

+-----+
| LOCAL COMMISSIONERS MEMORANDUM |
+-----+

Transmittal No: 90 LCM-133

Date: August 23, 1990

Division: Operations

TO: Local District Commissioners

SUBJECT: Zebley v. Sullivan Supreme Court Decision

ATTACHMENTS: None

A recent US Supreme Court decision, Zebley v. Sullivan, requires the Social Security Administration (SSA) to change its policy and procedure for determining children's eligibility for SSI benefits based on disability. In brief, the court found that a child is entitled to an "individual functional assessment" requiring SSA to assess the impact of the disabling condition on the child's ability to perform a full range of daily activities and to behave in an appropriate manner for the child's age. The decision will result in a significant increase in the number of children entitled to SSI benefits.

As a result of this decision, SSA may be required to review all children's SSI applications that were denied over the past 10-15 years. However, to date no decision has been made on retroactivity by the District Court. This review may result in large retroactive SSI payments for many children who were previously denied SSI benefits.

The Supreme Court remanded the case to the District Court of Pennsylvania for implementation. To date, no decision has been issued on final standards, period of retroactive eligibility and detailed procedures. The District Court has, however, required immediate implementation of an interim SSI children's disability standard which will apply to new cases. Any case denied under the interim system will: 1) be entitled to a reconsideration review; 2) automatically be reviewed under the final rules when they are released and 3) lock in an early application date which is used as the starting point for receipt of retroactive benefits.

Date August 23, 1990

Trans. No. 90 LCM-133

Page No. 2

We strongly recommend that local districts review their caseloads to identify children who were previously denied SSI, and any other possibly disabled children, and assure that they contact SSA to request review or make application for SSI. Districts may also wish to conduct a review of the foster care caseload since there is a potential for SSI to offset FNP foster care costs.

Although the SSA will be responsible for contacting children who previously were denied SSI, local district assistance would be helpful to assure that parents take advantage of this opportunity. You may wish to provide parents of disabled children with assistance in pursuing an SSI claim or in seeking retroactive SSI benefits for their children.

Local Districts may wish to notify SSA that a child intends to file an application for SSI, to establish a protective filing date. This can be done by contacting the local Social Security office by telephone or mail, and providing the child's name, address and Social Security Number. The parent or legal guardian of the child must file an application within 60 days of the first contact in order for the initial contact date to be used as the date of initial eligibility.

Under the new interim eligibility standards, observations by teachers, counselors, school psychologists, Committees on Special Education, parents and others having relevant knowledge of the child will take on increased importance for making the functional assessment of the child. Your assistance in obtaining such data from schools, parents and other involved parties who are knowledgeable about the child's activities will be very helpful in the evaluation of the child's disability.

The Department will be preparing training and public education materials and will provide technical assistance.

Any questions you have should be addressed to Lloyd Moses, Associate Commissioner, Office of Disability Determinations at 518-473-0360 or 1-800-342-3715, extension 3-0360.

Donald J. Faden
Deputy Commissioner for Operations