

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814



December 5, 2006

ALL COUNTY INFORMATION NOTICE I-91-06

TO: ALL COUNTY WELFARE DIRECTORS
ALL FOOD STAMP COORDINATORS
ALL CalWORKs PROGRAM SPECIALISTS

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

SUBJECT: FOOD STAMP QUESTIONS AND ANSWERS (Q&As)

The purpose of this letter is to provide counties with answers to questions regarding Food Stamp Program (FSP) policy. These questions were submitted by the Food Stamp Review and Advisory Team (FRAT) of the County Welfare Director's Association (CWDA). Answers were developed at the state level and finalized with assistance from FRAT members.

Answers to these questions are intended to be informational and are only based on the general circumstances provided in the question. For appropriate application to specific case circumstances, counties should refer to the regulations, All County Letters, and All County Information Notices that are referenced in the responses.

If you have any questions regarding the attached Q&As, please contact Joyce Brewer of the Policy Implementation Unit at (916) 654-3366 or e-mail Joyce.Brewer@dss.ca.gov.

Sincerely,

Original Document Signed By:

RIGHTON YEE, Chief
Food Stamp Branch

Attachment

HOUSEHOLD CONCEPT/DRUG FELON

BACKGROUND:

A young man who had a felony conviction applied for food stamps, stating he had a felony for forgery. His record stated "felony conviction for obtaining a controlled substance by fraud". The Department of Justice record does not state if it was for personal use or for sale; furthermore, the client stated that he was writing prescriptions for his mother to obtain her pain medication.

QUESTION:

1. Should this client be considered a drug felon for food stamps?
2. And if so, should he fall under the drug felony bill, such that he can get food stamps with a completed addendum or does he fall under the Welfare and Institutions (W&I) Code 18901.3 that disallows him from getting food stamps?

ANSWER:

Based upon the scenario of the client illegally obtaining pain medication for his mother, this action falls under W&I Code 18901.3(b) because the client was convicted of "furnishing, giving away, administering" a controlled substance by distributing or supplying the substance to his mother through forgery. Consequently, he is ineligible for food stamp benefits per All County Letter 04-59, All County Information Notice I-71-99, and Assembly Bill No. 1796. Manual of Policies and Procedures (MPP) 63-402.229 and 7 CFR 273.11(m) specify persons convicted of a felony involving an "element" of possession for distribution of a controlled substance are ineligible for food stamps.

INCOME/RESOURCES - INCOME PRODUCING PROPERTY

QUESTION:

Is a house that a customer does not live in exempt when determining resource limits simply because it is income producing regardless of the amount of income produced?

Example:

Customer has a home with a value of \$400,000 and owes \$200,000. The home is located in a different city than where the customer lives. The customer receives \$1000 per month in rental income.

ANSWER:

No. When determining resource limits, an income-producing house is not exempt if it is not producing income consistent with its Fair Market Value (FMV). A home producing income consistent with the FMV is excluded as a resource, per MPP 63-501.3(e). Such property shall include rental homes and vacation homes.

INCOME/RESOURCES - INCOME PRODUCING PROPERTY CONSISTENT WITH OTHER PROPERTIES

QUESTION:

Does an income producing property need to generate income consistent with the total value of the home, the value after encumbrance, or consistent with what other properties in the area receive for rent?

ANSWER:

The property must generate income consistent with the other properties in the area. MPP 63-501.3(e), under the Handbook Section, states "To determine if property is producing income consistent with its fair market value, the County Welfare Department (CWD) may contact local realtors, local tax assessors, the Small Business Administration, Farmer's Home Administration, or other similar sources. Newspaper classified advertisements can also be used as a resource. All findings/determinations should be documented in the case file."

INCOME/RESOURCES - INCOME PRODUCING RESIDENCE AT FAIR MARKET VALUE (FMV)

QUESTION:

How does the CWD determine whether property annually produces income consistent with its FMV in accordance with MPP 63-501.3(e)?

ANSWER:

MPP 63-501.3 (e) states “Property which annually produces income consistent with its fair market value, even if only used on a seasonal basis is excluded as a resource.” It also states “Such property shall include rental homes and vacation homes.” The CWD determines whether or not a property annually produces income consistent with the FMV by assessing if the rental amount is the same as comparable homes in the area by using the following: newspaper classified advertisements, local realtors, local tax assessors, the Small Business Administration, the Farmer’s Home Administration, property management companies or similar resources.

