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| LOCAL COMMISSIONERS MEMORANDUM |
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Transmittal No: 95 LCM-132

Date: December 6, 1995

Division: Economic Security

TO: Local District Commissioners

SUBJECT: HR Requirement to Sign Agreement and Assignment Forms

ATTACHMENTS: Attachment I - Agreement to Repay Any Home Relief
Overpayments Still Owed After Case is
Closed (available on-line)
Attachment II - Assignment of Wages, Salary,
Commissions or Other Compensation for
Services with Summary of Personal
Property Law (available on-line)

I. REQUIREMENT

Effective immediately, social services districts must require each adult applicant for HR, as a condition of eligibility, to sign two (2) filled out copies of the attached two (2) forms. Agreement To Repay and Assignment Of Future Earnings forms must be signed every time a person applies or reapplies for HR benefits. However, these forms do not have to be signed at the time of recertification.

Prior to requiring the HR applicant to sign the "Agreement to Repay" form (Attachment I), the social services district must fill out #3 in the middle of the form by entering the name of the county covered by the social services district entered on the bottom of the form. In addition, the social services district must fill out the name of the social services district in the space provided on the bottom of the form. The name and address of the social services district may be pre-printed. After the applicant signs and dates the form, a representative of the social services district must also sign and date the form.

Prior to requiring HR applicants to sign the "Assignment of Wages" (Attachment II), the social services district must fill out the top of the form by entering the name and address of the social services district and printing the applicant's name in the spaces provided. The name and address of the social services district may be pre-printed. The applicant must sign and date the form on the spaces provided on the bottom of the form.

One (1) set of signed forms (Attachments I and II) must be given to the applicant. The second set of signed forms must be placed in the case record or other location so that the forms can be retrieved if needed.

II. DENIAL/CLOSING

All adult applicants for HR must sign the repayment agreement and assignment of future earnings. If one adult HR applicant who is legally responsible for other HR applicants refuses to sign either the repayment agreement or the assignment of future earnings or both, the entire HR case is ineligible for HR and must be denied.

If an HR applicant who is applying to become added to an active HR case refuses to sign either or both forms and he/she is legally responsible for members of this active HR case, the SSD must deny the HR application and close the active HR case.

III. NOTICES

A. New York City

Instructions for closing/denial of a case will be provided under separate cover.

B. Rest of State

Both CNS and non-CNS districts should use the case closing/denial reason code M15. CNS districts should use a "no notice" indicator and provide a manual notice.

— Districts must use the appropriate State mandated (or approved local equivalent) notice:

- oo DSS-4013: "Action Taken on Your Application: Public Assistance, Food Stamps and Medical Assistance Coverage".
- oo DSS-4015: "Notice of Intent to Change Benefits": "Public Assistance, Food Stamps, Medical Assistance, and Services" (Timely and Adequate).

The reason for the denial/closing should read as follows:

This is because applicants, whose category of assistance would be Home Relief (HR), must sign an agreement to repay public assistance overpayments and an assignment of future earnings to secure the repayment of any overpayments.

This requirement applies only to persons in the Home Relief category of assistance. Generally, adults without children are in the Home Relief category of assistance.

We asked (you/name) to sign both a repayment agreement and an assignment of future earnings. We explained that these forms would allow us to recover only public assistance that was overpaid. (You/name) would not sign the repayment agreement or the assignment of future earnings or both.

This decision is based on Social Services Law 158(g).

Districts will be informed via a "Dear WMS and CNS Coordinator" letter when the correct language associated with reason code M15 will be available on production. It is expected to be available on production on January 16, 1995.

IV. USE OF FORMS

Until carbonized versions of these forms are printed, districts should copy and use the forms that are attached to this LCM. The printed forms are not expected to be delivered to the Albany and New York City HRA warehouses until approximately January 1996. A GIS message will be sent out to local districts instructing them when they can submit their orders, once the printer has given firm delivery dates.

