



CESAR A. PERALES  
 Commissioner

[An Administrative Directive is a written communication to local Social Services Districts providing directions to be followed in the administration of public assistance and care programs.]

**ADMINISTRATIVE DIRECTIVE**

TRANSMITTAL NO.: 85 ADM-17  
 [ Income Maintenance ]

TO: Commissioner of Social Services

SUBJECT: Procedure for Implementation of Legislation  
 Regarding Recipient Noncompliance with  
 Employment Related Requirements (SSL Section 131.5)

DATE: April 8, 1985

SUGGESTED DISTRIBUTION: Income Maintenance Director  
 Employment Coordinators  
 Fair Hearings Representatives  
 Medical Assistance Staff

CONTACT PERSON: Any questions about this release, other than those concerning medical assistance, should be directed to Michael Leonard, Division of Income Maintenance, Bureau of Employment Programs, by calling 1-800-342-3715, extension 4-7092, Medical Assistance questions should be directed to your MA County Representative at extension 3-7581.

**I. PURPOSE**

The purpose of this directive is to provide local social services districts with a mandatory State Social Services procedure for implementing the July 1984 changes to Section 131.5 of the Social Services Law regarding recipient noncompliance with employment related requirements.

This procedure is designed to encourage recipients, alleged to have willfully failed, without good cause, to comply with employment related requirements, to contact the local district and explain the reason(s) for their noncompliance.

**II. BACKGROUND**

Since February 1983, local districts have been obliged to comply with the court decision rendered in Allen v. Blum when providing recipients with a notice of intent to change the public assistance grant for willful failure to comply with employment related requirements. Administrative Directive 83 ADM-59, Earthlene Allen vs. Blum, issued November 30, 1983 has provided State policy for handling these cases.

**FILING REFERENCES**

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous Reference
81 ADM-55 80 ADM-18 83 ADM-59	83 ADM-59	18 NYCRR 351.21 351.22(e) 358.8(a)(2) 385 388	SSL 131.5 SSL 131.7-a SSL 164 SSL 164-b SSL 350-k SSL 350-1		PA Source Book Sections XI-H, XI-I, XI-J

DSS 2 EV. 8/B2)

In essence, Earthlene Allen requires that local districts investigate instances of noncompliance with employment related requirements and determine that they are willful and without good cause prior to issuance of a "Notice of Intent to Change the Public Assistance Grant."

In July 1984, revisions to Section 131.5 of the Social Services Law set forth specific procedures for handling recipient noncompliance with employment related requirements. Parts of the procedure established in 83 ADM-59 are not in compliance with these statutory revisions. This Administrative Directive replaces 83 ADM-59, which is cancelled.

### **III. PROGRAM IMPLICATIONS**

Local districts are no longer required to investigate each case of noncompliance and determine willfulness prior to sending a recipient an initial notice of intent to change the public assistance grant. Nevertheless, if a recipient responds to the initial notice prior to its effective date, the local district must provide the recipient with an opportunity to give reasons for his/her noncompliance. It will be the responsibility of the recipient, if he/she does respond to the notice with a request for a conference or hearing, to provide reasons for his/her failure or refusal to comply as described in the notice. The local district must then, using the recipient's explanation for noncompliance and any other available relevant information, make a determination of the willfulness of the noncompliance. Whether a local district will proceed to change the recipient's grant will depend upon this investigation and determination.

### **IV. REQUIRED ACTION**

#### **A. Implementation**

Effective May 1, 1985, local districts will implement the following procedure in handling issues of recipient noncompliance.

1. Recipients with unexcused failures to comply with assigned employment related requirements shall be sent an initial ten day notice, entitled "Notice of Intent to Change the Public Assistance Grant for Noncompliance with Employment Related Requirements (Notice A)" (See Attachment 1).

NOTE: It is imperative that this notice include a thorough description of the instance(s) in which the recipient failed to comply.

Attached to this initial notice shall be a "Notice of Employment Program Sanction, Recipient" as required by 84 ADM-27, Crawford v. Blum (see Attachment 4).

