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| LOCAL COMMISSIONERS MEMORANDUM |
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DSS-4037EL (Rev. 9/89)

Transmittal No: 94 LCM-81

Date: July 8, 1994

Division: Economic Security

TO: Local District Commissioners

SUBJECT: Velasquez Injunction - Required Action with Respect to
Poverty Level Respondents

ATTACHMENTS: Notice to the Respondent - (Available On-Line)

As a result of a preliminary injunction entered against the New York State Department of Social Services in Velasquez v. Bane in New York State Supreme Court in New York County, it is necessary for all of the State's social services districts to immediately implement changes in the procedures used when seeking or enforcing child support orders under the child support enforcement (Title IV-D) program.

The following procedures must be implemented immediately by all social services districts:

1. The attached notice, in English and Spanish, must be served with all petitions which seek the issuance of a court order of child support or the modification of an existing order of child support. The notice must be served with the petition, and may be printed on a separate piece of paper attached to the petition. The purpose of the notice is to inform all poverty-level respondents that they are permitted to rebut the statutory presumption that they should be ordered to pay \$25 per month in child support, and that the court may order them to pay an amount of child support from \$0 to \$25 per month.
2. Social services districts must not argue in any court proceeding that poverty-level respondents are required to pay a statutory minimum of \$25 per month pursuant to Family Court Act 413.1(g) after the poverty-level respondent has successfully rebutted the \$25 per month presumptive amount. Furthermore, districts must not argue a position that is inconsistent with the requirement that poverty-level respondents are permitted to rebut the \$25 presumptive amount downwards to as low as \$0 per month.

3. Social Services districts must not initiate any enforcement action against poverty-level respondents with \$25 per month orders who were not given the opportunity to rebut the \$25 presumptive amount. Poverty-level respondents with support orders of \$25 issued prior to January 1, 1994 should be considered not to have had the opportunity to rebut the presumptive amount. Poverty-level respondents with support orders greater than or less than \$25, and poverty-level respondents with \$25 orders issued on or after January 1, 1994, should be considered to have had the opportunity to rebut the presumptive amount. However, the preliminary injunction does permit the enforcement of any order through the collection of New York State and federal income tax refund offset and the interception of lottery prizes.

Although the Velasquez preliminary injunction requires that poverty-level respondents must be afforded the opportunity to rebut the \$25 presumptive amount downwards to as low as \$0 per month, the preliminary injunction does not require the issuance of a zero order nor does it require that a petition be dismissed if it has been filed against a poverty-level respondent. Due to the stringent federal performance standards that govern the State's administration of the Title IV-D program, districts must file petitions against poverty-level respondents regardless of the court's anticipated reaction to the petition. If a district encounters a case wherein the court issues a zero order, the district may file objections which argue that a zero amount is unjust and inappropriate given the specific circumstances of the case. If a district encounters a case wherein the court dismisses a petition because it was filed against a poverty-level respondent, the district must object to the dismissal.

In addition to the above, the Velasquez preliminary injunction also requires that the State and the social services districts refrain from sending "collection notices" to any poverty-level respondent with a \$25 per month order who was not given the opportunity to rebut the \$25 presumptive amount if the collection notices include references to possible incarceration or other penalties related to the poverty-level respondent's failure to pay. In addition, the preliminary injunction requires that "collection notices" must notify poverty-level respondents that if they receive public assistance or care then they are exempt from making payments on their \$25 per month order, and that any payments made are purely voluntary. In response to these requirements, the Department is modifying the Child Support Management System ("CSMS") to ensure that CSMS terminates any existing automated enforcement action on these cases and that it does not initiate any new automated enforcement action (with the exception of lottery intercept and tax refund offset) or produce unacceptable notices with regard to these cases. The Department will notify the districts when the CSMS modifications have been completed. If a social services district is using any type of enforcement document other than those generated by the Department through CSMS, the district must stop using those documents in cases involving poverty-level respondents.

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Please advise your Child Support Enforcement Unit and its attorneys of these requirements immediately. If you require further information regarding the Velasquez preliminary injunction, please contact Anne Binseel, Assistant Counsel, at 474-7693.

Oscar R. Best, Jr.
Deputy Commissioner
Division of Economic Security

(to be served with petition)

NOTICE TO THE RESPONDENT

State law requires that the family court must presume that you should be ordered to pay at least twenty-five dollars (\$25) per month in child support. However, if your income is below the poverty level, which is \$7,360 per year, you or your legal representative are allowed to tell the family court why you should not be ordered to pay \$25 per month in child support. If you wish to tell the family court that you should be ordered to pay less than \$25 per month, you will need to tell the court that your income is below the poverty level, what your income consists of, and the reasons you think that you should be ordered to pay less than \$25. The family court will then decide the amount of your child support order.

NOTIFICACION

La ley estatal requiere que la corte de familia suponga que a usted se le debería ordenar que pague por lo menos veinticinco dólares (\$25) al mes en manutención infantil. Sin embargo, si su ingreso está por debajo del nivel de la pobreza, que es \$7.360 al año, usted o su representante legal pueden notificar a la corte de familia la razón por la que a usted no se le debería haber ordenado que pague \$25 al mes en manutención infantil. Si usted desea informar a la corte de familia que a usted se le debería ordenar pagar menos de \$25 al mes, usted necesitará informar a la corte que su ingreso es inferior al nivel de la pobreza, de qué consiste su ingreso, y las razones por las que usted piensa que a usted debería ordenársele que pague menos de \$25. La corte de familia entonces decidirá la cantidad de su orden de manutención infantil.