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Governor

NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
40 NORTH PEARL STREET
ALBANY, NY 12243-0001

Robert Doar
Commissioner

Administrative Directive

Section 1

Transmittal:	05-ADM-10
To:	Local District Commissioners
Issuing Division/Office:	Child Support Enforcement
Date:	May 24, 2005
Subject:	Velazquez Cases – Special Instructions Part 2
Suggested Distribution:	Child Support Enforcement Coordinators Support Collection Unit Supervisors Attorneys
Contact Person(s):	DCSE – County Representative Legal – Brian Wootan
Attachments:	1. Notice to Custodial Parents Regarding a Modified/New Order 2. Notice to Custodial Parents Regarding Support Arrears
Attachments Available On – Line:	X

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
05-ADM-04					94 LCM-81 95 LCM-42

Section 2

I. Purpose

This directive provides special instructions for obtaining new or modified orders of support for cases with respondents who are determined by the Support Collection Unit (SCU) to be a member of the Velazquez class and who have an active \$25 per month mandatory minimum order of support, and also provides instructions for initiating enforcement of active \$25 per month orders of support that are determined not to be Velazquez class orders.

II. Background

This Administrative Directive is the second ADM that provides special instructions for the handling of Velazquez class cases, and should be read in conjunction with the first directive 05-ADM-04, dated February 28, 2005, which remains in effect.

III. Program Implications

The implementation of the procedures contained in this ADM will allow local district SCUs to take appropriate follow-up action with respect to cases for which a determination of Velazquez class membership has been made by the SCU in response to a request for refund. These actions are necessary because the Velazquez court decisions have rendered the \$25 per month mandatory minimum orders of support unenforceable. A third ADM is forthcoming and will address the handling of orders with a V25 indicator for which a request for refund was not received.

IV. Required Action

A. Class Member

Where the SCU has determined that a respondent with an active \$25 per month mandatory minimum order of support is a Velazquez class member, based on a review conducted pursuant to 05-ADM-04, the SCU must take the following action to obtain a modified or new order of support:

1. For cases in which payments were received on the \$25 per month order, complete all instructions in 05-ADM-04, section V.G. "Issuing Refunds to Respondents", before proceeding.
2. For cases in which no payments were received on the \$25 per month order:
 - a. Reduce the obligation amount to \$0.00 (transaction code 09 OAMT), and enter "Velazquez" in the R2 field.
 - b. Calculate the DUE that charged and complete a negative Batch 65 or 62 entry, as appropriate, for that DUE amount, and enter "Velazquez" in Option Field #1. If the \$25 per month order is the only order on the case (e.g. no prior order), the DUE that charged is the same amount currently in the TO DATE DUE field.

3. a. For cases with at least one child under the age of 21, send a manually prepared “Notice to Custodial Parents Regarding a Modified/New Order” (attachment 1) to the CP advising of the Velazquez court decision and that a modified or new support order is needed.
- b. For cases with no child under the age of 21 that have accumulated arrears under the \$25 per month order, send a manually prepared “Notice to Custodial Parents Regarding Support Arrears” (attachment 2) to the CP advising of the Velazquez court decision and that arrears accumulated under the \$25 per month order cannot be enforced.
4. Enter the following transaction on the IVDQRY screen to provide a record that the respondent has been determined to be a class member and the CP has been sent a manual notice:

***TR – TYPE 3G CHNG VELA V

When the transaction history screen is viewed, the following message will be displayed:

3G VELA (transaction date) MANUAL NOTICE SENT TO CP

5. For cases sent the notice described in 3.a., pursue a modified or new order as follows:
 - a. Except as provided in 5.b., file a modification petition (PA cases) or upon request, assist the CP in filing a modification petition (NPA cases).
 - b. Where the CP was in receipt of public assistance at the time the \$25 per month order was obtained and is now not in receipt of public assistance, the CP is entitled to a new (de novo) order of child support pursuant to FCA 571 (3)(b). For such cases, assist the CP in filing a petition to obtain a new order.
6. State in any petition filed for modification (Form 4-11) that there has been a substantial change in circumstances, in that:
 - a. Enforcement of the prior order has been enjoined pursuant to the Supreme Court’s decision in Velazquez v. State of New York.
 - b. The needs of the child are not being met.
 - c. Where applicable, there are additional facts indicating a change in circumstances, (e.g. a change in the respondent’s employment or income). These items should be identified in the petition.
7. In any petition filed for a new (de novo) order, use Form 4-3 and provide additional language to justify the filing as follows:
 - a. After specifying the Petitioner’s authority for originating the proceeding by checking the appropriate box on the petition form indicating the Petitioner/Respondent relationship, add the following statement:

The _____ Court Order of Support dated _____ was entered when the Petitioner was in receipt of public assistance. As of _____

Petitioner is no longer in receipt of public assistance and is therefore entitled pursuant to Family Court Act §571 (3)(b), to a support proceeding and a hearing de novo on the amount of support to which the Petitioner is entitled to receive for the children named in this petition.

b. Add the statement:

The Petitioner is currently receiving child support services from the local Department of Social Services.

