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| LOCAL COMMISSIONERS MEMORANDUM |
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Transmittal No: 91 LCM-89

Date: May 14, 1991

Division: Commissioner's
Office

TO: Local District Commissioners

SUBJECT: Filed Regulation 343.8, 358, 418.20(n), 421.24(g), 434.6,
519.15

Filed Regulation 399.1(e)

Filed Regulation 414.1

ATTACHMENTS: Attachment I 343.8, 358, 418.20(n), 421.24(g), 434.6,
519.15 (available on-line)

Attachment II 399.1(e) (available on-line)

Attachment III 414.1 (available on-line)

The following changes to the Official Regulations of the State Department of Social Services have been filed for adoption with the Secretary of State.

18 NYCRR 343.8, 358, 418.20(n), 421.24(g), 434.6, 519.15
relating to recusal of hearing officers.

The final rule - Filed: 5/13/91 - Effective: 5/29/91.

18 NYCRR 399.1(e) relating to food stamps: head of household
definition and intentional program violations.

The final rule - Filed: 5/10/91 - Effective: 5/29/91.

18 NYCRR 414.1 relating to school age child care.

The final rule - Filed: 5/10/91 - Effective: 5/29/91.

Michael J. McNaughton
Director, Local District
Policy Communications

The current language of section 343.8 is designated as subdivision (a) of section 343.8 and a new subdivision (b) is added to read as follows:

(b) A party to a hearing may make a request to a hearing officer that the hearing officer remove himself or herself from presiding at the hearing.

(1) The grounds for removing a hearing officer are that such hearing officer has:

(i) previously dealt in any way with the substance of the matter which is the subject of the hearing except in the capacity of hearing officer; or

(ii) any interest in the matter, financial or otherwise, direct or indirect, which will impair the independent judgment of the hearing officer; or

(iii) displayed bias or partiality to any party to the hearing.

(2) The hearing officer may independently determine to remove himself or herself from presiding at a hearing on the grounds set forth in paragraph (1) of this subdivision.

(3) The request for removal made by a party must:

(i) be made in good faith; and

(ii) be made at the hearing in writing or orally on the record; and

(iii) describe in detail the grounds for requesting that the hearing officer be removed.

(4) Upon receipt of a request for removal, the hearing officer must determine on the record whether to remove himself or herself from the hearing.

(5) If the hearing officer determines not to remove himself or herself from presiding at the hearing, the hearing officer must advise the party requesting removal that the hearing will continue but the request for removal will automatically be reviewed by the general counsel or the general counsel's designee.

(6) The determination of the hearing officer not to remove himself or herself will be reviewed by the general counsel or the general counsel's designee. Such review will include review of written documents submitted by the parties and the transcript of the hearing.

(7) The general counsel or the general counsel's designee must issue a written determination of whether the hearing officer should be removed from presiding at the hearing within 15 business days of the close of the hearing.

(8) The written determination of the general counsel or the general counsel's designee will be made part of the record.

Subdivision (j) of section 358-3.4 is amended to read as follows:

(j) to have the fair hearing held at a time and place convenient to you as far as practicable, taking into account circumstances such as your physical inability to travel to the regular hearing location; [and]

Subdivision (k) of section 358-3.4 is redesignated as subdivision (l) of such section and a new subdivision (k) is adopted to read as follows:

(k) to request removal of a hearing officer in accordance with section 358-5.6 of this Part; and

Subdivision (e) of section 358-4.3 is amended to read as follows:

(e) Social service agencies have those hearing rights which appellants have as set forth in subdivision 358-3.4(d) (adjournment), 358-3.4(e)(representation), 358-3.4(g) (present evidence, question witnesses, examine documents), and 358-3.4(h) (bring witnesses), and 358-3.4(k) (removal of hearing officer) of this Part.

Subdivision (c) is added to section 358-5.6 to read as follows:

(c) A party to a hearing may make a request to a hearing officer that the hearing officer remove himself or herself from presiding at the hearing.

(1) The grounds for removing a hearing officer are that such hearing officer has:

(i) previously dealt in any way with the substance of the matter which is the subject of the hearing except in the capacity of hearing officer; or

(ii) any interest in the matter, financial or otherwise, direct or indirect, which will impair the independent judgment of the hearing officer; or

(iii) displayed bias or partiality to any party to the hearing.

