



George E. Pataki
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-04
To:	Local District Commissioners
Issuing Division/Office:	Child Support Enforcement
Date:	February 28, 2005
Subject:	Velazquez Cases - Special Instructions Part 1
Suggested Distribution:	Child Support Enforcement Coordinators Support Collection Unit Supervisors Attorneys
Contact Person(s):	DCSE - County Representative Legal - Brian Wootan
Attachments:	1. Notice to Possible Class Members 2. Request for Refund of Child Support Payments 3. Determination of Request for Refund 4. Suggested Responses to NCP & CP Questions
Attachment Available On – Line:	<input checked="" type="checkbox"/>

Filing References

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

I. PURPOSE

This directive provides districts with special instructions for implementing procedures developed in response to court decisions rendered in Velazquez v. Bane by providing a mechanism for the members of the plaintiff class to obtain relief.

II. BACKGROUND

This class action lawsuit concerned the issuance of mandatory minimum \$25 per month child support orders against poverty-level respondents pursuant to Family Court Act (FCA) §413.1(d). The case also concerned the manner in which the Office of Temporary and Disability Assistance (OTDA) must implement the Court of Appeals decision in Rose v. Moody, which invalidated as unconstitutional that part of FCA §413.1(g) that required that poverty-level respondents be ordered to pay child support of \$25 per month without the opportunity to rebut imposition of the mandatory minimum child support obligation.

On November 18, 1994, the Supreme Court in New York County issued a decision in Velazquez, and subsequently issued its order and judgment on February 1, 1995. (See 95 LCM-42, dated April 18, 1995, for a summary of the court order). The matter was appealed by the agency in 1996 to the Appellate Division, First Department. The Appellate Division affirmed the lower court's declaration that the issuance of \$25 per month child support orders pursuant to FCA §413.1(g) without an opportunity to rebut the presumption of ability to pay is impermissible under federal law and the United States Constitution. The Appellate Division also affirmed the granting of Statewide class certification to the plaintiffs and affirmed the lower court's permanent injunction against the State from enforcing all such \$25 per month orders issued prior to January 1994. The order also affirmed that it was appropriate for the lower court to order retroactive monetary relief pursuant to 42 USC 1983 insofar as such relief is incidental to the declaratory and injunctive relief sought by the plaintiff class, and that any refunds made to the plaintiff class could not be recouped from any custodial parent or child.

The Appellate Division's order reversed other aspects of the Supreme Court's order, including that court's initial 1995 direction regarding the language of the notices and the method of implementing the relief. The basis of the Appellate Division's action was that the lower court improperly imposed the manner in which OTDA must implement the order's declaratory relief, and ordered that OTDA be allowed to exercise its administrative discretion in determining the manner in which to implement the court's order.

OTDA submitted a remedial plan, which was accepted in part and modified in part by the Supreme Court in a decision entered March 11, 2003. The Appellate Division upheld the Supreme Court's decision on May 25, 2004 (see Velazquez v. New York, 7 A.D. 3rd 449). On October 20, 2004, the Supreme Court issued an order and judgment implementing its 2003 decision. The order and judgment was entered on October 28, 2004. This order and judgment required the State defendant to mail a specific notice and reply form to the potential class members within 4 months of the entry of the order and judgment (attachments 1 and 2). The local support collection units were required to review all requests for refunds and respond using a specified determination letter (attachment 3). Finally, the order and judgment required that certain reports be made to the plaintiffs.

III. CLASS MEMBERS

A class member is a person ordered to pay the minimum support of \$25.00 per month pursuant to a court order issued during the period September 16, 1989 through January 1, 1994 (the date of the order is found on CSMS by reviewing page 1 of IVDHST), where:

1. the person was in receipt of Public Assistance or Supplemental Security Income or had income below the poverty level at the time the order was issued; and
2. the order was entered as a minimum order without regard for the person's ability to pay.

IV. PROGRAM IMPLICATIONS

The implementation of the procedures contained in this Administrative Directive will allow local districts to satisfy the requirements of the Velazquez decisions by making refunds to class members of all payments made pursuant to an order subject to the injunction. Class members will be given the opportunity to seek a refund of any payments made pursuant to an improper order.

