay the overpayment, they can request a waiver of the overpayment. It is suggested that you request the waiver before using conserved funds to repay.

An individual who is overpaid SSI due to unreported wages can repay the SSI overpayment from conserved wages but cannot be billed rent from the conserved wages once the SSI is suspended.

EARNED INCOME

The residential agency director may sometimes receive wages on behalf of individuals who are employed. If the person receives their wages directly, regulations require the agency to help the person manage their money when they are incapable of handling their own funds. The agency should help them obtain wages, deposit funds into their accounts and pay rent. The agency should work with the person to teach them money handling and management skills, including the responsibility to pay debts. The agency cannot force the individual to take specific action with their wages, such as requiring direct deposit or turning over their wages to residential staff. There should be documentation in the file that money management has been discussed.

If the residential agency is the representative payee, it must report wages to the Social Security Administration for SSI beneficiaries and to the Medicaid district for Social Security beneficiaries. If the person does not have a representative payee, they must report their wages. The person may need assistance from the residential staff or the care manager to perform the required reporting.

If the person does not want to share the amount of their earnings with the agency, this can create problems. The agency cannot report to benefit-paying agencies as required and may not be able to properly calculate the person's personal allowance. If this occurs, the agency should try to obtain the information directly from the employer;

authorization to release the information to the agency may be needed to do this. Document any problems and note that money management was discussed.

For individuals receiving SSI, the amount of their SSI benefit may be reduced based on the amount of their monthly countable wages. Personal allowance can come from both unearned and earned income. The representative payee must document the sources of a person's income each month, including calculation of the earned income exclusion, and proof that they received the full statutory personal allowance amount from their countable income. Refer to the Earned Income Exclusion and Examples of Calculations sections for more information.

Rent and Provider Payments
The portion of wages that is countable may be used to pay an individual's rent or the family care provider payment after the personal allowance amount is given to or set aside for the person.

Documentation of Earned Income
The residential agency must document income received by the people they serve. The documentation for earned income the agency is holding for a person may be in the form of a deposit in the personal account or residential ledger.

AGENCY RESPONSIBILITIES

It is not always clear what is covered by the agency rate, what the agency is required to pay for, and what can be paid for with personal allowance. Each agency must have a list of the services and items covered in its rate pursuant to NYCRR 635.9 Provision of Required Supplies and Services. It is a Class A misdemeanor to use personal allowance to pay for services or items the provider is supposed to pay for or supply. One area that leads to many questions is medical expenses.

MEDICAL EXPENSES

ICFs, DCs, SRUs, IRAs, CRs, OPWDD certified schools for the developmentally disabled, specialty hospitals and sponsoring agencies of family care homes are responsible for all necessary medical and dental expenses not covered by Medicaid, Medicare or other health insurance. When the agency is also the representative payee, State regulations prohibit using personal allowance for medical expenses, even with the person's permission, unless they meet the exceptions for excess resources or a Medicaid spenddown. This protects the person's resources from abuse.

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 and when they are managing any amount of money received from the payee or person they serve. These regulations do not apply to outside payees (e.g., a relative) or to people who receive their benefits directly.

The agency is responsible for paying co-pays and deductibles, which are medical expenses. This includes those required by private health insurance plans, even if the person pays the premium from their wages. If a person chooses, on their own, to go to a provider that does not accept Medicaid and makes the arrangements independent of agency staff, the individual's personal funds may be used to pay for the co-pays and deductibles. If a parent or advocate chooses to take an individual to a non-Medicaid participating provider, and the agency has not provided prior agreement, the person who made the decision is responsible for paying them. The agency may choose to pay these costs, but it is not a requirement. It is important that agency staff be involved in making decisions about medical providers and that families understand the impact of making decisions without prior agreement.

The agency is responsible for all medically necessary dental procedures. If an individual chooses to purchase items that are purely cosmetic, they may use personal allowance.

A dental bridge may be considered purely cosmetic by Medicaid. The agency must document the denial and appeal the decision before using personal allowance to purchase the bridge. If the appeal upholds the decision that the procedure is purely for cosmetic purposes, this should be documented so that it is clear the procedure is not considered medically necessary. Under these circumstances, if the person's current and foreseeable wants are met, the individual may choose to use personal allowance to purchase the item.

Example 1 - Medical Expenses

Jennifer needs eyeglasses. Typically, eyeglasses are paid for by Medicaid, Medicare or other health insurance. If Medicaid, Medicare or other health insurance does not cover the cost of the eyeglasses, the agency is responsible to pay because they are medically necessary. Personal allowance cannot be used to pay for medically necessary items or services.

Jennifer receives a pair of eyeglasses paid for by Medicaid but does not like the style. She wants to purchase a second pair of designer frame eyeglasses, because she prefers how they look. Since Jennifer *chooses* to have an additional pair of glasses, her personal allowance funds may be used to pay for the additional pair since it is not medically necessary to have a second pair of glasses with the same prescription. Using personal allowance funds for a second pair of eyeglasses that are not medically necessary must be supported by the person's PEP and there must be documentation that it is the person's choice to purchase the second pair. However, if she requires separate glasses for reading and distance, they are medically necessary and personal allowance cannot be used for the additional pair with a different prescription. If health insurance does not cover the medically necessary second pair, the agency must pay for them.

Example 2 - Medical Expenses

Jeff would like to have some of the hair on his body removed. He does not like the idea of waxing as he heard it is uncomfortable. His mom was pleased with her dermatologist and results recently and has found that laser hair removal is more permanent. Since hair removal is cosmetic and Jeff is choosing it, he may use his personal allowance to pay for the laser appointments and treatments.

Medical Expenses Exceptions

If a person is **ineligible** for Medicaid **only** because their countable resources exceed the Medicaid level, the excess amount of the person's saved personal allowance funds may be spent on medical bills. Once the person's countable resources have decreased to the Medicaid resource level, spending of the person's funds on medical expenses mustend. A Medicaid application should be filed as soon as the person is under the Medicaidresource level. Keep receipts and documentation for medical expenses, as Medicaid willconduct a resource review before granting eligibility for the person. Contact the local Medicaid district for further information about "resource spenddowns".

Excess countable income may be used for medical bills in certain circumstances (e.g., Medicaid spenddown). A person residing in a CR or IRA may use excess countable income to pay their Medicaid spenddown or to pay 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 residential agency is responsible for paying for the service. Detailed information regarding the Medicaid spenddown program is provided in OPWDD's "Benefits and Entitlements" training course. Training information and registration is available through the Statewide Learning Management System at https://nyslearn.ny.gov/.

MANAGEMENT OF INDIVIDUALS' FUNDS

The personal allowance regulations outline responsibilities for DDSOOs and OPWDD voluntary agencies that accept responsibility for handling any personal funds on behalf of individuals they serve. They specify residential provider and non-residential provider responsibilities. If the agency is handling funds, regardless of the source of the money, the agency must follow personal allowance regulations. This includes recording every receipt and disbursement of funds managed by the agency, such as deposits, withdrawals, interest and transfers between accounts.

Personal allowance is derived from a person's monthly income, including unearned income such as governmental benefits and any earned income. It is important that a person have access to their personal allowance as funds become available. The agency must separate personal allowance from other money within 3 business days of receipt. Individuals must be provided with personal funds within 3 business days of request.

