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

Transmittal No: 97 LCM-8

Date: February 12, 1997

Division: Legal Affairs

TO: Local District Commissioners

SUBJECT: Computation of Hours for Participation in the
Community Work Experience Program.

ATTACHMENTS: None.

The purpose of this Local Commissioner's Memorandum (LCM) is to clarify an aspect of the Job Opportunities And Basic Skills Training Program (JOBS) with respect to recipients of Aid to Dependent Children (ADC). Section 336 of the Social Services Law lists the activities to which a JOBS participant may be assigned. One of these activities is Work Experience. The work experience program for ADC recipients is the Community Work Experience Program (CWEP) and the requirements of that program are set forth in section 336-c of the Social Services Law.

Social Services Law 336-c(2)(b) provides that the number of hours a month an ADC recipient may be made to participate in CWEP may not exceed the number derived by dividing the monthly grant (not including any portion that is reimbursed by a child support collection) by the higher of "(1) the federal minimum wage, or (2) the state minimum wage, or (3) the rate of pay for persons employed in the same or similar occupations by the same employer at the same or equivalent site . . .".

In 1990, the Department filed regulations, 18 NYCRR 385.12, implementing section 336-c. Section 385.12(k) provides that a recipient may be assigned to participate in a work experience program only if: "...(5) the number of hours a participant is required to work in any month does not exceed the number of hours which would result from dividing the household's monthly grant amount excluding any portion reimbursed by a child support collection (except for the \$50 pass-through), by the highest of: (i) the Federal minimum wage: (ii) the State minimum wage: or (iii) the prevailing rate of pay for persons employed in the same or similar occupations by the same employer at the same or equivalent site: (6) the social services official has obtained a determination of the prevailing rate of pay from the Department of Labor before making the assignment ...".

Section 385.12(K)(6) was intended to apply only to those circumstances described in section 385.12(k)(iii), where an employer has regular employees in the "same or similar occupation" to which a CWEP participant is to be assigned. See 90 ADM-27 (August 29, 1990) at page 54. In any event, however, we have been informed by the Department of Labor that it does not maintain records necessary to make the determination referred to in 385.12(k)(6). Therefore, the requirement contained in 18 NYCRR 385.12(k) to contact the Department of Labor for such information is inappropriate. The Department will be amending the regulation to remove the provision concerning the Department of Labor.

Districts shall continue to be responsible for determining the appropriate rate of pay to be used in calculating the number of hours to be worked in CWEP in accordance with the provisions of Social Services Law 336-c.

The Department of Labor will be sending to each district a letter informing the district that it does not maintain records necessary to make the determination referred to in 385.12(k)(6). Districts should bring a copy of this letter to any fair hearing contesting the calculation of the number of hours an ADC recipient is assigned to participate in CWEP.

It should be remembered that recipients who wish to dispute a JOBS assignment may have an opportunity for conciliation pursuant to section 341 of the Social Services Law and 385.18(6) of the Department's regulations. If that dispute is not resolved through the conciliation process, the recipient should be provided with an opportunity for a fair hearing.

If you have any questions concerning this LCM, please contact Michael Leonard, of the Department of Labor at 518-485-6289.

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