

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
MEMORANDUM

TO: All Supervising ALJ's
All ALJ's

DATE: April 3, 2001

FROM: Russell J. Hanks

SUBJECT: "Correct When Made"

The following guidelines have been prepared in response to inquiries from local districts and ALJ's, to assist ALJ's in their deliberative process, and to promote statewide consistency. They are intended to provide direction for the use of the Decision Outcome, "Correct When Made."

Where the decision to direct relief (either specific relief or a remand) turns on evidence not available to the agency at the time of the original determination. "Correct When Made" may apply, rather than an outright reversal or affirmance. While this outline addresses the most common circumstances to use "Correct When Made," it is not intended to be all-inclusive.

In cases where "Correct When Made" is the appropriate outcome, the basis for this determination should be addressed in the Discussion section of your recommended decision. In addition, the Decision and Order section should indicate that the Agency's determination was "correct when made." The decision should then contain the directives that would have been applicable if the Agency were being reversed. It should also include the form paragraph advising the appellant of the need to cooperate where the decision (or the agency) indicates the need for additional information from the appellant.

If you are drafting a decision using the scripting process and the script asks for a choice between "Affirm" and "Reverse", you should choose "Reverse," so that the appropriate directives are inserted into the decision. The document should then be edited to reflect that the decision was "correct when made."

The Decision and Order should conform to the following example:

Decision and Order:

The Agency's determination was correct when made. However,

(Use Directives for Reversals or Remands)

Several of the checklist decisions used in New York City have been modified to allow selection of the "Correct When Made" outcome in appropriate cases. Daniel Bloodstein will be sending detailed instructions on use of the revised checklist forms.

OUTLINE for “Correct When Made”

ISSUE: FAILURE TO PROVIDE ELIGIBILITY DOCUMENTATION

IF SUBMISSION WAS TIMELY (e.g., before the agency determination at issue):

Reverse agency

Direct Agency to continue assistance or continue to process application
(directing retroactive relief)

IF SUBMISSION WAS UNTIMELY:

**WHERE CLIENT ESTABLISHES DIFFICULTY IN OBTAINING
INFORMATION AND ASKED FOR EXTENSION OR ASSISTANCE PRIOR TO THE
AGENCY’S DETERMINATION:**

Reverse agency if assistance or extension not provided

Direct Agency to continue assistance or continue to process application
and provide collateral assistance (directing retroactive relief)

**WHERE CLIENT HAS GOOD CAUSE FOR NOT SUBMITTING
DOCUMENTS, BUT DID NOT PREVIOUSLY EXPLAIN TO AGENCY
PRIOR TO FAIR HEARING:**

Correct when Made

Direct Agency to continue assistance or continue to process application
and allow additional time to submit (directing retroactive relief)

**WHERE CLIENT DOES NOT HAVE GOOD CAUSE FOR NOT
SUBMITTING DOCUMENTS, AND SUBMITS THEM ONLY AT FAIR
HEARING:**

Affirm (advise appellant to reapply in appropriate circumstances)

ISSUE: EMPLOYMENT SANCTION

(This analysis can be applied in non-employment situations as well)

WHERE GOOD CAUSE WAS ESTABLISHED AT CONCILIATION:

Reverse

Direct agency to continue assistance

WHERE GOOD CAUSE IS ESTABLISHED FOR FIRST TIME AT FAIR HEARING:

Correct When Made

Direct Agency to continue assistance

WHERE GOOD CAUSE NOT ESTABLISHED:

Affirm