RESPONSIBILITIES OF RESIDENTIAL PROVIDERS

The residential agency must determine whether a person needs a representative payee. The need for a representative payee must be evaluated and documented within 10 days upon admission, any time a person moves, if there is a change in their circumstances or ability to manage funds and if the person or someone else requests it on their behalf. If the agency determines a person needs a representative payee, and they did not have one before, a healthcare professional must conduct an evaluation and submit their findings to SSA. Documentation must be maintained.

If the representative payee is the facility director, they must manage the person's benefits and personal allowance without charging a fee. If the facility director is not the representative payee, they must offer in writing to manage the personal allowance for free. Additional information on representative payee responsibilities is outlined in [14 NYCRR Section 633.9](#).

The residential agency must develop and implement policies and procedures for the management and use of funds. Policies and procedures must address, at a minimum:

- Security of funds, including the location maintained and restrictions on access
- Accountability of staff, volunteers and providers
- Recordkeeping, both electronically and on paper
- Spending and monitoring of personal allowance
- That the use of personal allowance is to benefit the person only and reflects their choices

- A process for individual personal expenditure planning and the implementation of a Personal Expenditure Plan (PEP)
- Notification to the person and parties of their choosing when the provider is applying to be representative payee
- Responses to requests for accountings

The residential agency is responsible for managing the personal allowance account using the following guidelines:

- Personal allowance must be separated from income or Net Available Monthly Income (NAMI) within 3 business days of receipt.
- A record of all resources must be maintained to ensure continued eligibility for benefits and entitlements
- 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 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 funds to which a person has independent access and work with the individual to ensure this total does not exceed the amount specified in the person's Money Management Assessment (MMA). This includes:

- Cash or cash equivalents, such as a debit card or prepaid credit card, in the possession of the person
- Funds retained by the person from their earnings
- Funds maintained in a person-owned account (e.g., in a community bank account)

MOVES BETWEEN LIVING SITUATIONS

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

Personal allowance money belongs to the person and must be available for personal spending at the person's discretion. To ensure that the person's money remains available, specific procedures have been put in place and are outlined below.

When the original agency is the representative payee, and the person's money is derived **entirely** from sources **other** than Social Security or SSI, 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. During the transition, any additional funds received prior to the designation of a new representative payee must be forwarded within 5 business days of receipt to the new agency. This arrangement continues until a new payee is designated. If the new residence is a DDSOO or voluntary certified residence, the new provider must determine if a representative payee is still needed and apply to be payee, if applicable, within 10 days of admission.

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

- When there will be a change in representative payee, all funds from SSA must be returned to SSA within 10 days. The new agency or payee must be notified of the date and amount returned.
- SSA may grant written permission to forward the funds to the new payee if requested for specific individuals or under certain circumstances. This permission must be kept in the file.
- If written permission has been received from SSA to forward funds to the new agency, funds must be forwarded within 10 days of the move.

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

- When a person moves, the agency must send the lesser of 1 month's statutory personal allowance or the total of the person's funds, to the new agency before returning any funds remaining to SSA.
- When a new agency is appointed representative payee and receives a person's funds, the money must be treated as personal allowance. If any rent is due for a period prior to appointment as representative payee, the agency must obtain written permission from SSA to collect it unless the individual resides in an ICF, DC, or SRU.
- The burial fund must be sent to the new payee within 10 business days and must be clearly identified as such. The new agency must account for the burial fund separately for it to remain an excluded resource for SSI and Medicaid purposes.
- If it has been determined a person needs a representative payee, the new agency must apply to SSA to become the person's representative payee within 10 business days of the person's move. The residential agency should document the need for a payee and their offer to serve as representative payee. This documentation should be maintained in the case file.

TEMPORARY SHORTFALLS IN INCOME

The procedures detailed above are intended to avoid shortfalls in an individual's personal allowance when they move to a new residence. If a person moves into a residence operated by a different agency and a temporary shortfall occurs because the person's benefits are not yet being paid to the new agency, the agency may advance the person's personal allowance until the benefits are received. This is the only time an agency may advance funds to an individual. Any other advancement of funds constitutes pledging and is prohibited.

RESPONSIBILITIES OF NON-RESIDENTIAL PROVIDERS

A non-residential provider that accepts personal allowance funds from a residential agency for a person's use assumes responsibility for those funds and must handle them in accordance with personal allowance regulations.

This responsibility includes establishing policies and procedures that address, at a minimum:

- The usage of the funds
- The security of the funds
- Recordkeeping, both electronically and on paper
- The accountability of all agency personnel handling the money including staff, contractors, consultants and volunteers
- Spending and monitoring of personal allowance

Additionally, personal allowance regulations require that a non-residential provider must:

- Maintain an up-to-date person-specific record or ledger detailing receipt, disbursement and balance of personal allowance funds
- Obtain receipts in accordance with 14 NYCRR 633.15
- Ensure that expenditures benefit the individual and that items purchased by or for the person become his or her personal property
- Ensure that the use of personal allowance is in accordance with the individual's spending plan
- Quarterly, send the residential agency a copy of the ledger for each person for whom the program is holding personal allowance funds

ACCOUNTS ASSOCIATED WITH PERSONAL ALLOWANCE

There are different types of accounts associated with personal allowance. Documentation must be maintained for all accounts covered under personal allowance regulations. 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 regarding the amount of personal allowance due to a person in any given month and the total balance(s) in personal allowance account(s) you work with. These accounts may include any or all the following:

- A personal allowance account
- An agency fiduciary personal allowance account
- A person-owned account
- Cash or cash equivalents, such as a debit card or prepaid credit card, at the person's residence and/or day program
- Money in the person's possession

PERSONAL ALLOWANCE ACCOUNT

When the residential agency manages personal allowance, a personal allowance account must be established for the person. This applies when the agency is representative payee and/or when they receive funds from the representative payee or person to manage. The personal allowance account consists of an accounting process to record the receipt and disbursement of all personal allowance. There is no required format, but it is suggested that there be columns to show the difference between current income and savings. Agencies must identify which accounts are holding personal allowance and what amounts are in each, at least quarterly. Personal allowance account funds must be maintained in one or more of the following accounts:

- An agency fiduciary personal allowance account
- A person-owned account
- Cash at the person's residence
- Cash with other service providers

AGENCY FIDUCIARY PERSONAL ALLOWANCE ACCOUNT

Fiduciary personal allowance accounts are established by an agency to contain personal allowance funds for which they are responsible. They may contain the personal allowance for multiple individuals, but agencies must be able to identify personal allowance belonging to each person. The account must be interest bearing. Interest on the account must be allocated to all the people who have money in the account. While the agency controls the bank account, the agency does not own the money in the account.

Only authorized agency employees should have access to the fiduciary 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 family or friends to reimburse purchases with receipts
- To a person-owned account

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 only the individual's name to reflect sole ownership. The account must 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, which is helpful when investigating problems. The bank statement shows withdrawals and credits and can be used as an internal control. It also reduces the amount of cash in the house.

Since the person-owned account belongs only to the person, they are responsible for any fees connected with the account. However, the agency has a duty to seek the best option for the individual and try to get any fees waived. 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.

