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STATE OF NEW YORK

DEPARTMENT OF SOCIAL SERVICES

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COMMISSIONER

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ALBANY, NEW YORK 12243

INFORMATIONAL LETTER

TRANSMITTAL NO.: 76 INF-13

TO: Commissioners of All Social
Services Districts
SUBJECT: Evidentiary Requirements for Case Actions
and Fair Hearings for "Man-in-the-house" cases

DATE: May 5, 1976

SUGGESTED
DISTRIBUTION: All Public Assistance Staff
All Legal Staff
All Child Support Staff
All Medical Staff

I. Purpose

Local social services districts are expressing increasing concern as to the proper treatment of "man-in-the-house" cases, and as to the criteria utilized in review of these cases by the fair hearing process.

(1) The purpose of this transmittal is to assist local districts in the attainment of two major objectives: The successful defense of a higher percentage of case actions in man in the house cases by improved investigation and preparation and a corresponding avoidance of improper case actions.

There are two considerations, discussed more fully below, which should help to clarify the differences in evidentiary standards applicable at the local level in considering whether case action is warranted (e.g., whether a case should be closed or a grant reduced) and at the state level, in reviewing local district determinations by the hearing process.

(a) The local agency must obtain, by investigation, sufficient information indicating the presence of a man in the house to proceed with case action.

(b) The criteria for affirmance of an agency determination by fair hearing decision are often more stringent than the criteria upon which case action should be initiated.

(2) If there are any questions regarding this release, please contact:

Jack Hickey
Division of Income Maintenance
at 800-342-3710, extension 71137

or David S. Kellogg
Office of Legal Affairs
at 800-342-3710, extension 71750

FILING REFERENCE

NONE

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II. Criteria for Case Action

The IV-D manual of the State Department of Social Services sets forth the procedure to be followed in verifying categorical eligibility for aid to dependent children based upon the absence of a parent. These procedures are outlined in detail in the manual and indicate that when the initial investigation, including a home visit, has failed to verify the location of the absent parent, a more intensive investigation shall be required which shall include an intensive field investigation and referral to the State Parent Locator Service. If the investigation confirms the fact that the absent parent is in the home, appropriate case action should be taken.

Although the initial investigation will often reveal valuable avenues for further investigation, case action should not be initiated based upon the suspected presence of a parent or man in the house unless investigation has provided an accumulation of corroborating evidence of such presence. For example, the initial 30 day investigation requires, at a minimum, a home visit and at least two collateral sources, such as relatives, friends, landlord, neighbors, U.S. Postal Service, etc.. If these contacts do not produce what is felt to be sufficient corroborating evidence, other leads should be explored.

It should also be noted that in many cases the intensive investigation produces sufficient corroboration to justify case action even though the evidence accumulated will often, by its very nature, be largely "circumstantial", indicating only indirectly that the man resides in the household (e.g. a post office clearance by itself indicates only that the man has received mail at the address in question, or that a deserting parent has not changed his address). This factor is important to a consideration of the role of the fair hearing in "man-in-the-house" cases.

III. The Fair Hearing

The fair hearing procedure in New York State is mandated by federal law, federal regulations and federal court decisions. It is a quasi-judicial administrative proceeding wherein the applicant or recipient of assistance is afforded an opportunity for a State review of a local agency determination. Pursuant to Federal requirements, generated by the U.S. Supreme Court case of Goldberg v. Kelly, the applicant or recipient must be given an opportunity to present his own case and rebut that of the agency before an impartial hearing officer through the production of documents and witnesses and by confronting and cross-examining witnesses of the agency. Such individuals are also entitled to be represented, at the hearing, by an attorney or other individual of their choice.

It is a long standing rule of administrative law that an administrative decision must be based upon "substantial evidence". According to the New York State Court of Appeals, a finding of fact is based upon substantial evidence if, upon consideration of all the evidence presented, the finding is reasonable and rational. The finding of fact, although it may not be one upon which all reasonable persons

would agree, is one which could be made by a reasonable person from the evidence as a whole. For example, in a "man-in-the-house" case, the evidence produced by a local social services agency may, if not refuted or controverted by other evidence, be sufficient to uphold its determination. However, an evaluation of the evidence and testimony brought forth by the appellant must be made and the evidence must be sifted and weighed as a totality.

