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 | ADMINISTRATIVE DIRECTIVE |
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TRANSMITTAL: 92 ADM-40

TO: Commissioners of
 Social Services

DIVISION: Income
 Maintenance

DATE: October 8, 1992

SUBJECT: Pursuing Support for Home Relief Applicants/Recipients
 and Revision of Related Forms (DSS-4279 and DSS-4280)

 SUGGESTED

DISTRIBUTION: Public Assistance Staff
 Food Stamp Staff
 CSEU Staff
 SCU Staff
 Medical Assistance Directors
 Staff Development Coordinators
 Forms Coordinators

CONTACT
 PERSON:

Public Assistance: Carolyn Karins at 1-800-342-3715,
 extension 4-9343
 Food Stamps: County Representative at extension 4-9225
 Child Support: County Representative at
 1-800-342-3012
 Medical Assistance: MA Eligibility County
 Representative at 1-800-342-3715, extension 3-7581
 or MA NYC Representative at (212) 417-5853

ATTACHMENTS:

Attachment I - DSS-4279 (Rev. 7/92) - not available
 on-line
 Attachment II - DSS-4280 (Rev. 7/92) - not available
 on-line

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
91 ADM-40	77 ADM-107	347.5(a)	SSL 101	PASB	
77 ADM-107		347.8	111	VIII-T-1-	
		347.10	132-a	All	
		347.17	158	IX-B-1	
		351.2(e)	FCA 413	IX-C-1-5	
		352.14(a)(1)	DRL 240	XXI-J	
		352.15		FSSB	
		352.31(a)(4)		XII-C, XII-G	
		370.2(c)(3)		CSEM	
		370.2(d)(8)		Vol. 1	

I. PURPOSE

This directive transmits changes in the requirements for Home Relief (HR) applicants and recipients (A/R's) to pursue support and introduces revisions to two forms (DSS-4279 and DSS-4280).

II. BACKGROUND

Chapter 41 of the Laws of 1992 amended Social Services Law Section 158 to require HR A/R's, as a condition of eligibility for public assistance (PA), to assign support rights and to cooperate to establish paternity and secure support. Department regulations were filed August 6, 1992, effective August 26, 1992, to include these requirements.

III. PROGRAM IMPLICATIONS

Prior to the recent legislation, an HR A/R could voluntarily assign support rights to his or her social services district and the State. With mandatory HR support assignment, districts will retain support payments collected on behalf of HR recipients to apply toward reimbursement for cash assistance granted. Policies and procedures for determining PA eligibility and securing support on behalf of HR households will be consistent with the requirements which already apply to ADC households. It is anticipated that a relatively small number of cases will be impacted statewide.

IV. REQUIRED ACTION

A. Income Maintenance (IM) Responsibilities

1. Application as Assignment

Application for or receipt of HR constitutes an assignment to the district and the State of any rights to support on behalf of the A/R and all household members for whom the A/R is applying for or receiving assistance. The assignment of support rights applies to current support and to arrears which may have accrued prior to the assignment. Districts must so inform HR A/R's by distributing a copy of the DSS-4279 (Rev. 7/92): "The Requirements to Assign Support and Cooperate and Right to Claim Good Cause for Refusal to Cooperate," whenever:

- a. An application form (DSS-2921, DSS-2921(S), DSS-2921-NYC or DSS-2921-NYC(S)) is given to a public assistance (PA) applicant;

- b. The next recertification form (DSS-3174 or DSS-3174(S)) is distributed to an HR recipient; or
- c. An HR recipient is referred to the Child Support Enforcement Unit (CSEU).

Districts should reproduce Attachment I - "Requirements to Cooperate ..." (DSS-4279) locally with no textual changes until they order and receive the revised (7/92) DSS-4279 form (see section VI - Additional Information).

Upon receipt of this directive, districts should discontinue use of Attachment X of 91 ADM-40: "Voluntary Consent to Apply Support Collections as Repayment of Assistance".