CASH AT THE RESIDENCE

In accordance with the PEP and upon the request of the person or appropriate agency staff, cash may be kept at the residence to meet a person's day-to-day needs. The cash must be in a secure location and there should be limited access to the funds. Funds should be made available to the person at their request. There must be documentation at the residence, including a ledger or equivalent, of all receipts, disbursements and the balance of all cash in the residence. Cash equivalents, such as prepaid credit cards, must be treated as cash if being held by the residence. The amount of cash at the residence should reflect the person's spending needs based on their PEP and be equal to or less than the cash cap amount for the residence. The statutory cash cap applies to the total amount of cash, including wages, that can be maintained by the agency in the residence for a person. The cash cap is adjusted annually when there is an SSA COLA and is equal to the statutory personal allowance amount for Congregate Care Level III (Specialty School) plus $20. This amount may be exceeded for up to 14 calendar days for a specific purpose. Documentation of the specific amount, time and purpose for the excess amount must be included in the cash account record. An agency may choose a cash cap lower than the statutory amount but may not exceed that amount. A portion of cash at the residence may be provided to a non-residential program for use by the person while they are receiving services at that program.

CASH AT THE DAY PROGRAM

Day programs must follow the requirements for all non-residential providers. Funds provided to a day program should not negatively impact the person's ability to do the things they enjoy in the evenings and weekends. A residential program cannot transfer personal allowance funds to the day program unless the day program has procedures in place for handling personal allowance, including:

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

These procedures should only be used for people who are incapable of handling their own funds or for amounts greater than indicated on their money management assessment. If the day program does not follow the regulatory requirements, the residential agency staff should not send personal allowance funds to the day program.

Example: A DDSOO and a day program work together to provide personal allowance for Jessica during day community outings of her choosing. 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 keeps a ledger of all expenditures, including how the money was used and receipts if required. 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 the money each day.

DOCUMENTATION

LEDGERS

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

Sometimes there is more than one ledger for a person. The agency may keep one ledger to record benefit and personal allowance transactions, and the residence may keep another to record transactions for the cash on hand. The person should initial entries on the residential ledger at the time of transaction, or on a record attached to the PEP at least monthly, unless the PEP indicates that the person cannot understand what initialing these records means.

The person, their parents, guardians, advocates, representative payee and the benefit-paying agencies must be able to review all records of personal allowance accounts, including ledgers, upon request. Copies of the ledger must be sent to the representative payee quarterly; copies of the ledger from non-residential providers should also be sent to the residence quarterly.

If the agency manages money for multiple individuals, it must perform an annual audit of at least 10% of the personal accounts for individuals in family care homes and 25% of personal accounts for individuals in other types of residences for whom the director is representative payee or for whom they handle money. The audits must demonstrate compliance with the personal allowance regulations.

ELECTRONIC LEDGERS

Some agencies use electronic spreadsheets instead of paper ledgers. Each person has a spreadsheet with a different page for every month. Spreadsheets can be set up to automatically calculate the personal allowance balance after each transaction and carry over balances from month to month. This helps eliminate mathematical errors. Typing entries, rather than handwriting, also makes it easy for auditors to see how the funds were spent.

When the ledger is electronic, the page for the month must be printed at the end of the month and the individual must initial and date the spreadsheet if initialing has meaning for them. This shows that the person received the amounts reflected on the spreadsheet. Alternatively, the person may sign a separate monthly acknowledgement of their approval of the ledger transactions maintained electronically. This may eliminate the needto print the actual ledger.

If your agency does not have an electronic spreadsheet format, you may contact your local FBEAM for a sample ledger to use or use the sample family care ledger and instructions on the OPWDD website.

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							
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RECEIPTS

Receipts are necessary to document spending from personal allowance. The receipts should correspond to the ledger entries and should clearly show:

- The item or service purchased
- The amount paid
- The vendor
- The date of purchase

Receipts are required when agency staff spend personal allowance funds. Each purchase must have a receipt and the ledger item should have a reference number leading to the pertinent receipts. If a receipt is not obtained for a purchase made on a person's behalf, agencies may be required to reimburse the person for the amount spent.

Receipts are required for all group purchases. The receipt should show all the items above and list the number of people in the group. It should show that the amount each person spent is equal to their use of the purchase (the amount of each person's payment for the group purchase must also be reflected in their respective ledgers). Each person's ledger must have a copy of the receipt attached.

Receipts Exceptions

If a staff member uses personal allowance to buy a routine recreation-related item under $15, a receipt is not required, but staff must make a notation in the ledger for that small expense (e.g., "movies – name of film - $10.50").

Agencies may choose to require receipts for all purchases made by a staff person including recreation-related purchases under $15. Agency policies may be more restrictive than the regulations; you should refer to your agency's written procedures to ensure compliance.

When a person is spending their own funds in an amount consistent with their money management assessment, receipts are not required. The entry on the ledger should be "$XX.XX for spending" and the person should initial the entry. While receipts are not required for purchases made by the person, it is a best practice to encourage the person to obtain receipts and give them to the residence for safe-keeping in case the item needs to be returned or if proof of purchase may be needed for another purpose (such as a warranty). It is important to remember that the person cannot be given more money than they have been determined capable of independently handling in their MMA.

RETAILER REWARDS

When a retailer issues a reward for purchases that can be redeemed for cash, merchandise or other considerations, that reward is the sole property of the person who bought the original item. The rewards must be recorded on the ledger by entering the coupon or certificate/card number as part of the transaction and the reward must be attached to the receipt. Reward coupons, gift certificates/cards and points may only be used by the person who earned them. If the person does not use the reward, the reward must be allowed to expire. Unused rewards must remain attached to the purchase receipts.

If a reward is missing or lost, the agency staff should contact the store or the chain's toll-free number to determine if it has been redeemed. If the reward was used and there is no evidence that the reward was used for the person's benefit (for example, shown on later receipts), the agency must reimburse the person for the value of the reward. If the agency cannot confirm whether it was used, the agency must reimburse the person for the value of the reward.

Personal allowance audits should include verifying that any rewards were documented properly and used for the person's benefit or allowed to expire. Agency staff who do not follow the requirements above are in direct violation of OPWDD's responsibility to safeguard the personal property of the individuals in their care.

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 and cash equivalents 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.

RECORD RETENTION

Agencies must maintain complete records documenting all transactions involving personal allowance for 4 years.

RESTITUTION DUE TO LOSS, THEFT OR WRONGFUL WITHHOLDING

The mismanagement of personal allowance carries civil and criminal punishments.

Personal allowance must be managed in accordance with both OPWDD regulations, New York State Social Services Law and the Code of Federal Regulations. In addition, an agency acting as the payee for anyof a person's benefits is responsible for following the program rules of the benefit payingorganization.

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

- Investigate any loss, suspected misappropriation or wrongful withholding
- Start 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 person's personal allowance account as early as possible; this means that **funds must be returned to the account immediately upon discovery of the loss and the exact amount of the loss**. The agency cannot hold off repayment to the person until the investigation has been completed.