INCOME/RESOURCES - LOANS

QUESTION:

If a food stamp participant makes a verbal agreement to repay a loan, would the loan be excluded from income, or does the agreement have to be in writing?

ANSWER:

“All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred....” shall be excluded from income per MPP 63-502.2(f). The county may elect, on a county-wide basis, to require verification in writing if they so choose, per MPP 63-300(f). If the county wants written verification, the following would apply: “the county welfare department may verify liquid resources and whether monies received by the households are loans. When verifying whether income is exempt as a loan, a legally binding agreement is not required. A simple statement signed by both parties which indicates that the payment is a loan and must be repaid shall be sufficient for verification. ..”MPP 63-300.5(f)(2).

INCOME/RESOURCES – ROSS GRANT PAYMENTS

SCENARIO:

A food stamp participant receives income from the Resident Opportunity and Self Sufficiency (ROSS) grant program under the U.S. Department of Housing and Urban Development (HUD). The ROSS program is designed to provide on-site case management services for individuals who are elderly or individuals who experience permanent disabilities. The goal of this program is to enable elderly and/or disabled residents to remain independent in their homes as long as possible.

QUESTION:

Do ROSS grant payments qualify as income exclusions?

ANSWER:

No, ROSS grant payments do not qualify as income exclusions as provided in MPP 63-502.2. Grant receipts should be evaluated as income in the normal way based upon the reason for the payment. For example: a stipend paid to a FS recipient while attending a training program without a work requirement, would be counted as unearned income (MPP 63-502.146). However, if the FS recipient is participating in a work training program and is being paid a salary, the salary income would be counted as earned income (MPP 63-502.131).

NONCITIZENS/SAVE VERIFICATION

BACKGROUND:

A noncitizen mom declared on the SAWS 2 that she was a resident alien and provided an "A" number as well as an identification card issued by the U.S. military. The customer stated that she lost her Resident Alien Card but was on aid in San Diego previously so she would contact them to request a copy of the card. The caseworker conducted a Systematic Alien Verification for Entitlements (SAVE) using the provided "A" number. The SAVE came back verifying and matching the customer's name, birth date, date of entry, and provided benefit eligibility code (e.g.: W22, Z15).

QUESTION:

Sponsorship, work quarters, and other noncitizen verification aside, considering that the noncitizen currently cannot provide the alien card or other United States Citizenship and Immigration System noncitizen resident document, is the SAVE verification sufficient documentation to aid the noncitizen indefinitely as long as all other eligibility factors are met?

ANSWER:

Yes, the "A" number, and the SAVE verification were sufficient to verify noncitizen status. The following regulations support the noncitizen status verification.

- MPP 63-300.5(a) provides that "verification is the use of third-party information or documentation to establish the accuracy of statements on the application. Verification and documentation are tools for making this judgment and recording the decision-making process in the case file." By providing the "A" number, documentation of noncitizen status establishes the accuracy of statements on the application.
- MPP 63-300.5(e)(2)(A) specifies "if the proper INS documentation is not available, the noncitizen may state the reason and submit other conclusive verification. The CWD shall accept other forms of documentation or corroboration from INS." The "A" number constitutes an "other" form of documentation.
- ACIN I-71-00, section 4.2, states a client is ineligible unless they have an "A" number, and explains initiating SAVE is required with the "A" number.
- MPP 63-300.5(e)(2)(D)(1) clarifies that "a noncitizen is ineligible until acceptable documentation is provided unless the CWD has submitted a copy of a document provided by the household to INS (USCIS) for verification." Furthermore,

“pending such verification, the CWD cannot delay, deny, reduce or terminate the individual’s benefits on the basis of the individual’s immigration status.”

INCOME/RESOURCES – 401Ks

QUESTION:

Are Individual Retirement Accounts (IRAs) and 401(k) plans considered resources?

ANSWER:

Per MPP 63-501.11, funds held in IRAs and funds held in accessible Keogh plans that involve no contractual obligation with anyone who is not a household member are considered resources. Simplified Employer Pension Plans (SEPs), which are considered IRAs by banks and the IRS, are also counted as resources, per Federal Administrative Notice (AN) 02-26. In counting any of these plans as a resource, the CWD shall include the total cash value of the account or plan minus the amount of the penalty (if any) that would be exacted for the early withdrawal of the entire amount in the account or plan, per MPP 63-501.113.