2. Referral to the CSEU

a. Who must be referred

Income Maintenance workers must obtain a signed DSS-2521: "Application for Child Support Services", and refer to the CSEU for child support services each HR applicant household which includes, and each HR recipient household which gains, any of the following:

- (1) A person under age 21 who resides apart from a living parent or stepparent. Examples: A nineteen-year-old individual who lives alone and applies for PA; a twenty-year-old PA applicant who lives with her spouse but apart from her parents;
- (2) A person under age 21 who was born out of wedlock and whose paternity has not been legally established, including a child who resides with his or her putative father. Example: A PA household which consists of a mother and child and the child's putative father, who is not married to the child's mother;
- (3) A household in which only a mother is applying for assistance, but she resides with her under 21-year-old child who was born out of wedlock and whose paternity has not been established. Example: A woman who applies for PA for herself only, who resides with her child and the child's putative father; or

- (4) A pregnant woman, to seek paternity and support establishment for her unborn child, unless she is married and living with her husband.

Referral of an HR A/R to the CSEU does not abrogate the IM worker's responsibility to investigate whether a legally responsible relative is willing and able to provide an appropriate home and adequate financial support to reduce or eliminate the A/R's need for PA.

Please note that federal and State laws do not permit the CSEU to provide spousal-only support services. An adult (age 21 or older) HR A/R who is living apart from a spouse or ex-spouse, but is not eligible for child support services as described above, may be required to file a court petition for spousal support or maintenance as described in section IV.A.4.

b. How HR applicants/recipients are referred

When referring an HR A/R to the CSEU, the Income Maintenance (IM) worker must complete and submit for data entry a DSS-2860: "Child Support Enforcement Referral" for each absent parent/putative father associated with the household. Please refer to Public Assistance Source Book (PASB) Section VIII-T-1.4-1.6 for further information about CSEU referral procedures.

An HR A/R, or an adult-only A/R whose child's paternity has not been legally established, who is referred to the CSEU must first sign a DSS-2521: "Application for Child Support Services." Districts must require the A/R to sign the DSS-2521 in IM even if the A/R is interviewed in the CSEU before PA case opening. The original copy of the DSS-2521 must be sent to the CSEU. (The application for child support services will be included in a future revision of the DSS-2860.)

3. The Requirement to Cooperate and Right to Claim Good Cause

An HR A/R is required, as a condition of eligibility for assistance, to cooperate in establishing the paternity of a child born out of wedlock, locating any absent parent, and obtaining support payments or any other payments or property due to the applicant/recipient and each household member for whom PA is requested. As a further condition of eligibility, SSL 132-a requires an A/R who is pregnant with or the mother of (and residing with) an out-of-wedlock child to cooperate with establishing paternity and, if there is an absent parent, with securing support for the child, regardless of whether PA is requested for the child.

Failure to cooperate with establishing paternity and/or securing support without good cause results in the ineligibility and sanction of the applicant/recipient until compliance.

An HR A/R who claims good cause for refusing to cooperate with establishing paternity or securing support must sign and date the DSS-4280: "Second Notice - Right to Claim Good Cause for Refusal to Cooperate with Child Support Enforcement". Districts may use existing supplies of the DSS-4280 form until they order and receive the revised (7/92) form (Attachment II).

Guidelines for investigating, documenting and determining whether good cause exists are provided in PASB Section VIII-T-1.13-1.18.

4. The Requirement to Pursue Alimony/Maintenance/Spousal Support

An adult HR A/R who is not eligible for child support services must pursue alimony/maintenance/spousal support if it is potentially available, as follows:

a. Informal separation

An A/R who resides apart from a living spouse and has no action for separation, divorce or annulment pending or decreed, must petition in Family Court to establish a spousal support order. If an order exists but changes in the A/R's or obligor's circumstances so warrant, the A/R must petition to increase the existing order. If an order exists, but the obligor is not making the required payments, the A/R must petition to enforce the existing order.

b. Separation, divorce or annulment pending

An A/R who has an action for separation, divorce or annulment pending, but for whom the Supreme Court has not ordered spousal support, must request support in the Supreme Court action if he or she has an attorney, or petition in Family Court to establish a spousal support order. If a Family Court order already exists, the individual must petition in Family Court to increase or enforce the existing order, if appropriate.