Any thefts of funds belonging to a person must be reported to OPWDD's Incident Management Unit (see 14 NYCRR 624.4(c)(5)). If any amount of personal allowance is derived from Social Security benefits or SSI), any theft or misuse of funds must also be reported to the Social Security Administration (see CFR § 404.2041 and CFR § 416.641). A minor notable occurrence is theft of personal allowance or personal property valued between $15 and $100. A significant incident is theft of personal allowance or personal property valued more than $100 or **any amount of theft involving credit, debit or public benefit cards**. The benefit- paying agency must be informed of all thefts in accordance with the rules and regulations of the benefit paying agency.

When funds are discovered to be missing, the agency must audit all personal allowance accounts for persons residing in the same home for at least 1 year immediately prior to the identification of the missing funds. The agency must audit all personal allowance accounts for all residences accessed by agency staff alleged to have committed a theft.

MONITORING CREDIT AND PROTECTION AGAINST IDENTITY THEFT

The Social Security Administration provides information on how representative payees can protect beneficiaries from identity theft at:
https://www.ssa.gov/payee/NewGuide/toc.htm#Protecting_Beneficiaries_Identity_Theft.

The Federal Trade Commission (FTC) provides resources on credit scores, consumer rights and the Equal Credit Opportunity Act at: https://www.consumer.ftc.gov/topics/credit-and-loans.

To order your free annual credit report at https://www.consumer.ftc.gov/articles/0155-free-credit-reports from one or all of the national credit reporting companies, and to purchase your credit score, visit www.annualcreditreport.com at https://www.annualcreditreport.com/index.action call toll-free 877-322-8228, or complete the Annual Credit Report Request Form and mail it to: Annual Credit Report Request Service, P. O. Box 105281 Atlanta, GA 30348-5283.

AUDIT PROBLEMS

OPWDD and other governmental agencies will audit how a program handles personal allowance. They will review the ledgers and supporting documentation and count the cash on hand.

COMMON AUDIT PROBLEMS

Some common problems have been found during audits, including:

- Personal allowance was not separated from countable income within 3 days of receipt
- Funds were missing
- Full personal allowance amount was not allocated to the person when the amount of their unearned income decreased
- Annual review of the required percentage of personal allowance accounts for people living in the different types of residences was not completed
- Cash in the house exceeded the statutory per person cash cap
- Expenditures from personal allowance were inappropriate, for example, personal allowance was used to pay for local phone service, prescriptions and other expenses that should have been paid for by the agency or Medicaid
- The person’s money handling skills in the MMA were not re-evaluated periodically
- Internal written procedures on how to handle personal allowance funds did not exist
- Documentation of the receipt and separate accounting of the semi-annual clothing allowance from OPWDD was lacking
- The semi-annual clothing allowance funds were not being used

There have also been common problems with ledgers, such as:

- Cash transactions were not entered on the ledger at the time they occurred
- The person who made the purchase was not recorded
- Ledgers were poorly maintained or non-existent
- Mathematical errors were made on the ledger
- Purchases did not have supporting receipts
- Generic receipts did not include the vendor, date or description of items purchased
- Individuals who were capable did not initial or sign for money they were given

PLEDGING

Pledging is when an agency or staff lends agency funds or their own money to a person and expects repayment from personal allowance funds. Lending money to personal allowance recipients, even for a short period, and later being repaid from personal allowance funds, 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 or loan personal funds and later reimburse petty cash or staff from the person's personal allowance. Prior planning can eliminate situations in which staff may be tempted to loan agency funds or their own funds. The agency should review its procedures to ensure that there are plans to ensure individuals have access to their funds when staff who can open the safe are off duty.

It is difficult to make some purchases using cash today. OPWDD has developed policies to address the use of a credit card to make purchases in a manner that avoids pledging when necessary (such as airline tickets). The DDSOO or voluntary agency may use their business credit card for the purchase of an item(s) for a person for whom the DDSOO or voluntary agency Director manages personal allowance funds. The individual's funds must be set aside prior to the purchase and for the full amount of the purchase. If the funds are not set aside prior to the purchase, it would be considered a pledging of funds, and this would be a violation of the OPWDD Personal Allowance regulations (14 NYCRR 633.15).

For purchases requiring a credit card, the agency can ensure they allow people access to items and ensure they are not pledging money by:

- Reviewing the personal allowance account and verifying there is a sufficient balance to cover the purchase

- Setting aside the full cost prior to using the credit card
- Paying the full cost from the personal account to the credit card bill immediately after the transaction

An agency may provide funds to purchase items or participate in community outings when the person does not have income. This is not advancing funds as there is no expectation the person will repay the agency. If an agency provides funds to a person without income, the funds for personal spending cannot be reimbursed if the person later becomes eligible for benefits.

SUB-LEDGERS AND MONEY ACCESSIBILITY

Procedures can be developed to allow staff access to small amounts of personal allowance funds when staff who have access to the safe are off duty. One way is to use a sub-ledger system.

Sub-ledgers are recommended as a best practice because:

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

Example - Sub-ledgers

This example describes the sub-ledger procedures used by one provider.

Ledger sheets are secured and funds are kept locked in a safe. The provider designates a ledger manager who has access to the ledger and safe. A ledger co-manager can be designated as a back-up to cover when the designated manager is off duty. A full reconciling of 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 in advance and secured within the residence when the outings are complete. The staff person signs the ledger sheet, and the funds are put in a sub-ledger envelope designating the purpose of the funds. The staff person must document how all the money is spent and provide receipts. The funds and sub-ledger are secured when the staff is not out with the individual or shopping on their behalf. If there is a specific purpose for the cash, the responsible staff person must shop and return the receipts and change to the ledger manager within 7 days. If more money is requested for the same person, the staff person must turn in the sub-ledger before the additional funds are granted.

Whenever a staff person transfers a person's funds to another staff person, there must be a ledger entry.

The DDSOO has several policies which help safeguard the money:

- Staff are not allowed to transfer or loan money from one person's account to another's
- Loans from personal allowance funds to staff are prohibited
- Staff are not allowed to spend their own funds and later be reimbursed
- Comingling staff and individual funds is not allowed; each person's funds are kept separately
- The ledger manager can audit sub-ledgers at any time

PENALTIES

As personal allowance impacts 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 2 years in jail
- Fine of $10,000
- Judgments of up to twice the misused amount

CONCLUSION

This manual should give you guidance and help you fulfill your responsibilities working with people with developmental disabilities. It is not a replacement for training, nor will it answer every question you may have about personal allowance.

After reading this manual, you should know:

- What personal allowance is
- That personal allowance funds belong to the person, not to the DDSOO or voluntary agency
- What personal allowance may be used for and what expenditures are prohibited
- How to help the people you serve make good spending decisions
- How to calculate personal allowance amounts
- The guidelines for documenting the use of personal allowance

Most 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 lives 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 cannot find the information you need, ask your supervisor or agency administrators. You can also get help from your local Financial Benefits & Entitlements Assistance & Management (FBEAM). Your local Financial Benefits & Entitlements Assistance & Management can alsohelp you identify professional development opportunities. It is important that you continueto seek 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 in your care.