This process often depends, as a result, primarily upon the "quality" of the agency's evidence as weighed against the credibility of the appellant or the appellant's witnesses, since, as indicated, much of the agency's evidence will be circumstantial or hearsay.

The ideal of the "quality" of evidence is one which is embodied in the law applicable to courtroom proceedings in "rules of evidence" which are designed to exclude unreliable evidence, and in "burdens of proof", which are designed to ensure that minimal evidentiary standards are met. These legal rules are not applicable per se to Fair Hearings, but they provide assistance in determining those types of proof which are, by their inherent nature, more reliable and of more probative value in the fair hearing process. A few of these are outlined below:

(1) Direct Evidence - The best evidence of the existence of a fact such as the presence of a man-in-the-house, is "direct evidence". Direct evidence is that which is related by witnesses having actual knowledge of facts by means of their senses, and which tends, by definition, to establish directly a fact in issue. The testimony of relatives, friends or neighbors that the absent father to their personal knowledge resides in the recipient's household would be considered direct evidence. Even this evidence may, of course, be rebutted by cross-examination or other evidence which impugns the witnesses' veracity or otherwise establishes as a fact that the absent parent does not reside in the recipient's household.

(2) Circumstantial Evidence - Circumstantial evidence is proof of collateral facts, from which an inference may be drawn that the principal or essential facts are true (e.g. the presence of the parent in the household). Although each "piece" of circumstantial evidence alone is not sufficient to establish the fact at issue, many "pieces" together or many "pieces" presented in conjunction with other evidence may be sufficient. Much of the documentary evidence which must be used in "man-in-the house" cases is circumstantial in nature. For example, post office clearances, motor vehicle reports, employer reports, etc., establish, by themselves, only that the parent has used the recipient's address for varying purposes, and not that the man resides in the household. However, if the man is shown to have repeatedly and consistently used the recipient's address, the inference that he actually resides there becomes stronger. It becomes stronger yet if supported by other more persuasive circumstantial evidence (e.g. a case entry record of conversations with a neighbor wherein the neighbor states that the man is frequently seen entering and leaving the recipient's residence). It should be noted, however, that circumstantial or direct evidence by its very nature is subject to explanation by the recipient.

For example, credible testimony by the recipient and/or witnesses that the man visits his children pursuant to a court order and that bills for the apartment remained in a deserting parent's name would tend to negate the inference raised by a post office clearance and the testimony of a neighbor that the man is seen entering and leaving the residence.

The discovery of such circumstantial evidence should often lead to investigative steps which will produce more reliable evidence. For example, once an employer's report is received, the man has, in fact, been located and the investigation should, with little difficulty, center upon him. The man should be subpoenaed to testify at the hearing and to produce proof of his residence, fellow workers may be questioned in an attempt to verify his residence, etc.. Many times, the man, when confronted, will give another address, indicating to the agency that he lives elsewhere. This type of information opens up a whole new area of investigation for the agency which may tend to either establish that he does not reside with the recipient or further support the agency determination that he does reside with the recipient.

