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August 13, 2008

ALL COUNTY INFORMATION NOTICE 1-58-08

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 questions and answers regarding Food Stamp Program policy. These questions were submitted by the Food Stamp Review and Advisory Team (FRAT) of the County Welfare Director's Association. 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 Alicia Thomason of the Policy Implementation Unit at (916) 657-2630.

Sincerely,

Original Document Signed By:

RIGHTON YEE, Chief
Food Stamp Branch

Attachment

APPLICATIONS/CERTIFICATIONS – DENIAL ACTIONS ON THE 30th DAY

QUESTION:

What action does the County Welfare Department (CWD) take when denial actions fall on a weekend? Manual of Policies and Procedures (MPP) section 63-102(c)(9) states: “Compliance with CWD Time Limits” means taking action within the time frames specified. If the last day for taking action falls on a Saturday the CWD shall take action on or before that date. When the last day for taking action falls on a Sunday or other holiday, as specified in Government Code Sections 6700 and 6701, the CWD shall take action on the next normal working day except for expedited service time frames as specified in MPP section 63-301.531.” Federal Quality Control (QC) reviewers have found negative errors when the CWD follows this policy for denials.

ANSWER:

MPP section 63-102(c)(9) refers to actions pertaining to discontinuances falling on a weekend or other actions requiring a 10-day notice to households. Therefore, for actions to discontinue or for other actions requiring 10-day noticing which fall on a weekend, the provisions of MPP section 63-102(c)(9) will apply. For 30-day denial actions falling on a weekend, a full 30 days must have passed before the denial action can be imposed per MPP section 63-301.32 and .33. Any 30-day denial action falling on a weekend, is effective and dated the Monday following the weekend. QC errors will be cited by federal QC reviewers if a CWD proposed a denial on a Saturday or Sunday.

APPLICATION/CHANGING THE CASE NAME

QUESTION:

At the food stamp application or recertification both parents are not required to be present, and only one person will have signed the statement of facts. If the case holder left the home and we wanted to open a new or use a past existing case in the other parent's name, would we need to have that person in for an interview (since they would not have signed the previous documents), or could we copy their documents and ask them to come in to review them and sign the statement of facts and then update information at the next renewal?

ANSWER:

Since the case holder (head of household) left the home, the remaining adult household member would have to submit a new food stamp (FS) application to be determined eligible for benefits per MPP section 63-300. Once the application is approved, the County Welfare Department (CWD) may take a county-initiated action (MPP section 63-509(h)(1)(C) to discontinue individuals from the head of household's case. CWDs must ensure that duplicate benefits are not issued. If the head of household's case is Quarterly Reporting (QR), then the head of household may remain as an eligible household member in his own case pending receipt of this QR7.

APPLICATION PROCESS – CATEGORICAL ELIGIBILITY (CE)/DRUG FELONS

QUESTION:

There is conflicting information regarding disqualified Drug Felons and qualified Drug Felons. State regulations MPP section 63-402.229 states disqualified drug felons do not affect CE and ACL 98-19 says drug felons make the FS household non-CE. There's also conflicting information regarding individuals convicted of an IPV. Could you please clarify?

ANSWER:

A food stamp household is not considered CE if a member of that household is ineligible under 7 CRF 273.11(m) (individuals convicted of drug-related felonies). However, some drug felons are allowed to participate in the FSP, if they participate in a drug-treatment program (re: Assembly Bill (AB) 1796 (Statutes of 2004) and ACL 04-59). Refer to MPP section 63-402.22 drug and fleeing felons. Also, based on the income and the resources of drug and fleeing felons being handled in accordance with MPP section 63-503.44 and MPP section 63-503.45, the household would not be considered CE when a disqualified drug felon resides with the household.

In accordance with MPP section 63-301.741, under no circumstances shall any household be considered CE if any member of that household is disqualified for an Intentional Program Violation (IPV). The word "Disqualified" used here would include IPV individuals and drug and fleeing felons. Therefore, excluded IPV or drug/fleeing felon individuals render the household non-CE.

Note: MPP section 63-402.22 states the income of the drug and fleeing felon shall be handled in accordance with MPP section 63-503.44. In MPP section 63-503.44, household members excluded for conviction of a disqualifying drug felony, IPV disqualification, workfare or work requirement sanction, or who is a fleeing felon and/or probation/parole violator, there is no reference made to determining CE for the remaining household members (see MPP section 63-508.441(b)) as there is with household members excluded under MPP section 63-503.442(d)(4), for Social Security Number disqualification, Ineligible Noncitizen Status or Failure to Meet ABAWD Work Requirements. Therefore, there is no CE for households with IPV, and drug and fleeing felon disqualified members.

HOUSEHOLD CONCEPT-FLEEING FELON

SCENARIO:

A client has an active felony warrant from the state of Minnesota. The client acknowledges the warrant. He states he is not a "Fleeing Felon" as he has been pulled over by local police and they will not take him into custody to extradite him to Minnesota for the outstanding warrant. The county Special Investigation Unit confirmed the felony warrant is active and is not extraditable per Minnesota.

QUESTION:

Since the warrant is not extraditable, does it change the fact that he has an active felony warrant?