Financial Benefits & Entitlements Assistance & Management Contact Information

FBEAM/Address/Phone/Fax	Service Area
BROOME FBEAM 249 Glenwood Road Binghamton, NY 13905 BR.FBEAM@opwdd.ny.gov **Phone: (607) 771-7210** Fax: (607) 771-1098	**Broome DDSOO** For the counties of: Broome Otsego Chenango Tioga Delaware Tompkins
CAPITAL DISTRICT FBEAM Capital District DDSOO, Bldg. 12-A Oswald D. Heck Developmental Ctr 500 Balltown Road Schenectady, NY 12304 CD.FBEAM@opwdd.ny.gov **Phone: (518) 370-2010** Fax: (518) 370-2297	**Capital District DDSOO** For the counties of: Albany Schenectady Fulton Schoharie Montgomery Warren Rensselaer Washington Saratoga
CENTRAL/SUNMOUNT FBEAM P.O. Box 550 Rome, NY 13442 CS.FBEAM@opwdd.ny.gov **Phone: (315) 339-3440** Fax: (315) 336-0407	**Sunmount DDSOO** **Central New York DDSOO** For the counties of: Cayuga Jefferson Clinton Lewis Cortland Madison Essex Oneida Franklin Onondaga Hamilton Oswego Herkimer St. Lawrence
FINGER LAKES FBEAM Vienna Building, Room 137 509 Vienna Street Newark, NY 14513 FL.FBEAM@opwdd.ny.gov **Phone: (315) 331-7141** Fax: (315) 331-0182	**Finger Lakes DDSOO** For the counties of: Chemung Seneca Livingston Steuben Monroe Wayne Ontario Wyoming Schuyler Yates

FBEAM/Address/Phone/Fax	Service Area
HUDSON VALLEY FBEAM P.O. Box 470 3 Wilbur Road Thiells, NY 10984 HV.FBEAM@opwdd.ny.gov **Phone: (845) 947-6250** Fax: (845) 947-6161	**Hudson Valley DDSOO** For the counties of: Orange Sullivan Rockland Westchester
LONG ISLAND FBEAM 415A Oser Avenue Hauppauge, NY 11788 LI.FBEAM@opwdd.ny.gov **Phone: (631) 434-6109** Fax: (631) 434-6511	**Long Island DDSOO** For the counties of: Nassau Suffolk
NEW YORK CITY FBEAM 25 Beaver Street – 3rd Floor New York, NY 10004-2310 NYC.FBEAM@opwdd.ny.gov **Phone: (646)766-3472** Fax: (646)766-3474	**Metro New York DDSOO** **B. Fineson DDSOO** **Brooklyn DDSOO** **Staten Island DDSOO** **Institute Basic Research** For the counties of: Bronx Queens Kings Richmond Manhattan
TACONIC FBEAM 36 Firemen's Way Poughkeepsie, NY 12603-6519 TA.FBEAM@opwdd.ny.gov **Phone: (845) 473-8210** Fax: (845) 473-8204	**Taconic DDSOO** For the counties of: Columbia Putnam Dutchess Ulster Greene
WESTERN NEW YORK FBEAM 1200 East & West Road Building 16-4W West Seneca, NY 14224 WNY.FBEAM@opwdd.ny.gov **Phone: (716) 675-8666** Fax: (716) 675-8919	**Western New York DDSOO** For the counties of: Allegany Genesee Cattaraugus Niagara Chautauqua Orleans Erie

GLOSSARY OF PERSONAL ALLOWANCE TERMS

Care Manager - A person who helps people with developmental disabilities access necessary services and supports appropriate to their needs and life goals. Qualified service/care managers use a person-centered process to develop, implement and maintain an Individualized Service Plan (ISP) or Life Plan (LP).

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 Social Security.

Developmental Center (DC) - A facility for the care and treatment of the developmentally disabled that is operated by OPWDD.

Developmental Disabilities Regional Office (DDRO) – OPWDD offices that are the starting point to apply for services. The DDROs each cover several counties and work with local voluntary agencies to improve access to and coordinate services within the region (“catchment area”).

Developmental Disabilities State Operations Office (DDSOO) - OPWDD offices responsible for providing both residential and non-residential State Operated programs in one or more counties. These offices, in conjunction with Developmental Disabilities Regional Offices, provide specially designed person-centered assistance to each individual with developmental disabilities as requested by that person or by their family.

Disregard – See Income Disregard.

Earned Income Exclusion - The first $65 of gross monthly wages plus half of the amount over $65 is excluded for Medicaid and SSI purposes. 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 homes. Family care is referred to as Congregate Care Level I by Social Security.

Income Disregard - Certain income is disregarded (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 countable monthly income is compared to the appropriate income level for the benefit program and the individual's living arrangement.

Income, earned - *<u>Medicaid Definition:</u>* Income received as a result of work activity including wages, salaries, tips, commissions and income received from self-employment. *<u>SSI Definition:</u>* 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 - *<u>Medicaid Definition:</u>* 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. *<u>SSI Definition:</u>* 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 to 14 people that provides room, board and individualized protective oversight. This is a type of Community Residence.

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

Intermediate Care Facility (ICF) - 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 – Living at home, or in an uncertified residence, and 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 - A medical insurance program for low-income individuals who are unable to pay for needed medical services such as care in a hospital, nursing home or intermediate care facility; services provided by physicians and other enrolled medical/dental providers; day treatment; transportation to medical services; medication and medical supplies; services provided through OPWDD's Home and Community Based Services Waiver and Medicaid Service Coordination/Care Coordination.

Medicare - Federal health insurance program for people aged 65 years or older, people under 65 with disabilities, and those with End-Stage Renal Disease. It includes 4 parts (A, B, C, D) which provide hospital, medical insurance, prescription drugs and other medical services. People with developmental disabilities may qualify for Medicare on their own, parents' or spouse's work record.

Net Available Monthly Income (NAMI) - For persons residing in ICFs, DCs, SRUs, specialty hospitals and nursing homes, the combined amount of earned and unearned income remaining 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 Developmentally Disabled - A residential facility for the developmentally disabled certified by the Office for People With Developmental Disabilities.

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

Planning team - those who provide person-centered care to the individual. The team must be comprised of the individual and/or their family member and/or their representative, Care Manager, primary providers of developmental disability services, primary physician and other providers either as requested by the individual and/or their family member and/or representative

Pledging - The prohibited 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 specified services/merchandise upon the death of the person to whom the agreement pertains. Since January 1, 1997, for Medicaid and SSI to not count as an asset, 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 rent in a congregate care setting. The rent is based upon the amount remaining from income after personal allowance has been deducted.

Representative payee - A person or an organization appointed to receive the Social Security or SSI benefits for anyone who cannot manage or direct the management of their benefits.

Financial Benefits & Entitlements Assistance & Management (FBEAM) - Part of OPWDD's Division of Fiscal Policy and Management. There are regional FBEAMs in New York State and each office develops and maintains benefits and entitlements for individuals served by their local DDSOOs. FBEAM is responsible for various revenue related support functionsfor individuals in Voluntary and State Operated programs.

Sheltered Workshop - A recognized program of training and rehabilitation for workers with disabilities.

Supplemental Needs Trust (SNT) - Special account for a person with disabilities who wants to protect income or resources, and who also wants benefits like Medicaid or SSI. A trust must be written properly to comply with state and federal laws. Monies from the trusts can be used to pay for items or services that Medicaid and SSI won't pay for. SNTs can be used to protect an inheritance or money from a lawsuit, and help a person become financially eligible for Medicaid. What happens to the money in the trust when the individual passes away depends on how the trust was set up.