V. REQUIRED ACTION

A. Notification and Potential Class Member Response

1. On February 28, 2005, the State Division of Child Support Enforcement (DCSE) will send a "Notice to Possible Class Members" (attachment 1) to all respondents ordered to pay \$25 per month pursuant to an order issued during the period September 16, 1989 through January 1, 1994, whose child support enforcement case is identified by the V25 indicator on the Child Support Management System (CSMS). The notice will advise those respondents of the Velazquez court decision, and the fact that they may be a class member. A list identifying the respondents to whom a notice was sent will be provided to local districts.
2. Any respondent receiving the notice who believes he or she is a class member and wishes to request a refund of child support payments made, must contact the Support Collection Unit (SCU) within 90 days of receipt of the notice. Late responses must be accepted if the respondent demonstrates good cause for his or her failure to timely respond. When the respondent contacts the SCU, he or she must provide:
 - a. Information sufficient to identify the child support case (such as respondent's name, the child's name, child support case number or respondent's social security number and/or date of birth); and
 - b. The basis for the belief that he or she is a member of the class (receipt of Public Assistance, Supplemental Security Income or income below the poverty level at the time the order was issued).
3. A respondent may provide the above information to the SCU by filling out a "Request for Refund of Child Support Payments" (attachment 2), and mailing it to the SCU at the address listed on the notice. Also, a respondent may, but is not required to, provide additional information or documentation.
4. No further location action is required with respect to Notices returned to the SCU by the US Postal Service as undeliverable. The respondent addresses used for the Notice were selected using the Tax Refund Offset Process address selection criteria for FIPS codes 136 (own county code) and 2 (any valid state and county code). A 19 CMMT transaction will be stored on IVDHST identifying the address selected for notification in Field 2, except for accounts that are purged in their entirety.
5. Good cause for failure to respond within the allotted timeframe shall be determined by the SCU based upon the individual circumstances of a case, and should be granted where such failure was due to factors reasonably beyond the control of the respondent but not in violation of statutory requirements. Examples of good cause include, but are not limited to, (a) situations where a respondent in a closed case did not receive the Notice but subsequently learned of this action and contacted the SCU, or (b) situations where the respondent received the Notice but could not contact the SCU due to a prolonged and debilitating illness or injury.
6. SCU staff must keep a manual record of the number of "Request for Refund of Child Support Payments" received to satisfy reporting requirements set forth in Section H.
7. When responding to inquiries made in reaction to the Notice, SCU staff may wish to refer to "Suggested Responses to NCP and CP Questions" (attachment 4).

B. Determination of Class Membership

1. Upon receipt of a "Request for Refund of Child Support Payments" or other written communication from a possible class member seeking a refund, the SCU shall determine if that individual is a member of the subject class, as defined in Section III above.
 - a. The SCU must review the terms of the order, the findings of fact (if any), or its records and the court file to determine if the respondent is a class member.
 - b. The presence of a V25 indicator in the SA field of a possible class member's CSMS account does not necessarily mean that individual is a class member. Initially, the V25 indicator was placed on all \$25 per month orders entered during the relevant time period. However, the class definition is narrower than "all \$25 per month orders." While

many \$25 per month orders were entered as mandatory minimum orders, others may have been entered based on a deviation from the CSSA guidelines after consideration of the enumerated factors, after a self support reserve adjustment, on default without income information or after a determination of ability to pay.

- c. In determining class membership, the SCU must recognize that, due to the passage of time since the entry of the order, information may not be readily available. If there is insufficient information to determine class membership, the respondent should be treated as a class member.
 - d. If all court order dates shown on ASSET\$ (transaction code 14 EDCO) are dates other than during the period September 16, 1989 through January 1, 1994, the respondent is not a class member.
2. A respondent determined by the SCU not to be a class member shall be informed by the SCU in writing that they are not entitled to relief under this court decision. The SCU shall use the "Determination of Request for Refund" (attachment 3), and check box 3, 4, or 5 as appropriate.
 3. A respondent determined by the SCU to be a class member shall be informed by the SCU in writing pursuant to paragraph C, of such determination and of the amount of refund, if any.

C. Calculating the Refund

Where the SCU has determined that a respondent is a class member, the SCU must calculate the refund owed to the respondent, if any, and must provide notification as follows:

