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

Transmittal No: 95 LCM-82

Date: July 26, 1995

Division: Management Support
and Quality
Improvement

TO: Local District Commissioners

SUBJECT: Suggested Language For Letter Regarding
Review and Adjustment Process

ATTACHMENTS: Attachment I: Suggested language - available on-line

The purpose of this LCM is to provide districts with information describing the review and adjustment process which can be made available under local district letterhead to courts, bar associations, and other interested persons who have a need to or wish to know how the process will work.

If you have any questions concerning this LCM, please contact your OCSE County Representative at 1-800-343-8859.

Joan S. Keenan, Director
Office of Child Support Enforcement

"Dear :

This letter provides an overview of how the process for review and adjustment of child support orders will occur in New York State.

To ensure that children receive updated and meaningful amounts of child support relative to their parent's income and the state's child support guidelines, and to ensure adequate health care coverage, federal and state laws were amended to require a periodic review of child support orders in Title IV-D cases once every three years.

Initial Notification:

A "Notice of Right to Request a Review" will be sent to all parties to IV-D child support cases with court orders of child support. This notice will advise the parties that the purposes of conducting a review are to determine the appropriateness of adjusting the order to reflect an updated child support obligation as calculated by the state's child support guidelines, and for the inclusion of health insurance for the children named in the order of support.

Eligible Cases:

All AFDC or Title IV-E cases (except those for which a good cause determination has been made) and non-AFDC cases for which a review has been requested by one of the parties, are eligible for review if thirty-six months have elapsed since either the issuance of the order of support (original, modified or adjusted), or the last review, whichever is later.

Issuance of Notice of Intent to Review:

A "Notice of Intent to Review" and a "Net Worth Affidavit" form will be sent by regular mail to all parties of cases selected for review, advising each party that they must submit to the local district Child Support Enforcement Unit (CSEU) all requested information, including a completed "Net Worth Affidavit" signed and notarized, copies of State and federal income tax returns, current and representative paystubs, and other supporting documentation, such as child care bills. The parties will be advised that they may schedule a conference with the CSEU regarding review and adjustment.

Determination of Income:

The CSEU will use the financial information furnished by the parties to determine income and will review the order of support to determine if health care coverage is provided for in the order of support. If either party fails to provide any of the required information, the CSEU will take the following action:

If the party requesting the review in a non-AFDC case fails to provide documented financial information, the CSEU will terminate the review.

If the non-custodial parent in an AFDC or Title IV-E case or the non-requesting party in a non-AFDC case fails to provide documented financial information, the CSEU will seek such information from the files of the NYS Department of Taxation and Finance, or from the Welfare Management System (WMS) for public assistance clients.

If no information for the non-custodial parent is obtained from Tax and Finance records, the CSEU will apply the consumer price index, compounded annually, to the amount of the child support in the last permanent order of support to determine the new order amount. If the obligation amount on the last permanent order of support is \$0.00, the CSEU will use the average support obligation for all support orders issued in the county and made payable to the SCU during a twelve month period as updated every year to determine the new order amount. In addition, the non-custodial parent will be responsible for 75% of the total amount of reasonable child care expenses and 75% of the total amount of future reasonable health care expenses attributable to any child not covered by insurance.

Calculation of Revised Basic Child Support Amount/Inclusion of Health Care Coverage:

The CSEU will determine income and compute the basic child support obligation pursuant to the child support guidelines and compare the result to the amount of the current order. A 10% difference in the two amounts (either higher or lower) establishes a legal basis for the adjustment of the order. The CSEU will also review the availability of health insurance to determine if provisions for same must be added to the order.

Determination of Adjustment:

Upward Adjustment of the Order: When the result of the CSEU review indicates an upward adjustment is appropriate (i.e., the calculated correct amount is 10% or more than the order under review), the CSEU will prepare the following documents, file the originals with the court, and send copies to all parties by regular mail:

"Notice of Adjustment of Findings and Rights of the Parties";

"Notice of Results of Review";

"Affidavit With Findings In Support Of Adjustment" (which must be signed and notarized);

"Affidavit of Service" (which must be signed and notarized); and,

"Proposed Adjusted Order of Support".

If, after 35 days of receipt of a proposed adjusted order, no objection has been filed by either party, the clerk of the court will immediately issue the order without any further review, modification or other prior action by the court or any judge or hearing examiner and immediately transmit copies of the order to the CSEU and to the parties.

If an objection is received by the court within 35 days of a party receiving a proposed adjusted order, a hearing will be scheduled by the court with notice to the parties and to the CSEU.

Downward Adjustment: When the result of the CSEU's review indicates a downward adjustment of the amount of a support order is indicated, the CSEU will send a "Notice of Results of Review" and a "Notice of Findings in Support of Adjustment/Non-Adjustment" to all parties by regular mail. Parties will be advised that if they still wish to pursue an adjustment, they may seek assistance by obtaining the appropriate forms directly from the court which issued the original support order. District staff will be required to appear in court relative to their involvement with review and adjustment.

No Adjustment: When the result of the CSEU's review indicates that there is no deviation of at least ten percent, the CSEU will send a "Notice of Results of Review" and a "Notice of Findings in Support of Adjustment/Non-Adjustment" to all parties by regular mail. Parties will be advised that if they wish to challenge a finding of "no adjustment" that they are required to file an Article 78 proceeding.

If there are any questions regarding the review and adjustment process, please contact your local CSEU at ."