ANSWER:

No. Per MPP section 63-102(f)(4), the client is a "Fleeing Felon" and the regulations apply, thereby making him ineligible for food stamp benefits.

HOUSEHOLD CONCEPT- FOSTER CARE /ADEQUATE AND TIMELY NOTICE WHEN DISCONTINUING DUE TO CHILD PLACED IN FOSTER CARE

SCENARIO:

A child who has food stamp benefits and Medi-Cal is placed in foster care on 05/16/07.

The eligibility worker sent a timely 10-day notice to terminate 5/31/07.

QUESTION:

Is the effective date of the child's removal from the household 06/01/07, 07/01/07, or at the end of the quarter?

ANSWER:

The effective date of the child's FS discontinuance would be the end of the quarter, unless the child is approved for food stamp benefits in the foster care household (per MPP section 63-509(h)(1)(C)) in which case the CWD would discontinue the child mid-quarter. This regulation citation would prevail over ACL 03-18 instructions that directed removal of the foster care child from the FS household be a mid-quarter county initiated action.

INCOME - ANNUITIES/ANNUAL LOTTERY PAYMENTS

QUESTION:

Should lottery winnings that are paid over several years be considered unearned income?

ANSWER:

A lottery payment is considered unearned income (MPP section 63-502.146) in the month it is awarded, but a resource (MPP section 63-501.111) in subsequent months for any amount leftover. For payments made in installments, the money is accounted for according to the month it is received. That is, payments made in installments are considered unearned income in each month that they are awarded because they are currently owed and currently received.

Annuities and lottery winnings that are paid annually and not made in monthly installments shall be averaged over a 12-month period of time per guidance at MPP section 63-503.242(c).

For QR households, a lump sum lottery payment (not an annual payment and averaged) is considered a non-recurring payment for monies currently owed and income in the month received (MPP section 63-503.242(b)). If it is received mid-quarter, the household does not have to report it since receipt of the income will decrease benefits mid-quarter (MPP section 63-509(b), (c) and (d)). The household must report receipt of the lump-sum payment on the next QR7. The county will then assess for excess resources.

INCOME/RESOURCES-ADOPTION ASSISTANCE PAYMENTS

QUESTION:

Are Adoption Assistance Payments excluded as income?

ANSWER:

No. Once the child is adopted, adoption assistance subsidies are treated as unearned income, with the exception that any portion of the adoption subsidy that is earmarked for an excludable reimbursement (e.g., medical or dependent care expenses) shall be excluded from consideration as income, and determined on a case-by-case basis. Refer to ACIN I-05-92.

Payments through the Adoption Assistance Program (AAP) are assigned to the adoptive parents, not the child, based on ACIN I-05-92, "AAP payments are considered incentive payments to the adoptive parents of hard to place children. The family circumstances and the need of the child(ren) are considered in determining eligibility to the assistance payments." Adoption Assistance payments are covered by section 4102 (Simplified Definition of Income) of the 2002 Farm bill, P.L. 107-171. This section specifically requires that benefits paid under Title IV of the Social Security Act (SSA) be counted as income for food stamp purposes. Title IV-E of the SSA authorizes Federal payments for adoption assistance. Therefore, any benefits received by a food stamp household pursuant to a program operated under Title IV-E must be counted as income to the household.

NONCITIZENS - INDIGENT

QUESTION 1:

If a Legal Permanent Resident (LPR) Sponsored Noncitizen applies for FS only and knows who their sponsor is, but states they are unable to provide their sponsor's income or resource information, can the Sponsored Noncitizen be determined to be an "indigent noncitizen" if the household's income does not exceed 130% of the Federal Poverty Level (FPL)?

ANSWER:

No. An LPR-sponsored noncitizen who does not provide information regarding their sponsor's income or resources cannot be determined an indigent noncitizen. According to 7 CFR 273.4(c)(3)(iv), an indigent noncitizen is an LPR that is:

unable to obtain food and shelter taking into account the noncitizen's own income plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor(s)... the phrase "is unable to obtain food and shelter" means that the sum of the eligible sponsored noncitizen's household's own income, the cash contributions of the sponsor and others, and the value of any in-kind assistance the sponsor and others provide, does not exceed 130 percent of the FPL for the household's size.

MPP section 63-503.492(d)(1) omits the "unable to obtain food and shelter" phrase. If the LPR qualifies as an indigent noncitizen taking into account the sponsors income, according to 7 CFR 273.4(c)(3)(iv), the sponsor's income and resources are exempt from deeming. If the noncitizen is indigent, the only amount that must be deemed to the noncitizen, will be the amount actually provided. The 12-month exception is renewable for additional 12-month periods. The period of indigency begins on the date of such determination and ends 12 months after such date. [MPP section 63-503.492(d)(1)(A) and (B)].

QUESTION 2:

If the secondary Systematic Alien Verification for Entitlements (SAVE) returns within the certification period with their sponsor's information, would they be required to obtain sponsor information (income and resources) by the next recertification or would they continue to remain indigent as long as they stated they were unable to provide the income and resource of their sponsor?