(2) The hearing officer may independently determine to remove himself or herself from presiding at a hearing on the grounds set forth in paragraph (1) of this subdivision.

(3) The request for removal made by a party must:

(i) be made in good faith; and

(ii) be made at the hearing in writing or orally on the record; and

(iii) describe in detail the grounds for requesting that the hearing officer be removed.

(4) Upon receipt of a request for removal, the hearing officer must determine on the record whether to remove himself or herself from the hearing.

(5) If the hearing officer determines not to remove himself or herself from presiding at the hearing, the hearing officer must advise the party requesting removal that the hearing will continue but the request for removal will automatically be reviewed by the general counsel or the general counsel's designee.

(6) The determination of the hearing officer not to remove himself or herself will be reviewed by the general counsel or the general counsel's designee. Such review will include review of written documents submitted by the parties and the transcript of the hearing.

(7) The general counsel or the general counsel's designee must issue a written determination of whether the hearing officer should be removed from presiding at the hearing within 15 business days of the close of the hearing.

(8) The written determination of the general counsel or the general counsel's designee will be made part of the record.

The current language of subdivision (n) of section 418.20 is designated as paragraph (1) of subdivision (n) of section 418.20 and a new paragraph (2) is added to such subdivision to read as follows:

(2) A party to a hearing may make a request to a hearing officer that the hearing officer remove himself or herself from presiding at the hearing.

(i) The grounds for removing a hearing officer are that such hearing officer has:

(a) previously dealt in any way with the substance of the matter which is the subject of the hearing except in the capacity of hearing officer; or

(b) any interest in the matter, financial or otherwise, direct or indirect, which will impair the independent judgment of the hearing officer; or

(c) displayed bias or partiality to any party to the hearing.

(ii) The hearing officer may independently determine to remove himself or herself from presiding at a hearing on the grounds set forth in subparagraph (i) of this paragraph.

(iii) The request for removal made by a party must:

(a) be made in good faith; and

(b) be made at the hearing in writing or orally on the record; and

(c) describe in detail the grounds for requesting that the hearing officer be removed.

(iv) Upon receipt of a request for removal, the hearing officer must determine on the record whether to remove himself or herself from the hearing.

(v) If the hearing officer determines not to remove himself or herself from presiding at the hearing, the hearing officer must advise the party requesting removal that the hearing will continue but the request for removal will automatically be reviewed by the general counsel or the general counsel's designee.

(vi) The determination of the hearing officer not to remove himself or herself will be reviewed by the general counsel or the general counsel's designee. Such review will include review of written documents submitted by the parties and the transcript of the hearing.

(vii) The general counsel or the general counsel's designee must issue a written determination of whether the hearing officer should be removed from presiding at the hearing within 15 business days of the close of the hearing.

(viii) The written determination of the general counsel or the general counsel's designee will be made part of the record.

Paragraphs (5) and (6) of subdivision (g) of section 421.24 are redesignated as paragraphs (6) and (7) and a new paragraph (5) is added to read as follows:

(5) A party to a hearing may make a request to a hearing officer that the hearing officer remove himself or herself from presiding at the hearing.

(i) The grounds for removing a hearing officer are that such hearing officer has:

(a) previously dealt in any way with the substance of the matter which is the subject of the hearing except in the capacity of hearing officer; or

(b) any interest in the matter, financial or otherwise, direct or indirect, which will impair the independent judgment of the hearing officer; or

(c) displayed bias or partiality to any party to the hearing.

(ii) The hearing officer may independently determine to remove himself or herself from presiding at a hearing on the grounds set forth in subparagraph (i) of this paragraph.

(iii) The request for removal made by a party must:

(a) be made in good faith; and

(b) be made at the hearing in writing or orally on the record; and

(c) describe in detail the grounds for requesting that the hearing officer be removed.

(iv) Upon receipt of a request for removal, the hearing officer must determine on the record whether to remove himself or herself from the hearing.

(v) If the hearing officer determines not to remove himself or herself from presiding at the hearing, the hearing officer must advise the party requesting removal that the hearing will continue but the request for removal will automatically be reviewed by the general counsel or the general counsel's designee.