c. Legal separation

An A/R who has obtained a legal separation must petition in Family Court to establish, increase or enforce (as appropriate) an order for spousal support, unless the separation decree states that the Supreme

Court retains exclusive jurisdiction: See "Supreme Court jurisdiction", below.

d. Divorce or annulment final

An A/R who has obtained a final judgement of divorce or annulment which includes an order for alimony/maintenance to be paid to the A/R must petition in Family Court to increase or enforce the support order, as appropriate, unless the decree states that the Supreme Court retains exclusive jurisdiction. If the divorce or annulment decree refers the matter of support to the Family Court, the A/R must petition in Family Court to establish a support order. If the divorce/annulment decree does not address alimony/maintenance for the A/R, the Supreme Court retains jurisdiction.

e. Supreme Court jurisdiction

In situations where the Supreme Court has jurisdiction, the district should require the A/R to petition in Supreme Court for alimony/maintenance/spousal support only if the A/R has an attorney or the district will provide legal representation.

An A/R who has good cause for refusing to pursue alimony/maintenance/spousal support, or whose good cause claim is pending determination, is exempt from cooperating with pursuing support. The district may pursue support on behalf of such A/R without his or her cooperation only if the district has determined that the individual will not be endangered. Good cause criteria and procedures are described in PASB Section VIII-T-1.13-1.18. Districts should not include HR cases in their quarterly reports (DSS-3343) to the Department of IV-A/IV-D good cause claims.

5. PA Treatment of Assigned Support

a. Child support or alimony/maintenance/spousal support and child support

Support payments which are collected on behalf of an HR household, after disregard and pass-through of the first \$50 per month of current support, must be applied as reimbursement for assistance granted. As required for recipients of ADC, recipients of HR must remit to the district's Support Collection Unit (SCU) any support payments received, and repay any direct support received and retained. It is no longer appropriate to budget child support or child and alimony/maintenance/spousal support payments received

by HR recipients as ongoing income to reduce the PA grant amount. Please note, however, that support payments received on behalf of an individual who is not a member of the PA household, such as a non-PA child, are not counted as income to the PA household.

Districts must use the new methodology for budgeting HR support for households which apply for PA on or after the effective date of this release and for recipient households upon CSEU's redirection of the support payments to the SCU. To assist in the conversion process, the Department will prepare and distribute to districts' IM and CSEU offices a list of active HR cases which have direct child support budgeted (ABEL Other/Unearned Income Source Code "06" Upstate and "14" in New York City). IM workers must rebudget the listed cases, as appropriate, upon notification from the CSEU that the SCU is receiving the support payments.

CSEU workers also must use the lists to identify and notify IM of cases which lack an active IV-D case. IM workers must refer these identified cases to the CSEU by completing and data-entering a DSS-2860: "Child Support Enforcement Referral" and sending a signed DSS-2521: "Application for Child Support Services" to the CSEU.

b. Alimony/maintenance/spousal support only

A district's CSEU cannot secure or enforce an order which is only for alimony, maintenance or spousal support on behalf of a PA recipient. Such recipients will continue to have direct support payments budgeted as income, after disregard of the first \$50 per month of current support, to reduce their PA grant amounts. Direct support payments cannot be budgeted as income, however, if receipt or amount is irregular, as explained in 91 ADM-40, section V.E.1.b.ii.

c. Support arrears

Support payments up to the amount of the obligation for the current support of any members of the PA household are counted in determining the household's eligibility for assistance. An HR A/R's assignment of support rights also includes payments for support arrears. If the household's support payments are enforced by the CSEU, i.e. child support or alimony/spousal and child support is assigned, current and arrears payments are collected by the SCU and retained toward reimbursement for assistance granted. (Support arrears which an A/R previously assigned in the ADC category remain assigned as an ADC account.)

In the case of an adult-only PA household, direct payments of current alimony/ spousal support and arrears which are owed on behalf of the PA recipient are budgeted as income to reduce the PA grant amount. Child support payments, including arrears, paid to the adult-only household on behalf of an individual who is not currently a member of the PA household, however, cannot be budgeted as PA income.