(3) Hearsay Evidence - Hearsay is evidence which, whether orally or in writing, seeks to establish the existence of a fact based not upon the witness' own personal knowledge or observation, but upon what someone else said. Much of the documentary evidence which was listed above as "circumstantial" is also "hearsay", as is much testimony which might be elicited at the hearing. For example, testimony of an investigator as to what another individual told him is hearsay, since the truthfulness of the other person's statement cannot be ascertained by questioning the investigator. In addition, in the absence of direct testimony by the authors, entries from case records, reports of investigators and similar documents are often "double hearsay", if they relate statements made by the authors (who are not present for the purpose of cross-examination) as to statements made by other persons (who are likewise not subject to questioning). As indicated above, hearsay evidence is usually inadmissible in a court of law since it is considered unreliable, but it is admissible in fair hearings. However, every precaution must be taken at a hearing to minimize the unreliability of the evidence. For example, direct testimony of a neighbor is considerably more persuasive than testimony of an investigator as to what the neighbor told him; the investigator's testimony is, in turn, much more persuasive than his report made after speaking to the neighbor. In any instance where the substance of a person's statement is important, the above evidentiary priorities should be considered, since direct testimony of the recipient, if not incredible or otherwise controverted, may often be sufficient to overcome any inferences raised by a series of hearsay documents or testimony. The courts, in reviewing fair hearing decisions, have been most concerned with the lack of testimony by persons either involved in the investigation or having personal knowledge of the facts at issue. The courts have given the direct testimony of the appellant great weight when compared to circumstantial hearsay evidence when no one having personal knowledge of the case appears on behalf of the local district.

In light of the foregoing, it is apparent that evidence sufficient to justify case action in "man-in-the-house" cases may not be sufficient to uphold the determination after a fair hearing, once the appellant is provided with an adequate opportunity to present evidence in her own behalf.

IV. Guidelines for Preparation for Fair Hearings

The foregoing material points out the need for full investigation and preparation of suspected "man-in-the-house" cases. This need is further highlighted by the strict view adopted by the courts of this state as to the nature of the evidence necessary to affirm an agency determination in these cases. The following guidelines, which have been developed from an analysis of pertinent court decisions, should be helpful for local social services districts in undertaking such investigation and preparation. Although no strict formula can be used to guarantee success at a fair hearing, these guidelines should enable the local district to establish more effectively the presence of the man in the household at a fair hearing.

(a) Local agencies should not, as indicated above, undertake a case action unless there is evidence which strongly suggests the probability that the man resides in the household.

(b) This evidence should be accumulated through as intensive an investigation as resources allow, covering all readily available sources. Reports of other agencies (e.g. the Office of Audit and Quality Control of this department) should be independently investigated in order that competent and reliable evidence or testimony may be marshalled for presentation at a hearing. Such reports are usually not designed to constitute evidence, by themselves, at hearings, nor are they usually designed to prompt case action without independent investigations, but are rather intended to point out the necessity for case action if the circumstances indicated are found, in fact, to exist.

(c) The agency should request the recipient to provide verification that the man does not reside in the household. The recipient may be anxious to divulge or ascertain the actual whereabouts of the man in order to avoid a possible adverse case action predicated either upon the alleged presence of the man in the household or upon failure to cooperate in location and support efforts under IV-D.

(d) Full preparation for the hearing should be made, including the accumulation of reliable competent documentation and witnesses. Whenever possible, persons involved in the investigation should be available to testify at the hearing as should persons interviewed during the investigation who have provided information. If persons from whom information has been received are unable to testify personally, affidavits containing that information should be taken and presented at the hearing.

(e) If the absent parent's place of employment or other information as to his whereabouts are known, he should be located and subpoenaed to testify at the hearing and provide verification of his place of residence. If the parent can verify prior to the hearing that he does not live with the recipient, the case action should not be taken, and instead efforts should be made to compel support, if warranted.

(f) Inasmuch as fair hearings are quasi-judicial proceedings, it is suggested that local districts utilize their Welfare Attorney or County Attorney, to the extent feasible, to help analyze this type of case, to prepare most effectively for a hearing and to evaluate the possibility of referral for criminal action. If possible, in those cases which the local district consider particularly severe fraud cases, the attorney for the local district should be encouraged to participate in the preparation thereof and in the hearing itself.

While use of the foregoing guidelines will not guarantee that each local agency will prevail at each "man-in-the-house" hearing, it should help to ensure more adequate preparation for hearings and to provide insight into the workings of the fair hearing process, thereby increasing the probability of successful case presentation.



Blanche Bernstein, Deputy Commissioner
Division of Income Maintenance