(vi) The determination of the hearing officer not to remove himself or herself will be reviewed by the general counsel or the general counsel's designee. Such review will include review of written documents submitted by the parties and the transcript of the hearing.

(vii) The general counsel or the general counsel's designee must issue a written determination of whether the hearing officer should be removed from presiding at the hearing within 15 business days of the close of the hearing.

(viii) The written determination of the general counsel or the general counsel's designee will be made part of the record.

The current language of section 434.6 is redesignated as subdivision (a) of section 434.6 and a new subdivision (b) is added to read as follows:

(b) A party to a hearing may make a request to a hearing officer that the hearing officer remove himself or herself from presiding at the hearing.

(1) The grounds for removing a hearing officer are that such hearing officer has:

(i) previously dealt in any way with the substance of the matter which is the subject of the hearing except in the capacity of hearing officer; or

(ii) any interest in the matter, financial or otherwise, direct or indirect, which will impair the independent judgment of the hearing officer; or

(iii) displayed bias or partiality to any party to the hearing.

(2) The hearing officer may independently determine to remove himself or herself from presiding at a hearing on the grounds set forth in paragraph (1) of this subdivision.

(3) The request for removal made by a party must:

(i) be made in good faith; and

(ii) be made at the hearing in writing or orally on the record; and

(iii) describe in detail the grounds for requesting that the hearing officer be removed.

(4) Upon receipt of a request for removal, the hearing officer must determine on the record whether to remove himself or herself from the hearing.

(5) If the hearing officer determines not to remove himself or herself from presiding at the hearing, the hearing officer must advise the party requesting removal that the hearing will continue but the request for removal will automatically be reviewed by the general counsel or the general counsel's designee.

(6) The determination of the hearing officer not to remove himself or herself will be reviewed by the general counsel or the general counsel's designee. Such review will include review of written documents submitted by the parties and the transcript of the hearing.

(7) The general counsel or the general counsel's designee must issue a written determination of whether the hearing officer should be removed from presiding at the hearing within 15 business days of the close of the hearing.

(8) The written determination of the general counsel or the general counsel's designee will be made part of the record.

Subdivisions (c), (d) and (e) of section 519.15 are redesignated as subdivisions (d), (e) and (f) respectively and a new subdivision (c) is added to read as follows:

(c) A party to a hearing may make a request to a hearing officer that the hearing officer remove himself or herself from presiding at the hearing.

(1) The grounds for removing a hearing officer are that such hearing officer has:

(i) previously dealt in any way with the substance of the matter which is the subject of the hearing except in the capacity of hearing officer; or

(ii) any interest in the matter, financial or otherwise, direct or indirect, which will impair the independent judgment of the hearing officer; or

(iii) displayed bias or partiality to any party to the hearing.

(2) The hearing officer may independently determine to remove himself or herself from presiding at a hearing on the grounds set forth in paragraph (1) of this subdivision.

(3) The request for removal made by a party must:

(i) be made in good faith; and

(ii) be made at the hearing in writing or orally on the record; and

(iii) describe in detail the grounds for requesting that the hearing officer be removed.

(4) Upon receipt of a request for removal, the hearing officer must determine on the record whether to remove himself or herself from the hearing.

(5) If the hearing officer determines not to remove himself or herself from presiding at the hearing, the hearing officer must advise the party requesting removal that the hearing will continue but the request for removal will automatically be reviewed by the general counsel or the general counsel's designee.

(6) The determination of the hearing officer not to remove himself or herself will be reviewed by the general counsel or the general counsel's designee. Such review will include review of written documents submitted by the parties and the transcript of the hearing.

(7) The general counsel or the general counsel's designee must issue a written determination of whether the hearing officer should be removed from presiding at the hearing within 15 business days of the close of the hearing.

(8) The written determination of the general counsel or the general counsel's designee will be made part of the record.

(Deleted material [brackets]; new material underlined).

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of Sections 20(3)(d), 34(3)(f) and 355(3) of the Social Services Law, I, Cesar A. Perales, Commissioner of Social Services do hereby amend 399.1(e); 399.1(f)(4); 399.1(f)(5); 399.1(g); 399.6(h)(4); 399.6(h)(4)(ix) and add 399.1(h) of Title 18 NYCRR of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective upon publication of the Notice of Adoption in the State Register.