2. If the recipient does not respond to the initial notice by its effective date, he/she will be considered to have willfully failed, without good cause, to comply with employment program requirements and the notice shall take effect. As with any ten-day notice, the recipient has the right to request a fair hearing within 60 days of the issuance date of the notice.
3. If the recipient contacts the local district regarding the initial notice by its effective date:

- a. The local district must offer the responding recipient an opportunity to provide an explanation for his/her failure or refusal to comply with employment related requirements, and inform him/her that it is his/her responsibility to give reasons for his/her failure or refusal to comply. This opportunity must be provided prior to any further action by the agency that affects the recipient's public assistance based on the noncompliance. The recipient may choose to provide an explanation informally by phone or visit to the local district, or via a formal conference. He/she should be made aware that the reasons he/she gives for his/her noncompliance will be used by the local district to make a final determination of willfulness. Local districts must use judgment in determining whether recipients were actually provided this opportunity. For example, a recipient who requests a conference and does not report as scheduled but contacts the local district with a reasonable excuse for not being able to report, should be afforded the opportunity to reschedule the conference.
- b. The local district shall review the recipient's explanation, along with any other relevant information, and determine whether or not the noncompliance was in fact willful and without good cause.

NOTE: To avoid premature requests for fair hearings, staff should remind recipients, who do contact the agency in response to the notice, that no action will be taken to change their public assistance grant unless and until an adverse decision is made and a second ten day notice issued.

- c. If the district determines that the recipient's explanation is adequate, i.e., that he/she did not willfully fail to comply, without good cause, then the district shall cancel the initial ten day notice and notify the recipient of this determination using a "Notice of Determination Re: Compliance with Employment Related Requirements." The notice shall be sent as soon as possible following the determination of adequate explanation (See Attachment 2).
- d. If the district determines that the recipient willfully failed, without good cause, to comply with the assigned employment related requirements, a second ten day notice, entitled "Notice of Intent to Change the Public Assistance Grant for Noncompliance with Employment Related Requirements (Notice B)" shall be sent to the recipient (See Attachment 3). It is imperative that a full explanation of the recipient's willful noncompliance be provided on this notice. Additionally, the "Notice of Employment Program Sanction, Recipient" must be attached to this second notice as required by Crawford (Attachment 4).
- e. If the recipient does not respond to the second ten-day notice by the effective date of the notice, it shall take effect on that date. The recipient has the right to request a fair hearing within 60 days of the issuance date of the notice.
- f. If the recipient responds to the second ten-day notice, he/she has the right to a fair hearing, an agency conference, or both. The request for an agency conference only shall not deter the local district from taking

action to reduce or discontinue assistance on the effective date of the notice. Current procedure for aid continuing shall apply if the recipient requests a fair hearing prior to the effective date of the notice.

4. If the recipient requests a fair hearing in response to the initial notice, a hearing shall be scheduled based on that notice. Current procedure for aid continuing shall apply if the recipient requests the fair hearing prior to the effective date of the notice.

A fair hearing for an initial notice may address, but not be limited to, any of the following issues:

- a. a claim by the recipient that he/she was unable to contact or not afforded the opportunity to provide an explanation of his/her noncompliance to the local district;
- b. a claim by the recipient that his/her noncompliance was not willful and without good cause, and he/she has no interest in offering an explanation to the local district;
- c. a claim by the recipient that his/her public assistance is inappropriately calculated as a result of the notice;
- d. a claim by the recipient that the progressiveness of the sanction is unwarranted.

Fair hearings involving claim 4a (above), where the recipient successfully demonstrates the claim to be true, may result in the question of willful noncompliance being remanded to the local district for review and determination, or may have the issue resolved through the fair hearing itself.

Fair hearings involving claim 4b, 4c, or 4d only shall be resolved by the fair hearing itself.

#### B. Mandated Notices

The notices described and incorporated into this Administrative Directive are mandatory. Local equivalents may be developed as long as the exact language and order of information is not altered. All local equivalents must be approved by the Department. Drafts of local equivalents should be transmitted to:

Michael F. Leonard  
Bureau of Employment Programs  
New York State Department of Social Services  
40 North Pearl Street, Section 7B  
Albany, New York 12243

#### V. ADDITIONAL INFORMATION

##### Applicants

The procedure outlined in this Administrative Directive does not apply to applicants. Nevertheless, the concept of willfulness does apply to applicants who fail to comply

with employment related requirements assigned them as part of the eligibility determination process. Local districts must investigate instances of applicant noncompliance with employment related requirements in the same manner that they investigate other eligibility issues pursuant to Section 351.22 of Department Regulations. In all such instances where an applicant is issued the standard "Notice of Denial of Public Assistance Application and Notice of Status of Medical Assistance Application," the notice shall state that it is the willful failure, without good cause, to comply with employment related requirements (specifically identified) that has precipitated the intended action.

