

NEW YORK STATE

DEPARTMENT OF SOCIAL SERVICES

40 NORTH PEARL STREET, ALBANY, NEW YORK 12243-0001

CESAR A. PERALES
Commissioner



SUSAN V. DEMERS
*Deputy Commissioner
and General Counsel*

Writer's Direct Dial No.

(518) 473-4775

May 24, 1990

Mr. Eugene Doyle
P.O.O.R.
102-12 164th Avenue
Hamilton Beach, New York 11414

Re: Necessary Expenditures for
Policy Materials

Dear Mr. Doyle:

I am in receipt of your letter of May 9, 1990 in which you seek clarification of this Department's policy concerning reimbursement for expenses incurred in obtaining materials necessary to prepare for a fair hearing.

You assert in your letter that reimbursement for materials necessary for hearing preparation should be considered to be within the scope of Department Regulations at 18 NYCRR 358-4.3(d), which provide for that, upon request of the appellant, the local agency must provide payment for "necessary costs and expenditures related to the fair hearing."

Subject to the following, I agree with your assertion that such expenses may be reimbursible. Section 358-4.3(d) specifically requires that an appellant request the local district to provide reimbursement for expenses related to a fair hearing. If the local agency denies such request, or fails to act thereon, this determination should be requested as an additional issue for the fair hearing to which it relates. (Note that this additional issue should be requested sufficiently in advance to allow the local agency time to prepare its case.) The appellant would then have the burden of establishing at the hearing that the materials for which reimbursement was sought were, in fact, "necessary" as required by Section 358-4.3(d). This would, by definition, always be a factual question since a determination of necessity would be limited to the facts of a particular case.

With regard to your question as to whether the reimbursement issue would survive when the related substantive issues have been settled, I can see no reason at this time why the local agency's failure to provide reimbursement would not continue to be reviewable subject to any applicable statute of limitations. Assuming a timely request, the question would be whether such materials were "necessary" for the fair hearing in light of the specific facts of the case under review.

I hope that this satisfactorily responds to your recent letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell J. Hanks". The signature is fluid and cursive, with a large initial "R" and "H".

Russell J. Hanks
Acting Deputy Counsel
for Fair Hearings

RJH/DB:db

cc: David S. Kellogg
Linda Hunt