New York State
Office of Temporary and Disability Assistance
40 North Pearl Street - Albany, NY 12243-0001

Administrative Directive

Section 1

Transmittal:	06-ADM-09
To:	Commissioners of Social Services
Issuing Division/Office:	OTDA
Date:	June 7, 2006
Subject:	Velazquez Cases – Special Instructions Part 3
Suggested Distribution:	Child Support Enforcement Coordinators Support Collection Unit Supervisors Attorneys
Contact Person(s):	DCSE – County Representative 1-800-343- 8859 or NYC 1-212-961-8269 Legal – Brian Wootan
Attachments:	1. Notice of Court Order Affecting Your Child Support - CP or guardian 2. Notice of Court Order Affecting Your Child Support - NCP
Attachment 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 05-ADM-10 05-LCM-08					94 LCM-81 95-LCM-42

Section 2

I.   Summary

This directive outlines the final special instructions for implementing procedures developed in response to court decisions rendered in <u>Velazquez v. Bane</u>. Following these procedures will ensure permanent compliance with the injunction that prohibited enforcement of certain child support orders, and provides instructions for obtaining new or modified orders of child support for the benefit of the children of potential class members.

II. Purpose

The purpose of this directive is to provide notification of final automated system modifications that will eliminate all remaining V25 codes from the Child Support Management System (CSMS); reduce current obligation amounts on such cases to $0.00; remove arrears that could have accrued on the Velasquez order; and provide instruction as to how the districts should go about obtaining new or modified orders of support for all cases where the V25 indicator was eliminated.

III. Background

This Administrative Directive is the third ADM providing special instructions for the Velazquez class cases, and should be read in conjunction with the first and second directives (05-ADM-04, dated February 28, 2005, and 05-ADM-10, dated May 24, 2005), which remain in effect. This ADM addresses handling all orders with a V25 indicator for which a request for refund was not received.

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 providing a process for addressing the effects of the injunction barring enforcement. These procedures will result in continued compliance with the injunction while obtaining appropriate levels of current support for the children of class members.

V. Required Action

A. Adjustments to CSMS V25 Accounts

1. On or about the weekend of June 16, 2006, a system fixer will be run that will modify all active ledgers with an obligation amount greater than $0.00 to $0.00 and a 09 OAMT transaction will be logged out to IVDHST indicating the modification that has occurred.

2. All V25 SA Indicators will be changed from V25 to U08 and a 34 SIND transaction logged out to IVDHST.

3. A total of up to $500 will be removed systematically from any arrears balances owing on the account which represents the total amount that could be owed under the Velasquez order. Any remaining arrears on the case resulting from prior orders will remain due and owing. The DUE will be subtracted from the account first reducing TANF ledgers, then non-TANF ledgers with DSS as beneficiary

and lastly non-TANF ledgers with the custodial parent as beneficiary. Ledgers with a fourth position equal to M or D will be excluded. A negative 68 DUE batch transaction will be logged out to IVDHTM for each ledger adjusted.

B. Notification to Parents or Guardians

1. The weekend following the systems fixer noted in A above, the Division of Child Support Enforcement (DCSE) will send a notice (see attached) to all custodial parents or guardians and a notice to non-custodial parents with an active account on CSMS advising:

   a. that the support order was declared unenforceable in a class action lawsuit affecting the $25 per month orders of support;

   b. of the effect of the Velasquez court decision on the order; and

   c. of necessary actions that must be taken to obtain a current support order.

   Note: If the FIPS code on the account is 136 (own county code) the custodial parent notice will be mailed to the client mailing address on IVDJCH. If no client mailing address exists, the notice will be mailed to the client residential address. If the FIPS code on the account is 2 (any valid state and county code) the custodial parent notice will be mailed to the residential address on IVDJCH. If the FIPS code on the account does not equal 136 (own county code) or 2 (any valid state and county code) the custodial parent notice will be sent to the client mailing address on IVDJCH and no non-custodial parent notice will be generated. All non-custodial parent notices will be mailed to the address selected using the tax refund offset respondent address selection criteria for FIPS codes 136 (own county code) and 2 (any valid state and county code) unless no address exists for the non-custodial parent. A separate 19 CMMT transaction will be logged out to IVDHST for each CP and NCP notice that identifies the address that the notice was sent to.

