

M E M O R A N D U M
DSS-524ELTO: All New York City ALJ's
and Supervising ALJs

DATE: March 21, 1996

FROM: Henry Pedicone

SUBJECT: Rivera v. Bare and Sabol
Sup. Ct., New York County
(Amendment of 3/20/96 memo)*

This memorandum is to advise you of an adverse decision and judgment in the above-referenced case. In its decision of July 25, 1995, the Court required that all fair hearing appellants be provided with (a) the right to timely receive by mail copies of the evidence package HRA intends to present at a fair hearing (i.e., within three business days of the request when the request is made more than five days before the fair hearing); (b) the right to timely receive copies of any other specifically identified documents from the case record requested by appellants to prepare for a fair hearing; and (c) notices that adequately set forth these rights regarding access to case records. These requirements are contained in current Regulations.

The Court did find incorrect, as a matter of law, the petitioners' contention that they have the right to receive, by mail, a copy of the entire case record, or any blanket request for documents (such as all documents for a particular year.) The Court also found that HRA's policy of requiring appellants to visit their center to review their file to determine what documents they need is reasonable and consistent with the Regulations.

The November 14, 1995 Judgment in this case, entered on December 22, 1995, provided that the Department is required to supervise HRA and enforce the regulations relating to the right to obtain documents, and to ensure that all of HRA's public assistance notices contain specified information regarding access to documents and case records.

FAIR HEARINGS REQUIREMENTS: The Judgment also requires that where HRA fails to comply with the regulatory requirements to provide evidence packages or specifically identified documents within three business days of a request for such documents where the request is made more than five days before the hearing date, it must withdraw the notice of its determination to "deny, terminate, reduce, restrict or suspend" public assistance benefits. (NOTE: For purposes of Rivera, "public assistance" includes AFDC, Medicaid, food stamps, and home relief. This definition was set forth in an interim decision dated September 24, 1993) If the agency has a case record at the hearing and offers an evidence package, the ALJ must ask if the appellant requested the documents, when the request was made, and when the agency sent the documents to the appellant. If the HRA representative concedes that documents or evidentiary packages were not sent out timely where requested, the notice of intent must be withdrawn. If the ALJ determines that HRA did not comply with Rivera, and HRA will not withdraw, a decision directing the withdrawal should be drafted. Where the notice involves a denial, a directive should be included directing HRA to make a new determination of eligibility.

Effective Monday, March 25, 1996, new reason codes have been established that must be entered on the Federal Data Sheet for these cases. For Reversal enter 07, for a Withdrawal enter 23. These codes will be printed on the legend for the data sheet in about two weeks.

*Changes in boldface