(or, check the box indicating that the petitioner has made application for child support services with the local Department of Social Services).

c. After the statement “No previous application has been made to any Court or judge for the relief herein requested, except:”, add the following:

...as noted in paragraph _____ above.

(may be paragraph 2 or 3 of the petition depending on version of petition used.)

8. For cases sent the notice described in 3.b. for which there are no arrears that accumulated under an order of support other than the \$25 per month order, no further action is required and the case should be processed for closing. If arrears exist that accumulated under another order, continue to enforce those arrears.

B. Non-Class Member

Where the SCU has determined that a respondent with an active \$25 per month order of support is not a Velazquez class member, based on a review conducted pursuant to 05-ADM-04, the SCU must take the following action to enforce the \$25 per month order of support:

1. Obtain the current value of the arrears cap from the SUP-DEL field on IVDQRY and make note of the amount.
2. Copy the most recent IVDJSA permanent record to a working record, and update the income fields with the most recent income information available.
3. Store the working record as a permanent IVDJSA record, and note the value of the new SA indicator.
4. If the new SA indicator is other than S25, assess the case to determine if there exists sufficient change in circumstances to warrant the filing of a petition for modification, and proceed accordingly.
5. If the new SA indicator is S25, and the value of the arrears cap obtained in B.1. is:
 - a. equal to \$500.00, no further action is required.

- b. not equal to \$500.00, enter the following transaction on IVDQRY to store the value of the arrears cap obtained in B1 in the SUP-DEL field:

***TR – TYPE **21** CHNG **SADU** (*enter value of arrears cap from B.1.*)

V. Effective Date

This ADM is effective immediately.

Margot Bean
Deputy Commissioner and Director
Division of Child Support Enforcement

Notice to Custodial Parents Regarding a Modified/New Order

Our records show that your child support order was declared unenforceable in a class action lawsuit affecting \$25 per month orders of support. As a result of the court decision in that lawsuit, it will be necessary to seek a modification of your order or to obtain a new order, to ensure you have an active current support order in place.

The New York State Court of Appeals determined that the New York Law requiring mandatory minimum child support orders of \$25.00 per month violated federal law. The Court of Appeals held that federal law requires that a parent from whom child support is sought must be given the opportunity to present proof that the order was unjust or inappropriate. In a later lawsuit, Velazquez v. State of New York, the New York State Supreme Court certified a class of non-custodial parents entitled to relief. This relief included an order prohibiting enforcement of improper child support orders. Your order is included in that group.

Effect of the Velazquez Court Decision on You

Because the non-custodial parent in your case (identified below) is a Velazquez class member, enforcement of your order has been permanently enjoined by the court. The obligation amount has been reduced to \$0, and any arrears that accrued under that order have been removed. You are not required to return any child support payments you may have received under the improper order.

To Obtain a Modified or New Order

If you are receiving temporary assistance for needy families (TANF), we will initiate action on your behalf to seek a current child support order. If you are not receiving TANF and you wish to obtain a current child support order, you may contact our office at the address listed below. At that time please provide your name, address, social security number, date of birth, child support case number, and child's name, and the non-custodial parent's name. We will advise you if you should file a petition for modification or for a new order, and will assist you in preparation and filing of the petition.

Sincerely,

_____ County Support Collection Unit

Street

City

Telephone number

CSMS case number _____

NCP name _____

Child(ren) _____

Notice to Custodial Parents Regarding Support Arrears

Our records show that your child support order was declared unenforceable in a class action lawsuit affecting \$25 per month orders of support. As a result of the court decision in that lawsuit, any arrears that may have accumulated under that order will not be enforced by the SCU.

The New York State Court of Appeals determined that the New York Law requiring mandatory minimum child support orders of \$25.00 per month violated federal law. The Court of Appeals held that federal law requires that a parent from whom child support is sought must be given the opportunity to present proof that the order was unjust or inappropriate. In a later lawsuit, Velazquez v. State of New York, the New York State Supreme Court certified a class of non-custodial parents entitled to relief. This relief included an order prohibiting enforcement of improper child support orders. Your order is included in that group.

Effect of the Velazquez Court Decision on You

Because the non-custodial parent in your case (identified below) is a Velazquez class member, enforcement of the arrears that accumulated under your order has been permanently enjoined by the court, and thus no future action can be taken by the SCU to collect those arrears. You are not, however, required to return any child support payments you may have previously received under the improper order.

Sincerely,

_____ County Support Collection Unit

Street

City

Telephone number

CSMS case number _____

NCP name _____

Child(ren) _____