#### WIN Districts

Because the WIN program is governed by federal regulations, this directive does not apply to recipients who are WIN registrants. Any failure on their part to comply with the WIN program will continue to be processed through the WIN Sponsor adjudication system. However, this directive does apply to ADC recipients in WIN districts prior to their registration with WIN.

#### Food Stamp Implications

This directive applies to public assistance Food Stamp recipients who are involved in USDA approved employment programs. In such programs, the PA work rules are recognized as equivalent to the USDA work rules. If a PA/FS recipient is found to have willfully failed to comply, both PA and FS sanctions may be applied. Nevertheless, a PA/FS household shall not be denied food stamp benefits because a member of that household willfully fails to comply with public assistance requirements that are not also USDA food stamp requirements.


The attached notices provide no information regarding intended food stamps case action. When food stamps eligibility is terminated or benefits reduced for any food stamps case during an existing certification period, notification to the household must be done via a food stamp notice entitled "Notice of Intent to Change Food Stamp Benefits".

#### Medical Assistance Implications

Because MA HR related individuals are subject to certain work requirements as provided for in Part 385 of Departmental Regulations, the requirements set forth in this ADM shall apply to all MA HR related applicants and recipients. This does not include individuals covered under catastrophic illness provisions, as these recipients are not subject to work requirements.

#### **VI. EFFECTIVE DATE**

This Directive shall take effect May 1, 1985.

  
\_\_\_\_\_  
Michael J. Dowling  
Deputy Commissioner  
Division of Income Maintenance

NOTICE OF INTENT TO CHANGE PUBLIC ASSISTANCE GRANT FOR NONCOMPLIANCE WITH EMPLOYMENT RELATED REQUIREMENTS

**NOTICE A**

DATE SENT                      EFFECTIVE DATE

NAME AND ADDRESS OF (CENTER)  
DEPARTMENT OF SOCIAL SERVICES

DISTRICT                      CASE NUMBER

This is to advise you that this agency intends to:

**PUBLIC ASSISTANCE**

- ( ) REDUCE your public assistance grant from \$ \_\_\_\_\_ to \$ \_\_\_\_\_ effective \_\_\_\_\_.
- ( ) SUSPEND your public assistance grant effective \_\_\_\_\_.

The reason for this action is that on \_\_\_\_\_ you failed to:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

This action is being taken pursuant to Section 131.5 of the Social Services Law.

You should contact this agency by phone \_\_\_\_\_ or in person to see \_\_\_\_\_ before the effective date of this notice. If you do not contact the agency, your failure will be considered a willful violation and your benefits will be reduced or suspended. If you do contact this agency, your assistance will continue unchanged until you have had the chance to explain the circumstances of your noncompliance. It is your responsibility to give reasons why we should not take this action. We will then review your explanation, along with any other relevant information, and make a final determination. You will be notified in writing of the results of the review.

If we determine that you did not willfully and without good cause fail or refuse to comply with employment requirements, this notice (and the attached notice of program sanction) will be nullified and no action will be taken to reduce or suspend your benefits.

If we determine that you did willfully and without good cause, fail or refuse to comply with employment related requirements, you will receive another notice and can request a fair hearing at that time to review the proposed change.

If you have any questions about the way your budget was computed, please contact your worker at \_\_\_\_\_.

**MEDICAL ASSISTANCE**

\_\_\_ Your medical assistance coverage remains unchanged. You will continue to receive a medical assistance authorization entitling you to full services.

\_\_\_ Your medical assistance continues with a SPENDDOWN. Your total monthly income is \$ \_\_\_\_\_. Your total monthly deductions are \$ \_\_\_\_\_. The difference between these is your monthly NET income for Medicaid. This is \$ \_\_\_\_\_. The allowable level for a family household your size is \$ \_\_\_\_\_. The difference between your net income and this level is \$ \_\_\_\_\_. This is called your monthly surplus income.

If your medical expenses equal this amount in any month, Medicaid will pay those covered medical expenses incurred during the month which are more than your surplus income amount. If you have an inpatient hospital bill more than \$ \_\_\_\_\_ (your surplus income for six months), you can also receive Medicaid coverage.

