

+-----+
| LOCAL COMMISSIONERS MEMORANDUM |
+-----+
DSS-4037EL (Rev. 9/89)

Transmittal No: 95 LCM-42

Date: April 18, 1995

Division: Legal Affairs

TO: Local District Commissioners

SUBJECT: Updated information concerning
Velasquez v. Bane

ATTACHMENTS: NONE

This LCM is intended to provide the social services districts' Child Support Enforcement Units (CSEUs) with updated information regarding the status of Velasquez v. Bane, a class-action lawsuit concerning \$25 per month "minimum orders" issued by the State's family courts pursuant to Family Court Act (FCA) 413.1(g). As the social services districts have been advised previously, Velasquez addresses the manner in which the Department and the social services districts must implement the Court of Appeals' ruling in Rose v. Moody, 83 NY2d 65 (1993), which held that FCA 413.1(g) was invalid insofar as it precluded the family court from issuing child support orders of less than \$25 per month. The social services districts were previously advised in 94 LCM-81 of actions they were required to implement as a result of the Velasquez preliminary injunction. This LCM supplements the instructions contained in 94 LCM-81. Until further notice, the instructions in 94 LCM-81 remain in effect.

On November 18, 1994, the Supreme Court in New York County issued a final decision in Velasquez. The court subsequently issued its order and judgment on February 1, 1995, which was not served upon the Department until recently. The Department's appeal of the order will be filed shortly with the Appellate Division for the First Department. The Department will obtain an automatic stay of the order pending the Appellate Division's disposition of the appeal. In the event the stay is challenged, the Department will defend the stay and will advise you of the status of any implementation requirements that may be imposed.

Pending the resolution of the appeal, it is not necessary for the social services districts' CSEUs to implement the Velasquez order. However, the CSEUs must continue to execute the requirements imposed by 94 LCM-81 relating to the preliminary injunction.

For your information, the Velasquez order states the following:

1. The court's order declares that the issuance of \$25 presumptive child support orders pursuant to FCA 413.1(d) and 18 NYCRR 347.10(b)(1) is permissible under federal law, but that FCA 413.1(g) violates 42 USC 667(b)(2) and the Supremacy Clause of the United States Constitution to the extent that it mandates a post-rebuttal \$25 per month child support order;
2. the order grants Statewide class certification to the plaintiffs;
3. the order declares that the Department and the social services districts are permanently enjoined from enforcing all \$25 per month child support orders issued against class members prior to January, 1994;
4. the order requires that all \$25 per month child support orders issued against poverty-level respondents since the 1989 implementation of the State's child support guidelines must be vacated in those instances where the child support proceeding was commenced by a social services district and where the respondent was not told that he or she could rebut the \$25 per month presumptive amount;
5. the order requires that the Department identify all such class members and send them a notice, the text of which is appended to the order, advising them that they may request a refund of any support payments that they made pursuant to their vacated support order. The order also requires that any refunds made pursuant to the order shall be made from the public treasury and shall not be deducted from any child who may have been the beneficiary of such payments; and
6. the order requires that each social services district attach a notice, the text of which is appended to the order, to each support petition filed by the social services district.

Again, it is not necessary for the social services districts to implement the Velasquez order's requirements at this time due to the Department's impending appeal of the order. However, the CSEUs must continue to comply with the requirements stated in 94 LCM-81.

Date April 18, 1995

Trans. No. 95 LCM-42

Page No. 3

Please advise your Child Support Enforcement Unit and its attorneys of these requirements immediately. If you require further information regarding the Velasquez lawsuit, please contact Assistant Counsel Anne Binseel of the Division of Legal Affairs at (518) 474-7693.

John E. Robitzek
Deputy General Counsel
Division of Legal Affairs