Social Security - Benefits/payments 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 operator of one or more family care homes. In the case of family care homes operated by OPWDD, the DDSOO is the sponsoring agency.

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.

Supported employment - This service enables an individual with a disability to work in the community rather than in the sheltered workshop environment.

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. An example is health insurance provided by an employer.

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

APPENDIX

APPLICABLE REGULATIONS AND LAW

Title 20 Code of Federal Regulations

The below pertains to Social Security benefits.

§ 404.2041. Who is liable if your representative payee misuses your benefits?

(a) A representative payee who misuses your benefits is responsible for paying back misused benefits. We will make every reasonable effort to obtain restitution of misused benefits so that we can repay these benefits to you.

(b) Whether or not we have obtained restitution from the misuser, we will repay benefits in cases when we determine that a representative payee misused benefits and the representative payee is an organization or an individual payee serving 15 or more beneficiaries. When we make restitution, we will pay you or your alternative representative payee an amount equal to the misused benefits less any amount we collected from the misuser and repaid to you.

(c) Whether or not we have obtained restitution from the misuser, we will repay benefits in cases when we determine that an individual representative payee serving 14 or fewer beneficiaries misused benefits and our negligent failure in the investigation or monitoring of that representative payee results in the misuse. When we make restitution, we will pay you or your alternative representative payee an amount equal to the misused benefits less any amount we collected from the misuser and repaid to you.

(d) The term “negligent failure” used in this subpart means that we failed to investigate or monitor a representative payee or that we did investigate or monitor a representative payee but did not follow established procedures in our investigation or monitoring. Examples of our negligent failure include, but are not limited to, the following:

(1) We did not follow our established procedures in this subpart when investigating, appointing, or monitoring a representative payee;

(2) We did not timely investigate a reported allegation of misuse; or

(3) We did not take the necessary steps to prevent the issuance of payments to the representative payee after it was determined that the payee misused benefits.

(e) Our repayment of misused benefits under these provisions does not alter the representative payee's liability and responsibility as described in paragraph (a) of this section.

(f) Any amounts that the representative payee misuses and does not refund will be treated as an overpayment to that representative payee. See subpart F of this part.

Available online at: https://www.ssa.gov/OP_Home/cfr20/404/404-2041.htm

Title 20 Code of Federal Regulations

The below pertains to SSI benefits.

§ 416.641. Who is liable if your representative payee misuses your benefits?

(a) A representative payee who misuses your benefits is responsible for paying back misused benefits. We will make every reasonable effort to obtain restitution of misused benefits so that we can repay these benefits to you.

(b) Whether or not we have obtained restitution from the misuser, we will repay benefits in cases when we determine that a representative payee misused benefits and the representative payee is an organization or an individual payee serving 15 or more beneficiaries. When we make restitution, we will pay you or your alternative representative payee an amount equal to the misused benefits less any amount we collected from the misuser and repaid to you.

(c) Whether or not we have obtained restitution form the misuser, we will repay benefits in cases when we determine that an individual representative payee serving 14 or fewer beneficiaries misused benefits and our negligent failure in the investigation or monitoring of that representative payee results in the misuse. When we make restitution, we will pay you or your alternative representative payee an amount equal to the misused benefits less any amount we collected from the misuser and repaid to you.

(d) The term “negligent failure” used in this subpart means that we failed to investigate or monitor a representative payee or that we did investigate or monitor a representative payee but did not follow established procedures in our investigation or monitoring. Examples of our negligent failure include, but are not limited to, the following:

(1) We did not follow our established procedures in this subpart when investigating, appointing, or monitoring a representative payee;

(2) We did not investigate timely a reported allegation of misuse; or

(3) We did not take the steps necessary to prevent the issuance of payments to the representative payee after it was determined that the payee misused benefits.

(e) Our repayment of misused benefits under these provisions does not alter the representative payee's liability and responsibility as described in paragraph (a) of this section.

(f) Any amounts that the representative payee misuses and does not refund will be treated as an overpayment to that representative payee. See subpart E of this part.

Available online at: https://www.ssa.gov/OP_Home/cfr20/416/416-0641.htm

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;

Available online at: https://www.gpo.gov/fdsys/granule/CFR-2011-title42-vol5/CFR-2011-title42-vol5-sec483-420/content-detail.html?_sm_au_=iVVT3tPN5tSWtmJD

INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION

TAG NUMBER	REGULATION	GUIDANCE TO SURVEYORS
	<u>STANDARD: Protection of Client's Rights</u> 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 wasmade 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

§ 16.31 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 persons with developmental disabilities, 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.

(b) Any person residing in a facility for which an operating certificate is required pursuant to this article who has no income, or who has otherwise non-exempt income in an amount less that the appropriate amount pursuant to subdivision (a) of this section, shall be eligible for a state payment in an amount equal to subdivision (a) of this section less the amount of the person's otherwise non-exempt income.

Unofficial version available online at:
http://codes.findlaw.com/ny/mental-hygiene-law/mhy-sect-16-31.html

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

§ 131-o. Personal allowances 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 $141.00 for each month beginning on or after January first, two thousand sixteen.

* NB Effective until December 31, 2017

* (a) in the case of each individual receiving family care, an amount equal to at least $141.00 for each month beginning on or after January first, two thousand seventeen.

* NB Effective December 31, 2017

* (b) in the case of each individual receiving residential care, an amount equal to at least $163.00 for each month beginning on or after January first, two thousand sixteen.

* NB Effective until December 31, 2017

* (b) in the case of each individual receiving residential care, an amount equal to at least $163.00 for each month beginning on or after January first, two thousand seventeen.

* NB Effective December 31, 2017

* (c) in the case of each individual receiving enhanced residential care, an amount equal to at least $193.00 for each month beginning on or after January first, two thousand sixteen.

* NB Effective until December 31, 2017

* (c) in the case of each individual receiving enhanced residential care, an amount equal to at least $194.00 for each month beginning on or after January first, two thousand seventeen.

* NB Effective December 31, 2017

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

(1) the amounts specified in paragraphs (a), (b) and (c) 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 seventeen, but prior to June thirtieth, two thousand seventeen, rounded to the nearest whole dollar.

* NB Effective until December 31, 2017

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

(1) the amounts specified in paragraphs (a), (b) and (c) 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 eighteen, but prior to June thirtieth, two thousand eighteen, rounded to the nearest whole dollar.

* NB Effective December 31, 2017

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.

Unofficial version available online at: http://codes.findlaw.com/ny/social-services-law/sos-sect-131-o.html

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

(a) Principles of compliance.
(1) No person 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 need of certain persons with the most severe disabilities 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. Rights limitations must be documented and must be on an individual basis, for a specific period of time, and for clinical purposes only. (*Note:* See section 636-1.4 of this Title for documentation requirements specific to the person-centered service plan and section 633.16 of this Part for documentation requirements concerning person-centered behavioral intervention.)
(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 with regard 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's abilities to cope with his or her environment, fosters social competency (which includes meaningful recreation and community programs and contact others who do not have disabilities), 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's 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. This right shall provide that:

(a) meals are served at appropriate times and in as normal as manner as possible; and

(b) altering the composition or timing of regularly served meals for disciplinary or punishment purposes, for the convenience of staff, or for behavior modification shall be prohibited;

(xviii) individually owned clothing which fits properly, is maintained properly, and is appropriate forage, 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 Justice Center for the Protection of People with Special Needs (Justice Center) (see glossary, section 633.99 of this Part); 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; or
(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 developmental center (see glossary) shall adopt policies/procedures to actualize this right.
(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 the convenience of staff, as a threat, as a means of retribution, for disciplinary purposes or as a substitute for treatment or supervision.
(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) An 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/or 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 Justice Center for the Protection of People with Special Needs (see glossary, section 633.99 of this Part).