V. PROCESSING OF ASSIGNMENTS

We will publish instructions on when and how to process an assignment under separate cover.

VI. CONTACT

Please call Charles Giambalvo at 1-800-343-8859, extension 4-9327 if you have any questions about the attached forms.

Patricia A. Stevens
Deputy Commissioner
Division of Economic Security

AGREEMENT TO REPAY ANY HOME RELIEF OVERPAYMENTS
STILL OWED AFTER CASE IS CLOSED

I am applying for Home Relief money, and I understand that:

1. The law that allows me to apply for Home Relief is Title 3 of Article 5 of NYS Social Services Law.
2. I might get paid too much money ("overpayment") because:
 - a. I might be paid money that I was not allowed to get.
 - b. I might be paid money that had to be paid back, according to Social Services laws or regulations.

If I am paid too much money ("overpayment"), I understand and agree to pay back the overpayment:

1. even if I still owe it after my Home Relief case is closed.
2. on the first day of the second month after the month my Home Relief case is closed, unless another date is agreed to by the social services district.
3. To the social services district address listed below, since this social services district gives out Home Relief money for _____ County.

I understand that, in order to be able to get Home Relief money, I must agree to pay back any Home Relief overpayment that I may owe, even if I still owe it after my Home Relief case is closed [NYS Social Services Law 158(g)].

Applicant Signature X _____ Date _____

Applicant's Name and Address (please print)

Social Services Rep. Signature X _____ Date _____

_____ Department of Social Services

Address:

ASSIGNMENT OF WAGES, SALARY, COMMISSIONS
OR OTHER COMPENSATION FOR SERVICES

For a good and valuable consideration, I, of , City of , County of , State of New York, hereby assign to the Department of Social Services, located at , in the City of , County of and State of New York, hereinafter designated as the "social services district", its successors and assigns, a ten percent (10%) interest in all my wages, salaries, commissions and other compensation for services. This assignment is made to secure the repayment of any overpayments of Home Relief which have not been repaid by me to the social services district at the time of closing of my Home Relief case.

I authorize and direct any future employer to pay ten percent (10%) of my earnings, or such proportion thereof as may be legally collectible by the social services district under this assignment, such payment to be made directly to the social services district.

I expressly release and discharge my employer from all liability to me on account of any and all moneys paid in accordance with this assignment.

This assignment is executed as security for the payment to me of any Home Relief benefits by the social services district or its successors and assigns pursuant to Title 3 of Article 5 of the Social Services Law of the State of New York.

I acknowledge that this assignment authorizes the social services district to recover any overpayment of my public assistance benefits by collecting the amount of the overpayment directly from my future wages. If I fail to make the payments required by a repayment agreement between the social services district and myself, the social services district will file this assignment with my employer and recover the overpayment directly from my wages. Payment under the repayment agreement must be made at the address of the social services district set forth above on the first day of the second month after the month I cease to receive Home Relief, or another date agreed to by the social services district.

No other assignment of wages by me exists in connection with the above described transaction or series of transactions.

Receipt is hereby acknowledged of a copy of this assignment and a summary of sections 46-c, 46-e, 46-f, 47-e, 48, 48-a, 48-b, 48-c and 49 of the Personal Property Law of the State of New York.

THIS IS AN ASSIGNMENT OF WAGES, SALARY COMMISSIONS OR OTHER COMPENSATION FOR SERVICES.

Assignor

SUMMARY OF PROVISIONS OF THE PERSONAL PROPERTY LAW

Section 46-c includes requirements for assignments of future earnings involving less than one thousand dollars. It requires that such assignments must be written instruments in at least eight point type. The assignments must describe fully the transactions to which they relate, including the name and address of the assignee, the basis of the consideration given for the assignment, and the date on and place at which payments are to be made. It provides that the assignment is security only for the transaction or series of transactions described in it.

NOTE: Section 46-c applies to assignments of less than \$1,000. All the remaining sections apply to assignments of any amount.