1. Determine the total amount of payments made under the \$25 per month order.
 - a. If the \$25 per month order was not modified and is the only order on the account, the amount in the "TO DATE PAID" field represents the total amount of payments made under that order.
 - b. If the \$25 per month order was modified or is not the original order on the account, determine the total payments made under the \$25 per month order by reviewing the purged monetary microfiche for all payment transactions prior to January 1, 1996, and ASSET\$ records for all payment transactions from January 1, 1996 to the earlier of (1) the date the last payment was made under the \$25 per month order; or (2) the date the order was modified or terminated. The sum of those payment transactions represents the total amount of payments made under that order.
2. If no payments have been made, give the respondent written notice that a refund will not be issued (check box 2 on the "Determination of Request for Refund", attachment 3).
3. If payments have been made, the respondent is entitled to receive a refund of the total amount of such payments as determined under paragraph 1, subject to the limitations set forth in paragraph 4. Give the respondent written notice that a refund will be issued (check box 1 and enter the refund amount on the "Determination of Request for Refund", attachment 3).
4. If the respondent is entitled to a refund, but owes arrears pursuant to a prior order on the same account or a modification of the \$25 per month order on the same account, reduce the refund by the amount of those arrears. Notify the respondent of the amount of the refund applied to satisfy such arrears, and of the amount of the refund remaining (if any) after such application (check box 1 and enter the reduced refund amount or "0" on the "Determination of Request for Refund", attachment 3; add a footnote on the bottom indicating the amount of the arrears and the amount applied to those arrears).
5. For clarification, the following terms shall be used in referring to refunds issued pursuant to this ADM:
 - a. "GROSS REFUND" means the total amount paid by a class member under the \$25 per month order.
 - b. "NET REFUND" means the GROSS REFUND minus the amount applied to satisfy arrears, and is the amount refunded to a class member. Where a class member has no arrears, the NET REFUND will equal the GROSS REFUND. Where the class member's arrears exceeds the GROSS REFUND, the NET REFUND will be \$0.00.

D. Requests for Redetermination

A respondent who disagrees with the SCU's findings as set forth in the "Determination of Request for Refund" may submit new information or documentation to the SCU (such as a letter from the Social Security Administration or a record showing that he or she made child support payments). The respondent has 30 days from the date of the determination letter to submit any new information or documentation. Upon review of the new information or documentation, the SCU shall notify the respondent in writing of its redetermination. A respondent who disagrees with the SCU's original findings, or the findings after a redetermination, may file a petition in Supreme Court for a review of the determination under Article 78 of the New York State Civil Practice Law & Rules.

E. Refund Accounts

1. To facilitate the processing of refunds, the SCU must establish new refund accounts on CSMS, which should be labeled "REFUND, VELAZQUEZ PA" and "REFUND, VELAZQUEZ NON-PA".
2. Care must be taken to change the beneficiary name and address on the account to the respondent's information each time a refund is recorded, to direct the check to the correct address.
3. Multiple refund accounts of each type will be required in order to disburse more than one refund per day. Number accounts consecutively to distinguish them from each other (e.g. REFUND, VELAZQUEZ PA ONE, REFUND, VELAZQUEZ PA TWO, etc.).

F. Closed and Purged Cases

If the SCU has determined that the respondent is a class member entitled to a refund, and the case is either closed on CSMS or has been purged to ASSETS, the SCU must take the following actions to activate the closed case or recreate the purged case prior to completing the requirements in Section G for issuing the refund:

1. Closed Cases.
 - a. Change the ledger status (transaction code 07 LDST) to 01 on each affected ledger with the original V25 collection. Enter "Velazquez" in the R1 field.
 - b. Enter the following transaction on the IVDQRY screen to permanently record the reactivation of the case:

*****TR - TYPE 19 CHNG CMMT VELQZ CLASS MEMBER**
2. Purged Cases.
 - a. Create a new CSMS case with case information mirroring the purged case. Enter the original CSMS case number on the remarks screen (IVDJRR).
 - b. Create a new CSMS account on the new case including only ledgers with an original V25 collection, as follows:
 - (1) For disbursements that were made only to custodial parents, complete a positive Batch 61 and/or 62 entry, and a positive Batch 72 and 85 entry for the amount in the "TO DATE" field for each affected ledger with the original V25 collection. Enter the ledger type and "Velazquez" in Option field #1.
 - (2) For disbursements that were made only to DSS:
 - (a) Complete a positive Batch 61 and/or 62 entry, and a positive Batch 72 for the amount of the "GROSS REFUND" for each affected ledger with the original V25 collection. Enter the ledger type and "Velazquez" in Option field #1.
 - (b) Complete the actions required in Section G, "Issuing Refunds to Respondents", prior to the end of month in which the account was recreated.

(c) Manually reduce the end of month disbursement to DSS by the "GROSS REFUND" amount after the refund is generated.

(3) For disbursements that were made to both DSS and to custodial parents:

(a) For each affected ledger with the original V25 collection, determine the amount charged and paid to DSS or the amount charged and paid to the custodial parent.

(b) Complete a positive Batch 61 and/or 62 entry on each affected ledger for the amount that was charged, a positive Batch 72 entry on each affected ledger for the amount paid and applied, and a positive Batch 85 on any one of the Non-PA ledgers for the same amount as the 72 Batch. Enter the ledger type and "Velazquez" in Option field #1.