(iv) The Mental Hygiene Legal Service (see glossary, section 633.99 of this Part), 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 Justice Center may be contacted at the following locations:

Commissioner
Office for People With Developmental Disabilities
44 Holland Avenue

Albany, NY 12229
(518) 473-1997;
(b) Justice Center for the Protection of People with Special Needs
161 Delaware Avenue
Delmar, NY 12054
(518) 549-0200

(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; and

(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, NY 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, NY 12231; and

(b) the Office for People With Developmental Disabilities, Office of Counsel, 44 Holland Avenue, Albany, NY 12229.

(b) Standards of certification.

(1) There are written policies/procedures on notifying individuals and/or their 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 Justice Center for the Protection of People with Special Needs;

(d) the Mental Hygiene Legal Service, for residents of 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. (*Note:* see section 636-1.4 of this Title for documentation requirements specific to the person-centered service plan and section 633.16 of this Part for documentation requirements concerning person-centered behavioral intervention.)

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New York State Codes, Rules and Regulations 633.9 Facility directors as representative payees.

(a) Applicability.
This section applies to OPWDD operated and certified residential facilities, including family care homes.
(b) *Definitions.*
(1) *Beneficiary* means an individual who is receiving social security or other Federal or State benefits.
(2) *Facility* means an OPWDD operated or certified residential facility. As used in this section, *facility* also means the agency that sponsors a family care home.
(3) *Facility director* means the executive director, administrator, CEO, or its equivalent of an OPWDD operated or certified residential facility. As used in this section, *facility director* also means the executive director, administrator, CEO, or its equivalent of an agency that sponsors a family care home.
(4) *Health care professional* means physician, psychologist, or other qualified medical practitioner whose statements are acceptable to the benefit paying agencies for the purposes of determining the beneficiary's ability to handle his or her benefits.
(5) *Lump sum retroactive benefit* means a lump sum retroactive payment of a Federal or State benefit that exceeds the expected monthly recurring amount for a reason other than a delay in processing an application, changing a representative payee, or similar administrative delay.
(6) *Medicaid exception trust* means a trust that contains the assets of the beneficiary in which both the principal and income of the trust are considered exempt for purposes of determining the beneficiary's eligibility for Medicaid and/or supplemental security income.
(7) *Representative payee* means a party designated by a benefit-paying organization to receive an individual's benefit payments in a fiduciary capacity and in compliance with Federal and State laws and regulations. This includes, but is not limited to, a party specifically designated by the Social Security Administration (SSA) to handle benefits on behalf of a beneficiary.
(c) Determination of need for representative payee.
(1) The beneficiary does not have a representative payee. If an individual does not have a representative payee, then within 10 business days of a beneficiary's move into a facility, the facility director, in consultation with the beneficiary's planning team, must conduct a review to determine whether the appointment of a representative payee to manage the individual's benefits is advisable. The basis for the determination must be documented in the beneficiary's record. If the facility director and the planning team question whether an individual is able to manage his or her benefits, then the individual must be evaluated by a health care professional. If, in the health care professional's opinion, the beneficiary cannot manage his or her benefits, then the facility director may apply to become the beneficiary's representative payee. If, in the health care professional's opinion, the beneficiary is capable of managing his or her own benefits, then the facility director may not apply to become the beneficiary's representative payee.

(2) The beneficiary has a representative payee. If an individual has a representative payee, then within 10 business days of a beneficiary's move into a facility, the facility director, in consultation with the beneficiary's planning team, must conduct a review to determine whether there is a continuing need for the appointment of a representative payee for the beneficiary.
(i) If the facility director and the planning team determine that the beneficiary continues to require a representative payee, then the facility director may apply to become the beneficiary's representative payee.
(ii) If the facility director and/or the planning team determine that a beneficiary may no longer require a representative payee, or are unsure, then the individual must be evaluated by a health care professional. If the health care professional's opinion is that the beneficiary cannot manage his or her benefits, then the facility director may apply to become the beneficiary's representative payee. If the health care professional's opinion is that the beneficiary can manage his or her benefits, then the facility director may not apply to become the beneficiary's representative payee. The facility director must notify the benefit paying agency of any change.
(iii) The basis for the determination of the beneficiary's need or continuing need for a representative payee, as set forth in subparagraphs (i) and (ii) of this paragraph, must be documented in the beneficiary's record.
(3) A determination of a beneficiary's need for a representative payee must also be made under the following circumstances and must be documented in the beneficiary's record:
(i) when there is a significant change in the beneficiary's physical or mental condition;
(ii) in response to a circumstance that affects the beneficiary's ability to manage his or her benefits;
(iii) upon request of the beneficiary or a party making a request on behalf of the beneficiary;
(iv) when a beneficiary transfers from one certified residence to another and both residences are operated by the same agency, and the person needs different supports, then the facility director must follow the requirements of paragraphs (1) and (2) of this subdivision; and
(v) when a beneficiary transfers from one certified residence to another, and the residences are operated by different agencies, then the facility director must follow the requirements of paragraphs (1) and (2) of this subdivision.
(4) If the facility director applies to be representative payee, the director must provide notification in accordance with subdivision (d) of this section. If notice is not provided, then the reason must be documented in the beneficiary's record.
(d) Notice to qualified persons of intent and application for representative payee status.
(1) Whenever a facility director intends to apply to be representative payee of a beneficiary who is receiving services from an OPWDD operated or certified residential facility, the facility director must give concurrent written notice to the qualified parties as set forth in Mental Hygiene Law section 33.16(a)(6) and any other party designated by the beneficiary, of the facility director's intent to make such application.
(i) A facility director is not required to provide notice pursuant to this section if the beneficiary is a person, capable adult as defined in section 633.99(bp) of this Part, and