Dated: May 10, 1991

Signed: _____

Commissioner

This is to certify that this is the original of an order of the State Department of Social Services, made on May 10, 1991 amending 399.1(e); 399.1(f)(4); 399.1(f)(5); 399.1(g); 399.6(h)(4); 399.6(h)(4)(ix) and add 399.1(h) of the State Department of Social Services, being Title 18 NYCRR, the express terms of which were published in the New York State Register on March 13, 1991.

Dated: May 10, 1991

Signed: _____

Commissioner

Subdivision (e) of section 399.1 is amended to read as follows:

(e) Waiver of administrative disqualification hearing. A document sent by the department to an individual against whom the department has scheduled an administrative disqualification hearing, which complies with the provisions of section 399.8 of this Part, and which, when properly executed by the individual and the head of household and received by the department will result in the department sending written notification to the social services district which had requested the hearing that it may impose the appropriate penalty contained in section 399.9 of this Part, upon appropriate notice, approved by the department, without a hearing.

Paragraph (4) of subdivision (f) of section 399.1 is amended to read as follows:

(4) the household committed an act prior to August 1, 1983, which the [local] social services district suspects or has evidence which it believes is sufficient to establish was caused by fraud as defined in subdivision (a) of this section and the district has not received written authorization as set out in section 399.2(b) of this Part to forego nonfraud procedures prior to referral for either fraud prosecution and administrative food stamp fraud hearing; or

Paragraph (5) of subdivision (f) of section 399.1 is amended to read as follows:

(5) the household committed an act on or after August 1, 1983, which the [local] social services district suspects is, or has evidence which it believes is sufficient to establish an intentional program violation as defined in subdivision (c) of this section and the district has not received written authorization as set out in section 399.2(b) of this Part to forego proceeding on the inadvertent household error prior to referral for either [fraud] intentional program violation prosecution or an administrative disqualification hearing.

Subdivision (g) of section 399.1 is amended to read as follows:

(g) Disqualification consent agreement. A document in which [a recipient or former recipient consents] an individual and the head of household consent to an appropriate disqualification penalty as set forth in section 399.9 of this Part without a trial.

Subdivision (h) is added to section 399.1 to read as follows:

(h) Head of household. For purposes of this section, head of household has the same definition as that contained in section 387.1(u)(1) of this Title.

The opening language of paragraph (4) of subdivision (h) of section 399.6 is amended to read as follows:

(4) Enclose a written [demand letter] notice of food stamp overissuance and repayment agreement, specified by the department, which [shall] must indicate to the household:

Subparagraph (ix) of paragraph (4) of subdivision (h) of section 399.6 is amended to read as follows:

(ix) a method of electing [on the face of the letter] the repayment method by which the household wishes to liquidate the claim;

(Deleted material [bracketed] ; new material underlined)

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of Sections 20(3)(d), 34(3)(f), and 390 of the Social Services Law, I, Cesar A. Perales, Commissioner of Social Services, do hereby amend Section 414.1 of Title 18 NYCRR, effective immediately upon filing with the Secretary of State.

Dated: May 10, 1991

Signed: _____

Commissioner

This is to certify that this is the original of an order of the State Department of Social Services, made on May 10, 1991 amending Section 414.1 of the Official Regulations of the State Department of Social Services, being Title 18 NYCRR, the express terms of which were published in the New York State Register on January 30, 1991.

Dated: May 10, 1991

Signed: _____

Commissioner

Section 414.1(a) is amended to read as follows:

(a) School-age child care means care provided to more than six children enrolled in kindergarten or in school up to the age of 14 for up to five days per week for the portion of the school day before and/or after the period children enrolled in such programs are ordinarily in school, and during holidays and those periods of the year when school is not in session, whether such care is provided with or without compensation.

The introductory language of section 414.1(b) and paragraph (4) of such section are amended to read as follows:

(b) School-age child-care program means a place, person, association, corporation, institution or agency offering school-age child care up to five days per week during the school year to an enrolled group of children at one or more permanent site(s) [and which may offer such care to enrolled children on school holidays during the school year]. However, school-age child-care programs do not include:

(4) any program providing day care for children as defined in section 418.1(a) of this Title during any period of the day other than the period before and after school when school is in session; and

Deleted wording in [brackets], new wording underlined.