

FEB 27 1989

MEMORANDUM FOR: Gertrude W. Jordan, Regional Administrator -  
Regional Housing Commissioner, 5S

ATTENTION: Norman L. Deas, Manager, 5.1S

FROM: Thomas Sherman, Acting General Deputy Assistant Secretary, PD 151  
James E. Schoenberger, General Deputy Assistant Secretary, HD 151

SUBJECT: Lump-sum Payments Involving Attorney Fees

This is in response to your memorandum of September 29, 1988, and Mr. Deas' memorandum of September 16, 1988, concerning the determination of annual income. You asked whether attorney fees should be deducted in computing annual income when, as a result of an attorney's actions, a tenant receives a lump-sum payment in recompense for the delayed start of a periodic payment.

Mr. George K. Dickey, Chief, Assisted Housing Management Branch, Cincinnati Office, who originated the question, told us that the issue has arisen in public housing and Section 8. Therefore, our answer addresses both programs.

Public housing regulations at section 913.106(b)(4) provide that annual income includes "a lump-sum payment for the delayed start of a periodic payment." Section 8 regulations at section 813.106(b)(4) have an identical provision. The regulations do not address the issue of costs associated with obtaining recompense for the periodic payment when it has been wrongfully reduced or denied.

HUD recommends that attorney fees be deducted in computing annual income when:

- the attorney's efforts have recovered a lump-sum compensation for the wrongful reduction or denial of a periodic payment, and
- the recovery does not include an additional amount in full satisfaction of the attorney fees.

In these situations the tenant does not actually recover the entire amount of the past due periodic payment because he or she must pay the attorney fees.

We distinguish these situations from those in which an amount is withheld from funds otherwise due the tenant in satisfaction of a legitimate financial obligation unrelated to obtaining the income, such as withholding from wages or salary for income tax and insurance or garnishment for failure to pay child support, alimony, or a judgment creditor.

We also distinguish these situations from those where a tenant incurs attorney fees unrelated to asserting a right to a source of income or where no income results from the attorney's actions. In those situations, the attorney fees are simply the tenant's financial responsibility and are not deducted in determining annual income.