the beneficiary objects to such notice; if such notice is prohibited by court order; or, if the facility director, in consultation with the planning team, determine that it would cause substantial and identifiable harm to the beneficiary. This determination must be documented in the beneficiary's record.
(ii) The notice will be deemed to have been provided if hand delivered, mailed by first class mail to the last known address of the recipient(s) of the notice, or mailed electronically to the last known email address of the recipient(s).
(iii) The notice to beneficiaries must include information that the Mental Hygiene Legal Service is available to advise beneficiaries regarding the application process.
(2) During the application process or following the appointment of a facility director as a beneficiary's representative payee, the facility must ensure that the beneficiary is apprised of his or her right at any time to request to receive benefits directly, or to request a change in representative payee. Such request must be directed to the Social Security Administration or the Federal or State entity that made the appointment.
(e) Policies and procedures.
(1) If a facility director serves or may serve as representative payee, then the residential services agency must establish policies and procedures for the management and use of funds paid to the facility director as representative payee. These policies and procedures must be in compliance with all applicable Federal and State laws and regulations. At a minimum, such policies and procedures must include provisions for:
(i) establishment and maintenance of beneficiary accounts in interest bearing accounts;
(ii) individual accounting to segregate balances and permit the application of interest earned, if any, on a pro-rated basis, for collective accounts;
(iii) internal controls to keep the beneficiary accounts and funds secure, prevent identity theft, provide specific authorization for banking transactions, and document receipts and disbursements;
(iv) response to a request to review the representative payee account;
(v) designation of an appropriate staff member to act as a liaison between the facility director and the beneficiary;
(vi) management of the personal allowance derived from the benefit referenced in section 633.15 of this Part; and
(vii) consideration of the use of a Medicaid exception trust, supplemental needs trust, or similar device to protect a lump sum retroactive benefit, inheritance or any other funds which would affect eligibility for benefits.
(2) If the representative payee is the facility director, then the representative payee must:
(i) manage the benefits without charging a fee;
(ii) manage the personal allowance portion of the income without charging a fee;
(iii) maintain a record of all funds received, including earned income, and report to the benefit paying organization(s) on these funds as required; and
(iv) maintain a record of all resources, with current values, to meet all benefit paying organization(s) reporting requirements and to ensure that the entitlements are not jeopardized by a beneficiary's resources exceeding regulatory limits.
(3) When a beneficiary does not have a representative payee, the agency or sponsoring agency must offer to assist with:

(i) reporting both earned and unearned income to benefit paying organization(s), as required;
(ii) reporting resource amounts to benefit paying organization(s), as required;
(iii) monitoring resource amounts to ensure that the beneficiary's entitlements are not jeopardized by having excess resources; and
(iv) reporting any changes that may affect a beneficiary's entitlements to benefit paying organizations, as required.
(4) When the facility director is not the representative payee, the agency or sponsoring agency must offer to manage the beneficiary's personal allowance. The offer must be in writing and made within 10 business days of the beneficiary's move or change of representative payee.

(f) Transfer of funds.

When a beneficiary moves to a new residence:
(1) If the beneficiary moves to a facility operated or sponsored by the same agency, the agency may retain all funds and the facility director will continue to serve as the beneficiary's representative payee unless, in accordance with subdivision (c) of this section, the beneficiary no longer needs a representative payee. Cash maintained on behalf of the beneficiary at the facility must be forwarded to the new residential facility.
(2) If the beneficiary moves to a facility operated or sponsored by another agency:
(i) Personal allowance funds 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. Encumbered funds will be retained by the agency and appropriately disbursed. Funds derived from other sources must be forwarded to the new representative payee within 10 business days of the person's departure. If funds derived from SSA have been combined with funds from other sources, then the amount returned to SSA must be the percentage of the current total that represents the SSA portion. The percentage must be calculated based on the historical payments received over the last six months from SSA and non-SSA sources.
(ii) The former agency must notify the successor representative payee in writing of the return of the beneficiary's funds to SSA immediately following such return or transfer of funds. The notification must include the amount returned or transferred and the date it was returned or transferred.
(iii) On or before the date of the move, the former agency must disburse to the new facility a sum equivalent to one month's minimum statutory personal 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 payments made by SSA;
(iv) The facility director of the new agency shall apply to the benefit paying agency to become the person's representative payee no later than 10 business days after the person's admission unless a determination has been made that the beneficiary no longer needs a representative payee;
(v) Upon the appointment of the facility director of the new agency as representative payee by the benefit paying agency and receipt of the person's accrued funds, the new agency shall consider the funds 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 benefits at the time of the receipt of funds.

(vi) All funds in a burial reserve account, noted as such, regardless of the origin of the funds, shall be forwarded to the new representative payee within 10 business days of the beneficiary's discharge or change of representative payee.
(vii) Except for funds received from SSA, when the facility director of the former agency is the representative payee, the ongoing monthly personal allowance shall be forwarded to the successor representative payee within five business days of receipt of the benefit check. This arrangement shall continue until a new payee is designated.

(g) Record retention.

Each agency or sponsoring agency must keep records documenting compliance with this section for four years.

Available at:
https://govt.westlaw.com/nycrr/Document/I50390981cd1711dda432a117e6e0f345?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)&_sm_au_=iVV4rDNR2LrDS2DM

New York Codes, Rules and Regulations 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) of this section 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) of this section, 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.* An account maintained by a representative 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.* Preference 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 for 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, representative.* A party designated by a benefit-paying organization to receive an individual’s benefit payments in a fiduciary capacity and in compliance with Federal and State laws and regulations. This includes, but is not limited to, a party specifically designated by the Social Security Administration (SSA) to handle benefits on behalf of a beneficiary.
(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 for 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-supplemental 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 of this Part) 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 section 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; recordkeeping both on paper and electronically; usage; and monitoring of all personal allowance monies and other income of residences 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 (18 NYCRR).
(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; an
(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 case 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 a 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 employee 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 persons, 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 recordkeeping 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 shall 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 disbursement, 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 recordkeeping 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.

(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 percent 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 percent 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 of 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 care manager, 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 professional regarding choice it 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 care manager.
(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, care manager, and other participants in the expenditure planning process.

(k) Access to personal allowance.

(1) Present 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 receipt 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 an 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.

This subdivision is superseded by section 633.9(f) of this Part, effective October 1, 2017.

(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 pave 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 of this Title. 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 [CEO]), 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.

This subdivision is superseded by section 633.9 of this Part, effective October 1, 2017.
(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, recordkeeping, 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.

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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 including Individualized Residential Alternatives (IRAs), 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 paidfor 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. An exception to the meal/snack requirement isalso made where, and to the extent that, a person and the community residence or IRA in which the person lives agree that the person will pay for, obtain and prepare some or all of his or her own food.

(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.

(xxii) Supervised community residences (CRs) and supervised individualized residential alternatives (IRAs) are responsible for the cost of:

(a) services that are necessary to meet the needs of individuals while in the residence;
(b) services that, prior to August 1, 2004, could have been met by home health aide or personal care services separately billed to Medicaid; and
(c) services specified in section 635-10.4(b)(1)(xvi) of this Part and section 671.5(a)(7) of this Title that, prior to October 1, 2015, may have been separately billed to Medicaid.
(xxiii) Supportive CRs and supportive IRAs are responsible for the cost of services that, prior to October 1, 2015, could have been met by a home health aide or personal care services separately billed to Medicaid, as specified in section 635-10.4(b)(1)(xvii) of this Part and section 671.5(a)(8) of this Title.

(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 paragraph (1) of this subdivision. 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 tomake up this difference.

(3) Family care.

(i) The sponsoring agency (see glossary) is responsible for 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. This includes services that, prior to October 1, 2015, could have been met by a home health aide or personal care services separately billed to Medicaid, as specified in section 635-10.4(b)(1)(xvii) of this Part.
(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 orother 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 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 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 this clause. 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.
(x) Nonresidential facilities providing day treatment and day habilitation services shall assume the cost of service which:
(a) are necessary to meet the needs of individuals while attending their programs; and
(b) prior to August 1, 2004 could have been met by home health aide or personal care services separately billed to Medicaid.

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