2. A list identifying the custodial parents to whom a notice was sent will be provided to local districts through BICS file name ASCU VELZ and in NYC provided through the DeJesus queue. If no address exists for custodial or non-custodial parent notification, the message NO CP ADDR or NO NCP ADDR will be printed on the list.

C. Establishing or Modifying the Current Support Obligation

1. In all cases, the local district or custodial parent may petition for a modification on the grounds that there has been a substantial change in circumstances in that:

   a. enforcement of the prior order of child support has been enjoined;

   b. the needs of the child are not being met; and

c. any additional facts indicating a change in circumstances (i.e., a change in the respondent's employment or income).

2. In current public assistance or non-public assistance cases districts must modify the order as follows:

   a. File a modification petition (in public assistance cases) or upon request, assist the custodial parent in filing a modification petition (in non-public assistance cases; see 3 below if non-public assistance case was a former public assistance case).

   b. State in any petition filed for modification (use CSMS DMM Form 4-10 or OCA Form 4-11) that there has been a substantial change in circumstances, in that:

      i. Enforcement of the prior order has been enjoined pursuant to the Supreme Court's decision in <u>Velazquez v. State of New York</u>.

      ii. The needs of the child are not being met.

      iii. 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.

3. In former public assistance cases establish a new support order. The custodial parent is entitled to a new (de novo) order of child support pursuant to FCA 571 (3) (b). In any petition filed for a new (de novo) order, use (CSMS IVDDMM Form 4-3 or OCA 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.)

VI. <u>Effective Date</u>

This ADM is effective upon publication.

_____
Scott E. Cade
Deputy Commissioner and Director
Division of Child Support Enforcement

SAMPLE NOTICE TO BE MAILED TO **CUSTODIAL** PARENTS AND GUARDIANS BY STATE DCSE

Date:

IMPORTANT NOTICE
PLEASE READ CAREFULLY

CSMS Case No:
NonCustodial Parent:
JCA Worker Code:
Inv Code:

Notice of Court Order Affecting Your Child Support

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 that 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, <u>Velazquez v. State of New York</u>, 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. The non-custodial parent has been advised under separate cover of the Supreme Court's order.

Effect of the Velazquez Court Decision on Your Child Support Order

If the non-custodial parent in this case (identified above) is a Velazquez class member, the order cannot be enforced in the future. The obligation amount has been reduced to $0, and any arrears that accrued under that order have been removed from the child support case identified above. Custodial parents or guardians are not required to return any child support payments received under the order. This will not reduce any arrears that the non-custodial parent owes under any valid child support order.

To Obtain a Modified or New Child Support Order

If you are a custodial parent or guardian receiving public assistance on behalf of the child(ren), we will initiate action on your behalf to seek a current child support order. If you are not receiving public assistance and you wish to obtain a current child support order, please contact our office within 30 days of the date of this notice by writing to us at the address listed below or by calling us at the phone number listed below. Please provide your name, address, social security number, date of birth, child support case number, 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 preparing and filing the petition. If you do not wish to modify or establish a new support order and your case is otherwise eligible for closure, we will commence action to close your case.

Sincerely,

Telephone Number: Ext.

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Rev. 6/2006

Date:

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┌─────────────────────────────────────┐
│   IMPORTANT NOTICE                   │
│   PLEASE READ CAREFULLY              │
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CSMS Case No:
Custodial Parent:
JCA Worker Code:
Inv Code:

Notice of Court Order Affecting Your Child Support

Our records show that your child support order was declared unenforceable in a class action lawsuit affecting $25 per month orders of support entered between September 16, 1989 and January 1, 1994. 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. The custodial parent has been advised under separate cover of the Supreme Court's order.

Effect of the Velazquez Court Decision on Your Child Support Order

Your order cannot be enforced in the future. Your obligation amount has been reduced to $0, and any arrears that accrued under that order have been removed from the child support arrears ledger. This will not reduce any arrears which you owe under any valid order of child support. The custodial parent or guardian of your child (ren) may seek a new or modified order of support requiring you to pay child support.

If you have any questions, please contact our office within 30 days of the date of this notice by writing to us at the address listed below or by calling us at the phone number listed below. Please provide your name, address, social security number, date of birth, child support case number, and the child's name.

Sincerely,

Telephone Number: **Ext.**

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