

+-----+
| LOCAL COMMISSIONERS MEMORANDUM |
+-----+

Transmittal No: 90 LCM-166

Date: October 18, 1990

Division: Commissioner's
Office

TO: Local District Commissioners

SUBJECT: Filed Regulation 346.10

ATTACHMENTS: Attachment listed below
(Attachment available on-line)

The following changes to the Official Regulations of the State Department of Social Services have been filed for adoption with the Secretary of State.

18 NYCRR 346.10 relating to interception of lottery prizes.

The final rule - Filed: 10/16/90 - Effective: 10/31/90.

Michael J. McNaughton
Director, Local District
Policy Communications

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of Sections 20(3)(d), 34(3)(f), 111-a and 111-b of the Social Services Law, I, Cesar A. Perales, Commissioner of Social Services, do hereby add a new Section 346.10 to the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR effective upon publication of the Notice of Adoption in the State Register.

Signed: _____

Dated: October 15, 1990

Commissioner

This is to certify that this is the original of an order of the State Department of Social Services made on October 15, 1990 adding a new subdivision (10) to section 346 of the Official Regulations of the State Department of Social Services, being Title 18 NYCRR, the express terms of which were published in the New York State Register on July 3, 1990.

Dated: October 15, 1990

Signed: _____

Commissioner

A new section 346.10 is added to read as follows:

346.10 Interception of lottery prizes. The SCU must administer the process established by the Office of Child Support Enforcement (OCSE) within the State Department of Social Services pursuant to section 111-b of the Social Services Law, to satisfy past-due support obligations through the interception of lottery prizes awarded by the State Division of the Lottery.

(a) Eligible cases. The following cases are eligible for the interception of lottery prizes if a court order of support is payable to the SCU and the lottery prize intercept criteria established by the OCSE have been met:

(1) Aid to Dependent Children (ADC) and foster care (FC) maintenance cases in which court ordered past-due support is owed to the social services districts and the State.

(2) Non-ADC cases in which court ordered past-due support is owed to persons who are receiving child support services under section 111-g of the Social Services Law and section 347.17 of this Title.

(b) Notice to respondents. Written notice must be given to each respondent whose lottery prize has been intercepted to satisfy a liability for past-due support. The notice must advise the respondent that any objection to the crediting of a lottery prize against past-due support must be made by requesting a case review within 30 days of the date of the notice and by following the

procedure set forth in the notice. Such notice must include the following information:

(1) Defenses can be raised to the interception of lottery prizes and such defenses include, but are not limited to:

(i) The person receiving notice of the crediting of a lottery prize against past-due support is not the person identified as owing past-due support.

(ii) A court order of support does not exist or has been vacated by the court.

(iii) The amount claimed by the SCU to be past-due support is incorrect because a payment which was made was not credited, or the balance was not computed accurately, or the periodic amount due or arrears balance is incorrect or was changed as a result of a modification of the court order.

(2) The written notice to the respondent, or billing statement attached thereto, must include the following statements:

(i) The SCU records indicate that you are overdue in making scheduled support payments and/or have an unpaid balance on court-ordered support arrears.

(ii) The amount of the past-due support and/or arrears is collectible through the interception of lottery prizes.

(iii) Federal and State laws permit the crediting of lottery prizes against past-due support.

(iv) The lottery prize intercepted for crediting

against your past-due support cannot be retained if the arrears have been paid or are not owed.

(v) To obtain a review of your case, you must contact the SCU at the telephone number and address provided in this notice and comply with all requests for information.

(vi) If your case is reviewed, you may be represented by an attorney or other person.

(vii) Prior to submitting any written documentation, or appearing at any scheduled conference, you or your representative may review SCU payment records regarding your account and obtain a copy thereof.

(viii) If your case is reviewed, you may submit written documentation in support of the alleged defense(s), including your written explanation of why your lottery prize should not be credited against past-due support and you may request a conference with the SCU to present written and oral evidence supporting the alleged defense(s).

(ix) The decision of the SCU will be based solely upon consideration of the SCU records, any written documentation submitted by you and any written or oral evidence presented at the conference which you requested. The written decision of the SCU will be the final administrative determination.

(x) Upon the making of a final determination that your lottery prize should not be credited against past-due support, wholly or in part, the SCU will repay you for amounts which were improperly credited.

(xi) You may seek judicial review of the final determination pursuant to article 78 of the Civil Practice Law and Rules within the time limits provided by law.

(3) The written notice or billing statement must advise the respondent of:

(i) the business address and telephone number of the SCU to be contacted to review the correctness of crediting the respondent's lottery prize to past-due support, or to review the correctness of the amount of support liability;

(ii) the exact amount of past-due support; and

(iii) the amount of the lottery prize to be credited against past-due support.

(c) SCU administrative review. When a respondent asserts a defense to the crediting of a lottery prize against past-due support and requests a review by the SCU, the SCU must conduct the review as follows:

(1) The SCU must review its records relating to the respondent to determine whether any evidence of the validity of the claimed defense(s) exists or whether any other error was made.

(2) The SCU must accept and review all written documentation offered by the respondent in support of the alleged

defense(s), including a written explanation by the respondent of why the lottery prize should not be credited against past-due support.

(3) If the respondent requests a conference with the SCU, the SCU must promptly schedule a conference at which the respondent may present written and oral evidence supporting the alleged defense(s).

(4) The SCU must render a written decision stating findings of fact, the reason for its decision and the action required by the SCU, if any. Such decision is the final administrative determination and must be based solely upon consideration of the SCU records, and any written and oral evidence presented at the conference.

(5) The SCU must send a copy of the decision to the respondent promptly, with a statement of the respondent's right to a review under article 78 of the Civil Practice Law and Rules and the statute of limitations applicable thereto.

(6) If the written decision of the SCU requires the total or partial reimbursement to the respondent of the amount of lottery prize winnings which were credited against past-due support as the result of an erroneous intercept, the SCU must take such actions as are necessary to reimburse the respondent within 60 days of the respondent's request for a case review.

(d) Notice to non-ADC clients. The SCU must inform the custodial parent if any lottery prizes have been or will be used to satisfy any unpaid past-due support owed to any social services district and the State, to another state, or to a legal subdivision of another state.

(e) Distribution of intercepted lottery prizes. Any and all monies received by the department as a result of notices of past-due support liability submitted to the State Division of the Lottery, pursuant to this Part and section 1613-a of the Tax Law, must be distributed as follows:

(1) Single case liabilities. If a respondent is liable for past-due support in a single case, the entire amount of intercepted lottery prize winnings must be disbursed to that case in which the respondent is liable for past-due support.

(2) Multiple case liabilities. If a respondent is liable for past-due support in two or more cases, each case receives a pro-rated share of the total intercepted amount, based on the amount of past-due support owed to that particular case as a percentage of the total past-due liability certified for the particular respondent. The recipient or beneficiary of such pro-rated share is not entitled to know the identity of any other recipient or beneficiary of a pro-rated share of the total amount intercepted.