(c) Complete the actions required in Section G, "Issuing Refunds to Respondents", prior to the end of month in which the account was recreated.

(d) Manually reduce the end of month disbursement to DSS by the PA portion of the "GROSS REFUND" amount after the refund is generated.

c. Enter the following transactions on the IVDQRY screen to permanently record the recreation of the case:

*****TR - TYPE 19 CHNG CMMT VELQZ CLASS MEMBER**

3. Upon completion of the actions required under Section G to issue refunds, close all cases activated or recreated.

G. Issuing Refunds to Respondents

If the SCU has determined that the respondent is a class member entitled to a refund, the SCU shall issue a check in the amount of the NET REFUND through CSMS. Before issuing a refund check, the SCU must determine the prior disbursement of the funds constituting the GROSS REFUND, i.e., to the local social services district (DSS) for public assistance cases or to the custodial parent for non-public assistance cases, or to both, during the time period determined in Section C.1. Over a two day period, the SCU must take the following actions to issue a refund, adjust CSMS account information, and where applicable, satisfy arrears:

1. V25 Collections That Were Disbursed to DSS

a. Gross Refund Apportionment (Day 1). Of the GROSS REFUND, determine the amount which must be refunded to the respondent (the NET REFUND) and the amount which must be applied toward satisfaction of arrears from each CSMS account PA ledger, e.g. TANF, Safety Net, IV/E Foster Care, Medical Assistance, etc.

b. Refund to Respondent (Day 1). Transfer the funds to be refunded (NET REFUND) from each account ledger to a Velazquez PA refund account as follows:

(1) Complete a negative Batch 71 entry for each affected ledger with the original V25 collection. Enter the ledger type and "Velazquez" in Option field #1, and the Velazquez refund CSMS account number in Option field #2.

(2) Complete a positive Batch 61 entry and a positive Batch 71 entry to the refund account. Enter the respondent's name in Option field #1 and account number in Option field #2.

(3) Change the beneficiary name and address on the refund account to the respondent's information. CSMS will generate the refund check automatically the next day.

(4) The negative 71 batch transaction(s) will automatically reduce the DSS check for the current month, thereby making funds available in the SCU bank account to cover the refund check.

c. Application to Arrears (Day 1). Transfer the funds to be applied to arrears from each account ledger to the applicable ledger(s) with arrears as follows:

- (1) Complete a negative Batch 71 entry for each affected ledger with the original V25 collection, and enter "Velazquez" in Option field #1.
- (2) Complete a positive Batch 71 entry to each affected ledger with arrears accrued as a result of a modified or prior order, and enter "Velazquez" in Option field #1.
- (3) The negative 71 batch transaction(s) will automatically reduce the DSS check for the current month, thereby making funds available in the SCU bank account to cover the arrears satisfaction transaction(s).

NOTE: In order that an audit trail of all Velazquez related transactions is maintained, complete the transactions in (1) and (2) even where the arrears on the modified or prior order are on the same ledger as the original V25 collections.

- d. Account Adjustment (Day 1). If the \$25 per month order was not modified, adjust the obligation amount for each ledger with the original V25 collection for which a negative Batch 71 entry was completed or for which an obligation was charged while the order was in V25 status, as follows:

Reduce the obligation amount to \$0.00 (transaction code 09 OAMT), and enter "Velazquez" in the R1 field.

- e. Account Adjustments (Day 2). On the day following completion of the actions required under a, b, c, and d, adjust the DUE for each ledger with the original V25 collection for which a negative Batch 71 entry was completed or for which an obligation was charged while the order was in V25 status, as follows:

- (1) If the \$25 per month order was not modified:

Reduce the DUE to \$0.00 by completing a negative Batch 65 or 62 entry, as appropriate, for the same amount in the DUE field, and enter "Velazquez" in Option field #1.

- (2) If the \$25 per month order was modified:

(a) Calculate the DUE that charged while the order was in V25 status.

(b) Complete a negative Batch 65 or 62 entry, as appropriate, for that DUE amount, and enter "Velazquez" in Option field #1.

- f. History Transactions (Day 2). Enter the following transaction(s) on the IVDQRY screen to permanently record the disposition of the gross refund amount:

***TR - TYPE 19 CHNG CMMT VELQZ REF \$ _____
 ***TR - TYPE 19 CHNG CMMT VELQZ TXFR \$ _____

- g. Reimbursement (Day 2). Keep a manual record of the amounts issued as refunds and the amounts transferred to satisfy arrears for use in the claiming process for reimbursement to your local district. Keep a manual record of the number of refunds issued to satisfy reporting requirements set forth in Section H.

