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COMMISSIONER

ADMINISTRATIVE LETTER

TRANSMITTAL NO.: 70 PWD-2

DATE: January 6, 1970

TO: Commissioners of Social Services

SUBJECT: Bryant v. Wyman and Barbaro
(Right of Recipient to Appear at Eligibility Interview with Attorney)

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A recent case in the federal courts (Bryant v. Wyman and Barbaro, U.S. Court of Appeals, 2nd Circuit, decided December 11, 1969) has brought to the fore the Department's policy with respect to an applicant or recipient's right to have a representative with him at an eligibility interview by a caseworker or other official of a social services district. There has apparently been some confusion on the part of social services districts to the effect that State policy precludes the presence of a representative at such interviews. This is not so. To the contrary, as was made clear to the Court, State policy does not prohibit representation at interviews but affirmatively authorizes a social services district to permit an applicant or recipient to appear at an interview with counsel or lay representative. There can be no dispute with the right to appear with counsel at an interview wherein the information elicited could be the basis for criminal prosecution. It is difficult, if not impossible, to determine in advance, which interview relating to eligibility and related problems of recovery, will take on the aspects of a criminal or related investigation. For this reason, the policy of this Department requires that an applicant or recipient be permitted to appear with an attorney or other representative at any interview or conference with a caseworker or other official of a social services district, whenever such interview or conference relates to questions of eligibility for public assistance and care, or the amount to which the person interviewed is or was entitled.

In view of this statement of policy, the court dismissed the appeal as moot. However, in its decision, the court stated as follows:

> "Nevertheless we have no doubt that it is the policy of the State of New York to permit such assistance or representation and, if this policy is complied with in Nassau County, it renders all three of the pending appeals moot. In the interests of federal-state comity this court is reluctant to intervene in a matter which concerns the internal administration of state welfare laws. The only misgivings attendant on dismissal of the appeals in the present case have to do with possible misunderstandings or differences of policy on the part of local welfare agencies in the absence of the issuance by the Commissioner of a binding directive to them to follow the State's policy in this regard. It is abundantly clear that

he has such power under §34 of the Social Welfare Law, and it would obviate constitutional questions in the present cases, both as to denial of right to counsel and a possible unequal application of the laws, if such an order were promulgated. On the assumption that this will be done, we dismiss the appeals as moot, without prejudice, however, to a filing, between 60 and 70 days from date, of a motion for rehearing in the event that such a directive has not been issued within 60 days from the date of this decision."

Accordingly, the policy of the Department as now in effect, and as it had previously been in effect, will shortly be further implemented by appropriate amendment of the Regulations of the State Department of Social Services in order to fully resolve the court's "misgivings *** in the absence of the issuance by the Commissioner of a binding directive to them [social services districts] to follow the State's policy in this regard."

George K. Wyman
Commissioner