

LOCAL COMMISSIONERS MEMORANDUM

DSS-4037EL (Rev. 9/89)

Transmittal No: 91 LCM-100

Date: May 29, 1991

Division: Legal Affairs

TO: Local District Commissioners

SUBJECT: Compliance with Fair Hearing Decisions;
Directions in similar cases

ATTACHMENTS: None

The purpose of this memorandum is to remind all districts of the longstanding requirement to comply promptly with all fair hearing decisions, including fair hearing decisions containing directions in similar cases. Our monitoring of the compliance process and complaints from appellants have indicated that some districts are not fully complying with fair hearing decisions promptly. While we recognize that in these times of fiscal constraint many important matters must be addressed with diminished resources, federal and State regulations have for several years included specific time frames for compliance.

While federal regulations [45 CFR 205.10(a)(16), 42 CFR 431.244(f), and 7 CFR 273.15(c)(1)] require compliance with fair hearing decisions within ninety days from the request in most cases, and sixty days in food stamp cases, this Department's regulation [18 NYCRR 358-6.4] requires that definitive and final administrative action must be taken promptly. The ninety and sixty day time frames are outside limits for the entire fair hearing and compliance process. Districts may not wait ninety or sixty days to comply with a fair hearing decision. As soon as a fair hearing decision favorable to an appellant is received by a social services district, action must be taken to comply with the decision.

This Department's regulations [18 NYCRR 358-6.6(a)(4) and 358-6.6(b)] provide that a social services district must comply with an issued fair hearing decision even when the decision is under review or when the closed hearing record upon which the issued decision is based has been reopened.

This Department's regulations [18 NYCRR 358-6.5] also provide that when a decision contains a direction to a social services district to correct a misapplication of law, Department regulation or State-approved local policy in all cases similar to the one in which the decision has been issued, the district must report the actions taken to comply with the direction within thirty days after receipt of the decision. A report on these compliance actions is required in each case in which a direction in similar cases is made, and should be transmitted to the appropriate program division of this Department. A report of such actions is required whether or not a compliance complaint is received from an individual appellant.

If there is a question as to how a particular decision is to be implemented, you should contact the appropriate program division of this Department for assistance. This will ensure that appellants' rights are protected, and avoid unnecessary litigation to enforce compliance.

Susan V. Demers
Deputy Commissioner and
General Counsel