2. V25 Collections That Were Disbursed to Custodial Parents

- a. Gross Refund Apportionment (Day 1). Of the GROSS REFUND, determine the amount which must be refunded to the respondent (the NET REFUND) and the amount which must be applied toward satisfaction of arrears.

- b. Refund to Respondent (Day 1). To process a refund to the respondent:

(1) Complete a positive Batch 61 entry and a positive Batch 72 entry to a Velazquez Non-PA refund account for the NET REFUND amount. Enter the respondent's name in Option field #1 and account number in Option field #2.

(2) Change the beneficiary name and address on the refund account to the respondent's information. CSMS will generate the refund check automatically the next day.

c. Application to Arrears (Day 1). To satisfy arrears:

- (1) Complete a positive Batch 72 entry to each affected ledger with arrears accrued as a result of a modified or prior order for the amount of the gross refund to be applied to such arrears.
- (2) Enter the ledger type and “Velazquez” in Option field #1.

NOTE: In order that an audit trail of all Velazquez related transactions is maintained, complete the transactions in (1) and (2) even where the arrears on the modified or prior order are on the same ledger as the original V25 collections.

d. Account Adjustments (Day 1). If the \$25 per month order was not modified, adjust the obligation amount for each ledger with the original V25 collection for which an obligation was charged while the order was in V25 status, as follows:

Reduce the obligation amount to \$0.00 (transaction code 09 OAMT), and enter “Velazquez” in the R1 field.

e. Account Adjustments (Day 2). On the day following completion of the actions required under a, b, c, and d, adjust the DUE for each ledger with the original V25 collection for which an obligation was charged while the order was in V25 status, as follows:

(1) If the \$25 per month order was not modified:

- (a) Where the DUE minus the GROSS REFUND is greater than \$0.00, complete a negative Batch 65 or 62, as appropriate, on the ledger for the difference (i.e. the amount the DUE exceeds the GROSS REFUND). Enter “Velazquez” in Option field #1.
- (b) Where the DUE minus the GROSS REFUND is \$0.00, complete a negative and a positive Batch 65 or 62, as appropriate, for the DUE on the ledger, in order to provide an audit trail on all Velazquez related transactions. Enter “Velazquez” in Option field #1.

(2) If the \$25 per month order was modified:

- (a) Calculate the DUE that charged when the order was in V25 status.
- (b) Where the DUE amount in (a) minus the GROSS REFUND is greater than \$0.00, complete a negative Batch 65 or 62, as appropriate, on the ledger for the difference (i.e. the amount the DUE exceeds the GROSS REFUND). Enter “Velazquez” in Option field #1.
- (c) Where the DUE amount in (a) minus the GROSS REFUND is \$0.00, complete a negative and a positive Batch 65 or 62, as appropriate, for the DUE on the ledger, in order to provide an audit trail on all Velazquez related transactions. Enter “Velazquez” in Option field #1.

f. History Transactions (Day 2). Enter the following transaction(s) on the IVDQRY screen to permanently record the disposition of the gross refund amount:

***TR - TYPE 19 CHNG CMMT VELQZ REF \$ _____
***TR - TYPE 19 CHNG CMMT VELQZ TXFR \$ _____

g. Reimbursement (Day 2). Keep a manual record of the amounts issued as refunds and the amounts transferred to satisfy arrears for use in the claiming process for reimbursement to your local district. Keep a manual record of the number of refunds issued to satisfy reporting requirements set forth in Section H.

3. Unusual or Difficult Case Scenarios

Where the case composition, ledger types, and unique circumstances of a particular case are not addressed by these instructions, you may obtain assistance by contacting DCSE at 1-866-227-7035. Indicate to the DCSE staff member receiving your call that you need assistance on a Velazquez case and provide the case number and respondent name. You will be contacted by the DCSE staff member assigned to assist you in your review of the request for refund.

H. Reports and Timeframes

1. The "Notice to Possible Class Members" will be mailed by DCSE on February 28, 2005. DCSE will advise the plaintiffs of the number of notices mailed no later than March 14, 2005.
2. Requests for a refund must be made by a potential class member within 90 days of receipt of the notice, absent good cause shown. Requests made after June 3, 2005 (90 days plus 5 days for mail delivery), will be considered untimely, absent a determination of good cause.
3. The SCU must review all requests and reply in writing (using the "Determination of Refund Request") within 60 days of receiving the request for a refund. All CSMS account transactions required for issuing refunds or applying refunds to arrears must be completed ASAP, but no later than 5 business days of mailing a "Determination of Refund Request".
4. No later than June 21, 2005, each SCU must report to their DCSE County Representative (a) the number of requests for refund received from potential class members as of June 17, 2005, and (b) the number of refunds issued as of June 17, 2005. DCSE will report that information to the plaintiffs no later than June 28, 2005.
5. No later than August 23, 2005, each SCU must report to their DCSE County Representative the number of refunds issued as of August 19, 2005. DCSE will report that information to the plaintiffs no later than August 28, 2005.