Section 46-e requires that an assignment of future earnings be signed by the assignor and that a copy of the assignment and any papers pertaining to the transaction described in the assignment be given to the assignor.

Section 46-f provides that any assignment made for any advance or loan with interest greater than 18 percent is invalid for any purpose.

Section 47-e sets forth requirements for vacating an assignment of earnings. It requires that a proceeding may be brought by order to show cause and petition which specifies the grounds upon which the assignment should be vacated. It sets forth the method for serving the order to show cause and petition which may be by personal service, leaving the papers at the assignee's place of business with a person of suitable age with directions to deliver them to the assignee and mailing a copy by certified mail to the address of the assignee specified on the assignment, or as directed by the court. It provides that if the assignment is vacated the judgment vacating it must be presented to the county clerk where the assignment is filed and the clerk must mark on the assignment "Vacated by order of the court." It further sets forth that this section does not extend the territorial limits of the jurisdiction of the court, no assignment shown to have been made in compliance with the direction of a family in a matrimonial action may be vacated by an order authorized in this section and the court shall have jurisdiction to consider all defenses to the assignment and debt secured by the assignment.

Section 48 requires that a 20 days written notice accompanied by the papers required by section 46-e be sent to the assignor by certified mail, return receipt requested before an assignment of future earnings can be filed with the assignor's employer. The notice cannot be sent until 21 days after the payment which is the subject of the assignment is due. If a payment of any amount is accepted by the assignee before the 20 days notice has elapsed the assignment cannot be filed with the assignor's employer. However, if there is a subsequent default the assignment can be filed with the employer with no notice to the assignor. The written notice must notify the assignor that if the assignor has a defense to the wage assignment or the debt on which it is based, the assignor may either request a hearing before a court in accordance with the provisions of section 47-e above or send to the assignee within ten days of receipt of the notice by certified notice return receipt requested a written notice containing the assignor's

name and address which contains the following statement: I (insert name) residing at (insert address) hereby affirm that I have a bona fide defense to the claim in your notice dated (insert date of notice) and to the wage assignment given as security therefor, based upon the following facts (state the facts constituting the basis of your defense). If the assignor sends the above notice the assignee cannot file the wage assignment with the assignor's employer without an order of a court authorizing the filing.

Section 48-a provides that after filing with the assignor's employer payments shall begin to the assignee beginning with the first salary payment to the assignor after ten days after the filing of the assignment with the employer. A copy of the assignment that is filed with the employer must be authenticated by a notary public or commissioner of deeds and must be accompanied by a statement which sets forth the amount due to the assignee, the date and amount of any payments already made to the assignee on the debt which is the subject of the assignment and the date on which the assignment was filed with the county clerk. The amount that can be paid to the assignee by the employer of assignor cannot exceed ten percent of the assignor's future earnings for the month. If at the time of filing of the assignment with the employer there is any other assignment of future earnings of assignor subject to payment or any garnishment against assignor's earnings or order against the assignor for installment payments to a judgment creditor no amount shall be collectible by the assignee while such other assignment is subject to payment or such other garnishment or order is in force. No portion of assignor's earnings can be withheld or paid to pay any subsequent garnishment while any portion of the debt of less than one thousand dollars secured by an assignment previously filed with the employer remains unpaid.

Section 48-b provides that the assignor's earnings cannot be withheld pursuant to an assignment of future earnings unless the assignor's earnings exceed \$85 per week.

Section 48-c provides that if an assignor is not employed at the time of signing the assignment of future earnings, the assignment will be collectible from any future employer of the assignor. If the assignor ceases employment while his or her earnings are subject to an assignment, the assignment can be applied to any future employment of the assignor until the debt secured by the assignment is paid in full. If the assignor is re-employed by the same employer after the expiration of ninety days the assignee must file the assignment with the employer once again.

Section 49 provides that a bank, trust company or credit union doing business in New York State is not required to file an assignment of future earnings with a county clerk. This section also exempts such businesses from the notice requirements contained in section 48 above in certain circumstances.