

M E M O R A N D U M
DSS-524EL

TO: All New York City ALJ's and Supervising ALJs

DATE: July 2, 1997

FROM: Henry Pedicone

SUBJECT: Rivera v. Bane and Sabol
Sup. Ct., New York County

This memorandum is distributed pursuant to an Order and Stipulation and Withdrawal in the above case, so ordered on June 4, 1997, and reaffirms the instructions contained in my previous memorandum of March 21, 1996.

In its decision of July 25, 1995, the Court required that all fair hearing appellants be provided with (a) the right to timely receive by mail copies of the evidence package HRA intends to present at a fair hearing (i.e., within three business days of the request when the request is made more than five days before the fair hearing); (b) the right to timely receive copies of any other specifically identified documents from the case record requested by appellants to prepare for a fair hearing; and (c) notices that adequately set forth these rights regarding access to case records. These requirements are contained in current Regulations.

The November 14, 1995 Judgment in this case, entered on December 22, 1995, provided that the Department is required to supervise HRA and enforce the regulations relating to the right to obtain documents, and to ensure that all of HRA's public assistance notices contain specified information regarding access to documents and case records.

FAIR HEARINGS REQUIREMENTS: The Judgment requires that where HRA fails to comply with the regulatory requirements to provide evidence packages or specifically identified documents within three business days of a request for such documents where the request is made more than five days before the hearing date, it must withdraw the notice of its determination to "deny, terminate, reduce, restrict or suspend" public assistance benefits. (NOTE: For purposes of Rivera, "public assistance" includes AFDC, Medicaid, food stamps, and home relief. This definition was set forth in an interim decision dated September 24, 1993) If the agency has a case record at the hearing and offers an evidence package, the ALJ must ask if the appellant requested the documents, when the request was made, and when the agency sent the documents to the appellant. If the HRA representative concedes that documents or evidentiary packages were not sent out timely where requested, the notice of intent must be withdrawn. If the ALJ determines that HRA did not comply with Rivera, and HRA will not withdraw, a decision directing the withdrawal should be drafted. Where the notice involves a denial, a directive should be included directing HRA to make a new determination of eligibility.