I. Document Retention

In addition to the normal records retention requirement of six years after a case is closed, the SCU must retain all case specific documents associated with this process until notified by DCSE. This includes the following:

1. "Notice to Possible Class Members" returned by the US Postal Service as undeliverable.
2. "Request for Refund of Child Support Payments" received from respondents.
3. "Determination of Request for Refund" sent to respondents.

VI. FISCAL IMPLICATIONS

Refunds will be made at no cost to local districts. Claiming instructions will be provided in a separate letter.

VII. SYSTEMS IMPLICATIONS

DCSE will send CSMS generated notices to all possible class members. Lists of the potential class members will be provided by CSMS.

VIII. EFFECTIVE DATE

This ADM is effective immediately.

Margot Bean
Deputy Commissioner and Director
Division of Child Support Enforcement

Attachment 1

NOTICE TO POSSIBLE CLASS MEMBERS

Notice To Possible Class Members

You May Be A Class Member

Our records show that you may be a class member entitled to a refund of certain child support payments you may have made. On December 20, 1993, the Court of Appeals of New York State 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. The Family Court may consider this evidence in setting the amount of the child support award. In a later lawsuit, Velazquez v. State of New York, the New York Supreme Court certified a class of non-custodial parents entitled to relief.

Class Member Defined

A class member is a person ordered to pay the minimum support of \$25.00 per month pursuant to a court order issued during the period September 16, 1989 through January 1, 1994, where:

1. the person was in receipt of Public Assistance or Supplemental Security Income or had income below the poverty level at the time the order was issued; and
2. the order was entered as a minimum order without regard for the person's ability to pay.

Effect of Being A Class Member

If you are a class member, enforcement of your order has been permanently enjoined by the court. However, the Child Support Unit or the custodial parent of your children may seek a new order against you if permitted by law. In any new court proceeding for child support, New York State law presumes you have the ability to support your child. Public Assistance benefits and Supplemental Security Income are not counted as income under the Child Support Standards Act. The Child Support Standards Act presumes that you can pay at least \$25.00 per month child support, but you have the right to offer proof that this amount would be unjust or inappropriate and to request a lower order.

Action Required By A Class Member To Obtain A Refund

If you are a class member, you are entitled to a refund of child support payments you have made under the pre-1994 order. If you believe you have made payments, you must contact the Support Collection Unit at the address listed below to request a refund. When you contact the Support Collection Unit you must provide:

1. Information to identify your child support case (your name, the child's name, your child support case number or your social security number and date of birth); and
2. The basis for your belief that you are a member of the class (receipt of Public Assistance, Supplemental Security Income or income below the poverty level at the time the order was issued).

You may provide this information to the Support Collection Unit by filling out the enclosed form and mailing it to the Support Collection Unit at the address listed below.

Support Collection Unit Review

The Support Collection Unit will review the information you provide as well as the court order and its own file. The court in Velazquez has directed that we advise you that in the context of this review the receipt of Public Assistance or Supplemental Security Income is relevant and significant evidence of indigency and of an inability to meet the obligation to support a child at the time the original order was entered. Accordingly, if you are a class member, you will not be required to show that you were unable to pay the \$25/month order when it was issued to receive your refund.

Upon completion of the review you will be notified if you are a class member and, if so, the amount of your refund. This review will not affect your child support obligation under any later court orders, including modifications of the original child support order.

Important Time Frame Requirements

To be eligible for a refund of your pre-1994 child support payments, you must contact the Support Collection Unit within 90 days of receipt of this notice unless you can show good cause for your delay.

If you have any questions, you may call the _____ County Support Collection Unit, at () -

_____ County Department of Social Services
(address)

FEDERAL POVERTY INCOME LEVELS FOR ONE PERSON HOUSEHOLDS FROM 1989 TO 1994

1994	\$7,360 per year
1993	\$6,970
1992	\$6,810
1991	\$6,620
1990	\$6,280
1989	\$5,980

Attachment 2

Request for Refund of Child Support Payments

Request for Refund of Child Support Payments

You may request the Support Collection Unit to determine whether or not you are entitled to a refund of child support payments you made. If you wish to make such a request, complete this form and return it to the Support Collection Unit at the address listed at the end of the "Notice to Possible Class Members" within 90 days of receiving the Notice.