Districts are reminded that the disregard of the first \$50 per month of support applies only to current support, not arrears.

6. Examples

- a. John Bean is an eighteen-year-old PA applicant who lives apart from his parents who, when contacted by the IM worker, state that they are not willing to have John return to their home. John's father is court-ordered to pay John \$45 per month for current support and \$5 per month on arrears. John is referred to the CSEU and, when he is found eligible for PA, the CSEU modifies the support order to be payable to the SCU. From the \$50 per month received by the SCU on John's behalf, \$45 (current) is passed through to John and \$5 (arrears) is retained toward reimbursement of John's PA grant.
- b. Jean Smith is a 24-year-old PA applicant who lives apart from her husband. Jean verifies that she has a petition for spousal support pending in Family Court. Her case is opened in the HR category. At her recertification interview, Jean states that, two months ago, she began receiving \$45 per month for current support and \$5 per month for arrears. The IM worker budgets the \$45 per month current spousal support and ABEL applies the \$50 monthly disregard. Because rights to support arrears are also assigned, the worker budgets the \$5 per month arrears payments as income to reduce Jean's PA grant. The \$5 per month of countable income which Jean already received and retained is recouped as an overpayment.
- c. Myrtle Beech is a 50-year-old PA applicant who has never married. She receives \$10 per month arrears-only child support on behalf of her 22-year-old daughter, Sandy. Sandy has never applied for or received PA, and states that she does not contribute to Myrtle's household expenses. Myrtle's case is opened in the HR category and, because the support is paid on behalf of an individual who is not a member of the PA household, it is not counted as income to reduce Myrtle's PA grant.

- d. Virginia Beech, age nineteen, lives with her son, Dennis, and Dennis' putative father, Bill. Bill acknowledges that he is Dennis' father and that he supports Dennis. Virginia, who receives \$75 per month current support from her father, applies for PA for herself only, and her case is opened. She is referred to the CSEU and is required to sign a DSS-2521 and cooperate by remitting her support payments received from her father to the SCU, pending the CSEU's modification of the order to be payable to the district. Virginia also is required to cooperate with legally establishing her son's paternity.

- e. Dan Van Winkler, age 22, lives with his mother and sixteen-year-old sister, Winnie. They have never received public assistance. Their father, Rip, pays current child support to the SCU on behalf of Winnie, and child support arrears on behalf of both children. Dan moves in with Rip, applies for PA and is found eligible in the HR category. Because child support arrears are still owed on his behalf, Dan is referred to the CSEU. Dan is required to sign a DSS-2521 and to cooperate with obtaining a separate order on his behalf for support arrears, which he has assigned to the district.

B. CSEU and SCU Responsibilities

CSEU and SCU responsibilities include the following:

- 1. Accept IM referrals of HR cases for which a DSS-2521: "Application for Child Support Services" has been signed by the A/R.

An HR A/R, or an adult-only A/R whose child's paternity has not been legally established, who is referred to the CSEU (via a DSS-2860: "Child Support Enforcement Referral") for IV-D services is required to sign a DSS-2521: "Application for Child Support Services". Districts must require the DSS-2521 to be signed in IM, and the original signed DSS-2521 must be retained in the IV-D case file. The DSS-2521 will be required until the DSS-2860 is revised.

- 2. Conduct a CSEU intake interview as soon as practicable, but no later than twenty calendar days after PA case opening referral.
- 3. Promptly complete Child Support Management System (CSMS) data entry of IV-D cases, but no later than twenty calendar days after PA case opening.
- 4. Review and comment on IM "good cause" requests.

5. Take any action necessary to establish paternity and to establish and enforce support obligations, as needed.
6. Notify IM via a DSS-2859 when a PA A/R has refused or failed to cooperate to establish paternity and/or secure and enforce support obligations.
7. Further duties and responsibilities are described in more detail in Administrative Directive 91 ADM-40, "Public Assistance (IV-A), Medical Assistance (MA) and Family and Children Services (F&CS) Interface with Child Support Enforcement (IV-D)".