\_\_\_ Although you are not currently eligible, in the event you have inpatient hospital bills, please contact us so that we may determine your eligibility for catastrophic coverage for those inpatient hospital bills.

- We do not have enough information to decide your continued eligibility for medical assistance. Please contact us at \_\_\_\_\_ so we can tell you the information we need.
- Your application for continued medical assistance is being reviewed. We will sent you our decision within thirty days.
- Your medical assistance is being **discontinued** effective \_\_\_\_\_ because (legal or regulatory citation included):

**SERVICES**

**Recipients of Social Services** - A loss of Public Assistance and Medical Assistance benefits will require a redetermination of your eligibility for social services within 30 days of such a decision. This does not necessarily mean that these services will be terminated. It means that your continuing eligibility for these services will have to be redetermined. Please contact Services at \_\_\_\_\_ for further information.

**RIGHT TO A FAIR HEARING IF YOU DON'T AGREE WITH THESE ACTIONS**

If you believe that the above action(s) should not be taken you may request a State fair hearing:

- (1) By telephoning \_\_\_\_\_, or;
- (2) By writing to the Fair Hearing Section, New York State Department of Social Services, P.O. Box 1930, Albany, New York 12201, and including one copy of this notice with your letter.

**YOUR REQUEST FOR A FAIR HEARING MUST BE MADE WITHIN 60 DAYS OF THE DATE OF THIS NOTICE, EXCEPT THAT YOU HAVE 90 DAYS TO REQUEST A HEARING AS TO YOUR FOOD STAMPS.**

If you request a fair hearing before the effective date of this notice, you will continue to receive your public assistance, food stamps, medical assistance and social services unchanged until the fair hearing decision is issued. If you request a fair hearing, a notice will be sent to you informing you of the time and place of the hearing. At the hearing it will be your responsibility to give reasons for such alleged failure or refusal to comply with employment related requirements. You have the right to be represented by an attorney or other representative. At the hearing, you, your attorney or other representative will have the opportunity to present written and oral evidence to demonstrate why the action should not be taken, as well as an opportunity to question any persons who appear at the hearing and present evidence against you. You also have a right to bring witnesses to speak in your favor. You should bring to the hearing any documents such as paystubs, rent receipts, medical bills, heating bills, childcare expenses, etc., that may be helpful in presenting your case.

In addition, if you need legal assistance for your conference or fair hearing, you may be able to obtain it free if you cannot afford a lawyer, by contacting:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature of Worker \_\_\_\_\_ Telephone Number \_\_\_\_\_

Date \_\_\_\_\_

County                    Local Office#  
Notice Date            Effective Date  
Date of Birth    Sex    Soc. Sec. Number  
Case Name (L, F, MI)  
Street  
City            State            Zip Code

Notice of Determination Re:  
Compliance with Employment  
Related Requirements

This is to inform you that this agency has reviewed your case and your explanation for your alleged noncompliance on \_\_\_\_\_ with employment-related requirements, and has found it to be satisfactory. Therefore, no action will be taken on the NOTICE we sent you, date \_\_\_\_\_, and you will continue to receive your assistance unchanged.

Signature of Worker \_\_\_\_\_ Telephone Number \_\_\_\_\_

Date \_\_\_\_\_



NOTICE OF INTENT TO CHANGE PUBLIC ASSISTANCE GRANT FOR NONCOMPLIANCE  
WITH EMPLOYMENT RELATED REQUIREMENTS

**NOTICE B**

DATE SENT                      EFFECTIVE DATE

NAME AND ADDRESS OF (CENTER)  
DEPARTMENT OF SOCIAL SERVICES

DISTRICT                      CASE NUMBER

This is to advise you that this agency intends to:

- ( ) REDUCE your public assistance grant from \$ \_\_\_\_\_ to \$ \_\_\_\_\_ effective \_\_\_\_\_.
- ( ) SUSPEND your public assistance grant effective \_\_\_\_\_.