Your Name: _____ Your SSN: _____

Your Mailing Address: _____
number & street or post office box *apt..*

City: _____ State: _____ Zip: _____

Your Child Support Case Number(s): _____

Your date of birth: _____ Child (ren)'s Name(s): _____

Check the box below next to the basis for your belief that you are a class member:

- I was in receipt of Public Assistance at the time my child support order was issued, which was between September 16, 1989 and January 1, 1994.
- I was in receipt of Supplemental Security Income at the time my child support order was issued, which was between September 16, 1989 and January 1, 1994.
- I had income below the Federal poverty level for a one person household as shown on the chart at the end of the Notice at the time my child support order was issued, which was between September 16, 1989 and January 1, 1994.

In order to assist the Support Collection Unit in making a determination regarding your claim, if you have any information or documentation which supports your belief that you are a class member and/or that you made child support payments, please send it along with this form. If you do not have any information or documentation, the Support Collection Unit will review the court order and its records to determine the merits of your claim.

Documentation to support this claim attached? yes no

You will be advised by the Support Collection Unit of the result of their review of your information.

I hereby request that the Support Collection Unit determine whether or not I am entitled to a refund of child support payments based upon the reason indicated above:

signature of person making this request

date

Return the completed form to the Support Collection Unit at the address listed at the end of the "Notice to Possible Class Members" within 90 days of receiving the Notice.

Attachment 3

DETERMINATION OF REQUEST FOR REFUND

(LETTERHEAD)

Determination of Request for Refund

As a result of your request for a refund of child support payments based upon your belief that you are a class member in the Velazquez v. State of New York lawsuit, it has been determined that (see the box checked below):

- 1. You are a class member and you DID make payments, so you will be receiving a separate letter with a refund in the amount of \$_____.
- 2. You are a class member, but you will NOT be receiving a refund because our records show that you DID NOT make any child support payments.
- 3. You ARE NOT a class member because your child support order was not issued between September 16, 1989 and January 1, 1994.
- 4. You ARE NOT a class member because your child support order was not issued as a mandatory minimum \$25.00 per month order.
- 5. You ARE NOT a class member because at the time your child support order was issued, you were not in receipt of either Public Assistance or Supplemental Security Income, and you did not have income below the Federal poverty level for a one person household.

If you have new information or documentation that you did not previously submit to the Support Collection Unit (such as a letter from the Social Security Administration or a record showing that you made child support payments) you have 30 days from the date of this notice in which to submit this new information or documentation to the Support Collection Unit at the address listed above for further review.

You will be advised by the Support Collection Unit of the result of their further review of any new information or documentation you provide.

Attachment 4

SUGGESTED RESPONSES TO NCP and CP QUESTIONS

Suggested Responses to NCP and CP Questions

Questions from NCPs

- 1) **Question:** I received a notice regarding a refund and do not understand this. Would you please explain?

Answer: The Supreme Court in New York County made a decision regarding a particular category of child support orders. The Court's decision affirmed that non-custodial parent's must have the opportunity to challenge their "minimum" child support orders issued for \$25.00 per month when issued without regard to their ability to pay. The minimum orders in this category were issued during the period of September 16, 1989 through January 1, 1994 only. Based on the Court decision, if you meet the Class Member status identified on the Notice sent to you, you may be entitled to a refund of any money paid under that order. You must follow the instructions in the Notice to claim your refund.

- 2) **Question:** What do you mean by class member?

Answer: Class member, as defined in the Velazquez court decision, means a person ordered to pay a minimum support amount of \$25.00 per month based on a court order issued during the period September 16, 1989 through January 1, 1994, where such person was in receipt of Public Assistance or Supplemental Security Income or had income below the poverty level at the time the order was issued; and the order was issued without allowing an opportunity to challenge the order based on an ability to pay. If you meet all criteria stated above, you are deemed a "Class Member".

- 3) **Question:** What do I need to do?

Answer: You must first meet the requirements to claim a refund under this Court decision. You must have been issued a minimum support order of \$25.00 per month during the period of September 16, 1989 through January 1, 1994, where you were in receipt of Public Assistance or Supplemental Security Income or had income below the poverty level at the time the order was issued; and the order was issued as a minimum order without regard for your ability to pay. You must have made payments on the order as well. If you meet the requirements identified and have made payments on the order, you would fill out the "Request for Refund of Child Support Payments" form included with your Notice and return it to the SCU.

- 4) **Question:** How do I know if I qualify?

Answer: If you meet the definition of a class member and made child support payments under the \$25/month order, you are entitled to a refund. If you are not sure if you qualify, you may apply for a refund and the SCU will determine your status.

5) **Question:** I have multiple Child Support cases/accounts. Am I entitled to a refund for each case/account?

Answer: In order to qualify for a refund, you must meet the requirements to claim a refund under this Court decision, which include “Class Membership” status and payments. The requirements must be met for each case/account in order for you to be considered for a refund.

6) **Question:** When do I have to respond?

Answer: The “Request for Refund of Child Support Payments” must be received at the address indicated on the Notice within 90 days of the date you received the Notice.

7) **Question:** I will not be able to respond within 90 days. Can I extend this?

Answer: The “Request for Refund of Child Support Payments” must be received at the address indicated on the Notice within 90 days of the date you received of the Notice. However, if you have a valid reason why you could not submit your claim within the 90 day timeframe, you may include a statement of valid reason and any supporting documentation along with your request for refund to the SCU.

8) **Question:** When will I receive my refund?

Answer: A review will take place and a written response will be provided to you within 60 days from the date of receipt of your “Request for Refund of Child Support Payments”.

9) **Question:** How much will my refund be?

Answer: A review will take place to determine the amount, if any, of your refund.

10) **Question:** How do I know if I am considered poverty level/How would I know if I was poverty level at the time?

Answer: The Notice mailed to you includes the Federal Poverty Income Levels for One Person Households from 1989 to 1994. Please refer to Page 2 of “Notice to Possible Class Members”.

11) **Question:** Where do I send my completed refund request?

Answer: Send your request to the SCU. The SCU mailing address for the return of this request form is located in two areas within the Notices sent to you. You may locate the return mailing address on Page 2 of 2 of the “Important Notice” instructional document and on the “Request for Refund of Child Support Payments”.

12) **Question:** I received a response that I will not receive a refund. Who can I speak to about this?

Answer: If you disagree with the findings and feel that you are entitled to a refund, you may submit new information or documentation to the SCU at the address on the Notice within 30 days from the response date. Some examples of new information include a letter from the Social Security Administration supporting your income level or proof of payments made. A determination in writing will be made on the new information provided. If you do not have any additional information but wish to contest the findings, you may file a petition in Supreme Court for a review of the SCU's determination under Article 78 of the New York State Civil Practice Law & Rules.

13) **Question:** I have not received a response to my refund request. Can you tell me if you received it?

Answer #1 (record of receipt and within 60 days of receipt):

I have checked your account and a notation has been made regarding receipt of your request and it is in process. You must wait 60 days for a response. If you do not receive a response within 60 days, please phone back.

Answer #2 (no record of receipt and 15 days have not passed since mailed):

I have checked your account and there is no notation of receipt. You must allow 15 days from the date that you mailed your refund request for us to receive the request and notate such on your account.

Answer #4 (no record of receipt and 15 days have passed since mailed):

I have checked your account and there is no notation of receipt. Please mail a copy to the address on the document. If no copy, please submit a request in writing notating all necessary information.

Questions from a Third Party

14) **Question:** I received documentation from you regarding a refund. I do not know who this person is. What should I do with the paperwork?

Answer: Please mark the envelope "not at this address, return to sender" and return it to the post office. You may also place the document in a newly addressed envelope and return it to the SCU that way, but you may be responsible for postage. Thank you for advising us of this.

Questions from CPs

- 15) **Question:** The non-custodial parent contacted me and indicated that he has received a letter advising him that he may be receiving a refund of child support payments made for my children. Would you please explain this?

Answer: The Supreme Court in New York County made a decision regarding a particular category of child support orders. The Court's decision affirmed that non-custodial parent's must have the opportunity to challenge their "minimum" child support orders issued for \$25.00 per month when issued without regard to their ability to pay. The minimum orders in this category were issued during the period of September 16, 1989 through January 1, 1994 only. Based on the Court decision, if the non-custodial parent meets certain criteria as identified on the Notice, he/she may be entitled to a refund of any money paid under that order.

- 16) **Question:** The non-custodial parent contacted me and indicated that he has received a letter advising him that he will be receiving a refund of child support payments made for my children. Will I be required to return money that I received for child support to you?

Answer: No, you will not be required to return money to the SCU for this matter.

- 17) **Question:** The non-custodial parent contacted me and indicated that he has received a letter advising him that he will be receiving a refund of child support payments made for my children. Does this mean that my child support order is terminated?

Answer: As a result of this Court decision, the status of your child support order may be affected. Enforcement of certain \$25/month orders is barred by court injunction. Once we determine if your order is affected, you will receive information regarding actions you must take to obtain a new order of support.