Per MPP 63-501.3(b), the cash value of pension plans or funds are excluded as resources. AN 02-26 provides further clarification that the following types of retirement savings and pension plans are excluded from consideration as resources: 401(k) plans, 457 plans (plans for state and local governments and other tax-exempt organizations), Federal Employee Thrift plans, Section 403(b) plans (tax-sheltered annuities provided for employees of tax-exempt organizations and state and local educational organizations), Section 501(c)(18) plans (retirement plans for union members consisting of employee contributions to certain trusts that must have been established before June 1959) and Keogh plans that involve a contractual obligation with someone who is not a household member. Further clarification is provided in Food and Nutrition Service policy memo at <http://www.fns.usda.gov/fsp/rules/memo/o2/pensions.htm> .

INCOME DEDUCTIONS – DEPENDENT CARE DEDUCTION vs. TUITION

BACKGROUND:

A recipient works full time. Her two children, one in first grade and one in kindergarten, receive care and educational instruction at a licensed child care center. Both children attend all day. Stage 3 child care pays the tuition fees up to the Regional Market Rate (RMR) for the program. The customer pays the remaining tuition fees of \$66. The information provided did not specify whether either child has special needs. The Quality Control review conclusion is that tuition is not an allowable income deduction for the Food Stamp program.

MPP 63-502.341 states: “The dependent care cost shall be allowed as a deduction when necessary for a household member to: (a) accept or continue employment; (b) comply with the Food Stamp Employment Training (FSET) Program requirements.; or (c) attend training or pursue education which is preparatory to employment.”

MPP 63-300.5(f)(1) states: “For those households not subject to monthly reporting requirements which are claiming dependent care costs, as specified in section 63-502.34, the EW may verify the actual amount of cost incurred if allowing the expense could potentially result in a deduction...”

QUESTION:

Are tuition fees an allowable income deduction for the FS program when the customer is participating in one of the activities outlined in MPP 63-502.341?

ANSWER:

Per MPP 63-502.341, a dependent care cost shall be allowed as a deduction for a household member to accept or continue employment, for FSET compliance purposes, or for training or education preparatory to employment. Tuition is not a deductible expense. In this situation, it is the EW’s responsibility to determine/differentiate tuition from after-school child care expenses. The burden of proof would be on the recipient to provide documentation for the after-school child care expense per MPP 63-300.5(f)(1) which states “...the EW may verify the actual amount of cost incurred if allowing the expense could potentially result in a deduction...”

Clarification added to Page 8 of ACIN I-58-06, 8-23-06 (See bolded sentence below)

UNREPORTED INCOME - CALCULATION TO DETERMINE AN OVERISSUANCE

SCENARIO:

A food stamp household received benefits since 2002 and has been reporting income earned from her full-time job. Three years later through Income Eligibility Verification System, it was found that the recipient had also been self-employed working and paid cash which the household never reported to the county. CWD received a copy of the household's tax forms from IRS of the household's annual income which was reported on the recipient's taxes. The CWD calculated the overissuance as such:

Gross annual income (from tax forms provided by IRS); and
Subtracted the income that the household reported to the county; and
Subtracted the self-employment expenses (which are not verified); and
Divided the balance by 12 months and averaged out for the entire year.
The CWD then took the average gross monthly income to determine the overissuance for each month the household received benefits.

QUESTION:

Is this the correct calculation method to determine the overissuance? If not, what is the correct methodology to determine an overissuance?

ANSWER:

The preferred methodology is as follows:

The self-employed income needs to be computed separately from income earned on the job to arrive at a "net gross" self-employment income amount. Based on MPP 63-503.412(b), which states "Self-employment must be averaged over the period of time the income is intended to cover...," it is appropriate to average self-employment income over the year it was received. That monthly figure is considered gross self-employment income. From the gross self-employment income, allow 40 percent for self-employment expenses per month, as allowed by MPP 63-503.413, which states "To determine the net gross income of the applicant, a standard deduction of 40 percent of gross earned income," or deduct actual costs of doing business to arrive at the "net gross" self-employment income amount.

Then, compute all earned income, including self-employed "net gross" income per month. Add the gross earned income from the job with the "net gross" from

self-employment = total gross earned income. From there allow all applicable deductions, such as 20 percent of earned income, standard deduction, etc., to get the total net income amount. **When determining the amount of benefits the household should have received, the CWD shall not apply the 20 percent earned income deduction to that portion of earned income which the household failed to report (MPP 63-801.312(c)).** Then, from what was received, deduct what should have been received to determine the amount of the overissuance.