The reason for this action is that after a review of your case as well as the explanation which you provided to us, it has been determined that on \_\_\_\_\_ you willfully and without good cause failed or refused \_\_\_\_\_

\_\_\_\_\_

This action is being taken pursuant to: (legal or regulatory citation)

If you have any questions about how your budget was computed, please contact your worker. Also, you may have a conference to review this action. If you want a conference, you should request it as soon as possible. A conference may resolve any questions you have about this action. You may request a conference by calling this agency at \_\_\_\_\_. This number is for the purpose of requesting a conference only, and not to request a fair hearing. The right to a conference is separate from the right to a fair hearing, and does not affect your right to a fair hearing, which is described below. If you want to have your benefits continued unchanged until the fair hearing decision is issued, you must request a fair hearing before the effective date of the notice (a request for a conference alone will not result in a continuation of your benefits).

MEDICAL ASSISTANCE

\_\_\_\_ Your medical assistance coverage remains unchanged. You will continue to receive a medical assistance authorization entitling you to full services.

\_\_\_\_ Your medical assistance continues with a SPENDDOWN. Your total monthly income is \$ \_\_\_\_\_. Your total monthly deductions are \$ \_\_\_\_\_. The difference between these is your monthly NET income for Medicaid. This is \$ \_\_\_\_\_. The allowable level for a family household your size is \$ \_\_\_\_\_. The difference between your net income and this level is \$ \_\_\_\_\_. This is called your monthly surplus income.

If your medical expenses equal this amount in any month, Medicaid will pay those covered medical expenses incurred during the month which are more than your surplus income amount. If you have an inpatient hospital bill more than \$ \_\_\_\_\_ (your surplus income for six months), you can also receive Medicaid coverage.

\_\_\_\_ Although you are not currently eligible, in the event you have inpatient hospital bills, please contact us so that we may determine your eligibility for catastrophic coverage for those inpatient hospital bills.

\_\_\_\_ We do not have enough information to decide your continued eligibility for medical assistance. Please contact us at \_\_\_\_\_ so we can tell you the information we need.

\_\_\_\_ Your application for continued medical assistance is being reviewed. We will sent you our decision within thirty days.

\_\_\_\_ Your medical assistance is being discontinued effective \_\_\_\_\_ because (legal or regulatory citation included):

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- (1) By telephoning \_\_\_\_\_, or;
- (2) By writing to the Fair Hearing Section, New York State Department of Social Services, P.O. Box 1930, Albany, New York 12201, and including one copy of this notice with your letter.

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If you request a fair hearing before the effective date of this notice, you will continue to receive your public assistance, food stamps, medical assistance and social services unchanged until the fair hearing decision is issued. If you request a fair hearing, a notice will be sent to you informing you of the time and place of the hearing. At the hearing it will be your responsibility to give reasons for such alleged failure or refusal to comply with employment related requirements. You have the right to be represented by an attorney or other representative. At the hearing, you, your attorney or other representative will have the opportunity to present written and oral evidence to demonstrate why the action should not be taken, as well as an opportunity to question any persons who appear at the hearing and present evidence against you. You also have a right to bring witnesses to speak in your favor. You should bring to the hearing any documents such as paystubs, rent receipts, medical bills, heating bills, childcare expenses, etc., that may be helpful in presenting your case.

In addition, if you need legal assistance for your conference or fair hearing, you may be able to obtain it free if you cannot afford a lawyer, by contacting:

\_\_\_\_\_  
\_\_\_\_\_

Signature of Worker \_\_\_\_\_ Telephone Number \_\_\_\_\_

Date \_\_\_\_\_

LOCAL DEPARTMENT OF SOCIAL SERVICES

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone Number \_\_\_\_\_

RECIPIENT

Name \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_

NOTICE OF EMPLOYMENT PROGRAM SANCTION  
RECIPIENT

You are being sanctioned for willful failure without good cause to comply with employment program requirements. During the sanction period your case will remain open but you will receive no cash assistance. This sanction will begin on \_\_\_\_\_ and will last for \_\_\_\_\_ days and until such time as you are willing to comply.

You must show that you are willing to comply with the requirements of the employment program to be eligible for cash assistance at the end of your sanction. You have the right to demonstrate your willingness to comply with employment program requirements at any time while the sanction is in effect. Contact the local district (or in New York City the Income Maintenance Center) to find what action is necessary on your part to demonstrate willingness to comply. (Telephone \_\_\_\_\_).

While a sanction is in effect you are responsible for complying with all other eligibility requirements such as face-to-face recertification and notifying the agency of any changes that occur in your household or in your financial circumstances.

Medical Assistance

This action will have the following effect on your Medicaid coverage: