§ 33.08 Personal needs allowance for residents of state psychiatric centers and state operated alcoholism facilities.

(a) For the purposes of this section:

1. "countable resources" shall mean cash or other liquid assets or any real or personal property that an individual or couple owns and could convert to cash to be used for his or their support and maintenance, which is not excluded under federal law or regulations to determine the need of an individual for supplemental security income benefits.

2. "countable income" shall mean all of a person's income, in cash or in kind, both earned and unearned, which is not excluded by federal law or regulations in determining the need of an individual for supplemental security income benefits, including the income of the individual's eligible spouse, and, if the individual is a child, certain income of such individual's parent or parents, provided however, such provisions of federal law or regulations which provide a twenty dollar income exclusion in each month shall not apply to this paragraph.

3. "earned income" shall mean wages and earnings from employment of the person, including wages or earnings from participation in a sheltered workshop program.

4. "unearned income" shall mean all income of a person other than earned income.

(b) Any inpatient of a hospital operated by the office of mental health or a state operated alcoholism facility shall be entitled to receive a monthly state payment for personal needs for each full calendar month commencing on or after the effective date of this section, in which the patient is in such hospital or alcoholism facility, if such patient also:

1. does not receive supplemental security income benefits pursuant to title sixteen of the federal social security act;

2. does not have countable resources in an amount equal to or greater than the amount of resources an individual may have and remain eligible

for supplemental security income benefits pursuant to title sixteen of the federal social security act;

3. has countable income in a month of less than thirty-five dollars; and

4. has applied for or agrees to apply for any federal, state, and local benefits for which such patient may be entitled, provided that someone other than the patient may apply or agree to apply for such benefits on behalf of the patient.

(c) The amount of such monthly state payment for personal needs shall be equal to the maximum amount of countable income allowed under paragraph three of subdivision (b) of this section reduced by such patient's actual countable income.

(d) The director of a hospital shall have the power to take and retain any state payment for personal needs provided pursuant to this section in accordance with the provisions of section 33.07 of this article.

(e) The commissioner of mental health is authorized to obtain reimbursement for a personal needs allowance payment made pursuant to this section for any month for which a patient subsequently receives a retroactive payment or benefit, from any source. Such reimbursement shall not exceed the amount of the personal needs allowance payment made to the patient for such month.

(f) The commissioner of mental health is authorized, on behalf of the state, to enter into an agreement with the secretary of the federal department of health and human services for the purpose of obtaining reimbursement for personal needs allowance payments made pursuant to this section for any month in which a patient is subsequently determined to be eligible to receive supplemental security income payments for such month.

(g) For the purposes of this section, a person who has been admitted to central New York psychiatric center from a state correctional facility or county jail pursuant to section four hundred two of the correction law shall not be considered a patient in a hospital operated by the office of mental health. Notwithstanding any other provision of this section, a person who has been admitted to central New York psychiatric center from a county jail pursuant to section four hundred

two of the correction law shall be entitled to receive a monthly state payment for personal needs in an amount equal to, and calculated in the same manner as, an incentive allowance which is provided to an incarcerated individual of a state correctional institution pursuant to section two hundred of the correction law.

(h) Any patient who is qualified to receive a monthly state payment for personal needs pursuant to this section shall be required to provide the commissioner of mental health with information relating to the amount of income and assets of such patient. If the commissioner discovers that assets or income of the patient were not disclosed because of fraud or negligence, he may collect the difference between the amount of such payments and the amount to which the patient would otherwise have been eligible.

(i) The commissioner is authorized to promulgate regulations to provide for the time and manner of such payments for personal needs of such patients.