C. Food Stamp Implications

Child support payments which are received by public assistance recipients and must be remitted to the Child Support Enforcement Unit to maintain public assistance eligibility are excluded as food stamp income.

The first \$50 of child support payments which is disregarded and passed through to the recipient is counted as income for food stamp purposes. See Food Stamp Source Book (FSSB) Sections XII-C and XII-G for further information regarding budgeting of child support payments.

D. Medical Assistance Implications

In the situation of a parent applying for PA for herself only, who resides with her child born out of wedlock and is referred to the CSEU, the definition of MA household is all applicants and their legally responsible relatives. In such instances districts must not refer an MA-only applicant to the CSEU if the child is not applying. In addition, a woman who is sanctioned for PA for refusing to cooperate with the CSEU with respect to a non-PA child would continue to be eligible for MA.

V. SYSTEMS IMPLICATIONS

A. WMS

1. Districts Outside NYC

IM workers must enter IV-D Indicator Code "Y: IV-D Case" in WMS Screen 1 for HR cases which are referred to the CSEU. The DSS-2860: "Child Support Enforcement Referral" should be sent with the APP-TAD or 3209 for data entry on the WSVIVD screen.

2. ABEL Income Codes (Upstate and NYC)

a. Support collected by the SCU

Districts outside New York City must budget HR support income which is assigned and is to be paid to the SCU as Other/Unearned Income Code "13: Alimony/Spousal or Child Support Assigned to Agency". In NYC, assigned support is recorded on the Individual Screen (NSBL06) as "61: Alimony/Spousal/Child Support Assigned to the Agency".

b. Direct Payments of alimony/maintenance/spousal support

Districts outside New York City must budget direct payments of current alimony/maintenance/spousal support as Other/Unearned Income Code "02: Alimony/Spousal Support" and direct payments of spousal support arrears as Code "99: Other." In NYC, direct current spousal support is recorded on the Individual Screen (NSBL06) as "14: Alimony/Spousal/Child Support Received by the Client" and direct spousal support arrears as "99: Other Unearned Income."

Code "99-Other" will be used for alimony/maintenance/spousal support arrears until such time as a new code is added to specify this type of income.

3. Recoupment Codes

PA overpayments resulting from assigned support payments being received directly and retained by a PA recipient must be recouped Upstate using Recoupment Type Code "5: IV-D Payment". In NYC, PA support recoupments are identified by Offense Subtype Codes "18: Receipt of Income from a Legally Responsible Relative" or "34: Court Order Support".

B. CSMS

Enhancements will be made to CSMS to disallow the ledger type 11BR. In the meantime, districts must discontinue the use of ledger type 11BR and, instead, use the ledger type 21BR. Districts will be notified of further enhancements at a later date, via OCSE Systems Update letters.

VI. ADDITIONAL INFORMATION

The revised forms DSS-4279 (7/92) and DSS-4280 (7/92) have been delivered to the Albany warehouse. Both forms are printed in two-ply, carbonless format.

Districts will not automatically receive copies of the revised forms. Districts must discard existing supplies of DSS-4279 (6/91) and use locally-reproduced copies of Attachment I - DSS-4279 (Rev. 7/92) until they order and receive the revised forms. Districts may continue to use the 6/91 version of DSS-4280 until that stock is depleted or may locally reproduce Attachment II - DSS-4280 (Rev. 7/92) until they order and receive the revised forms. Reorders of both forms will be filled with the 7/92 versions.

Clear photocopied masters of the revised Spanish versions will be available for districts to reproduce locally.

Requests for the revised forms, as well as requests for the Spanish masters, should be submitted on form WMS-47 (Rev. 9/89): "WMS Order Form" and sent to:

New York State Department of Social Services
Welfare Management System
P.O. Box 1990
Albany, New York 12201
Attention: Office of Systems Development (OSD)

Questions concerning ordering forms should be directed to the Office of Systems Development by calling 1-800-342-3715, extension 6-6223.

VII. EFFECTIVE DATE

This directive is effective October 16, 1992.

Oscar R. Best, Jr.
Deputy Commissioner
Division of Income Maintenance