ANSWER:

If the LPR is required to provide the sponsor's information and they do not, the LPR is ineligible for the FSP. The client is required to obtain the sponsor information (MPP section 63-300.5(e)(8)). The rules for noncitizens awaiting verification is contained in 7 CFR 273.4(c)(5). The State agency must assist noncitizens in obtaining verification in accordance with the provisions of 7 CFR 273.2(f)(5) and MPP section 63-300.5. FS policy does not allow the determination of "indigency" for a sponsored noncitizen without the sponsor's information.

If the sponsored noncitizen has been determined and verified as "indigent" for the CALWORKs program, because of categorical eligibility, the sponsored noncitizen is eligible for food stamp benefits without further sponsor verification (MPP section 63-301.7 and ACIN I-42-07). If for any reason that household is no longer determined to be categorical eligible, the sponsored noncitizen cannot participate in the Food Stamp program without providing the sponsor's information. (MPP section 63-301.9, MPP section 63-503.494, ACL 03-08, and ACL 02-17)

OVERISSUANCE (O/I) – RENOTICING AND TIMEFRAMES FOR COLLECTION OF O/I'S

CASE SCENARIO:

A Food Stamp claim Administrative Hearing/Inadvertent Household Error (AE/IHE) has been established by documenting the amount of, and the reason for the O/I and the county issued a demand letter to the FS household in January 2004. The household did not return the repayment agreement for this claim, but they currently have an open and approved food stamp case. Due to an existing collection for another claim established, the new claim cannot be executed until 2007.

QUESTION:

1. When the CWD begins the new claim recoupment in 2007, is there an obligation to remind the household of the previous claim in the language of the Food Stamp Change NOA?
2. If the case is closed, can the case be referred to collections regardless of the time lapse?
3. Are there any regulations that would prevent counties from pursuing collections of an established claim when more than three years has lapsed?

ANSWER:

1. No. There is no obligation to remind the household of the previous claim in the change Notice of Action (NOA). See MPP section 63-801.431.
2. Yes. The CWD may pursue other collection action as appropriate, to obtain restitution of a claim against any household who fails to respond to a written demand letter for repayment of any IHE or AE claim. (MPP section 63-801.442) However, for AE claims, once recoupment of the claim begins, the remaining balance of the claim must be forgiven after 36 consecutive calendar months (MPP sections 63-801.222 and .442).
3. No. There are no current State regulations that would prevent counties from pursuing collections of an established IHE claim when more than three years has lapsed. (Refer to ACIN I-03-02, Question 1b).

OVERISSUANCE (O/I) - CLAIM FROM TWO SEPARATE HOUSEHOLDS

SCENARIO:

A household consists of three adult sisters and five children all receiving food stamps. An overissuance (O/I) occurs and collection activity begins. Two of the adult sisters and their children move out of the home leaving only one sister and two children active in **Case A**.

One sister moves in with her boyfriend who is receiving food stamps with his mother and brother (**Case B**). Collection activity now begins in **Case B** as the sister that was active in **Case A** is now active in **Case B**.

QUESTION:

Can we collect from both cases at the same time for one claim? Per the following regulation we can collect from all adults who were in the household when the O/I occurred, but can we collect from both food stamp households at the same time for the same claim? According to MPP section 63-801.431(f), claim collection will be from all adults who were in the household when the O/I occurred.

ANSWER:

Yes. The CWD can collect from two separate cases at the same time for one claim as long as each case consists of an adult member who was an adult member of another household that received more food stamp benefits than it was entitled to receive. A collection for an O/I can be done in a new FS household (**Case B**) if the "liable" member moves to a new household. MPP section 63-801.1 states; "The CWD shall establish a claim, in accordance with MPP section 63-801.2, against any household that has received more food stamp benefits than it is entitled to receive or any household which contains an adult member who was an adult member of another household that received more food stamp benefits than it was entitled to receive except as specified in MPP section 63-801.12." Therefore, the CWD shall initiate an O/I allotment adjustment for **Case B**.

OVERISSUANCE – RENOTICING AND TIMEFRAMES FOR COLLECTION OF O/I'S

CASE SCENARIO:

A food stamp claim (AE/IHE) has been established by documenting the amount of and the reason for the O/I and the county issued a demand letter to the FS household in January 2004. The household did not return the repayment agreement for this claim, but they currently have an open and approved food stamp case. Due to an existing collection for another claim established, the new claim cannot be executed until 2007.

QUESTION:

1. When the CWD begins the new claim recoupment in 2007, is there an obligation to remind the household of the previous claim in the language of the Food Stamp Change NOA?
2. If the case is closed, can the case be referred to collections regardless of the time lapse?
3. Are there any regulations that would prevent counties from pursuing collections of an established claim when more than three years has lapsed?

ANSWER:

1. No. There is no obligation to remind the household of the previous claim in the Change NOA (MPP Section 63-801.431).
2. Yes. The CWD may pursue other collection action as appropriate, to obtain restitution of a claim against any household who fails to respond to a written demand letter for repayment of any IHE or AE claim. However, for AE claims, once recoupment of the claim begins, the remaining balance of the claim must be forgiven after 36 consecutive calendar months (MPP Sections 63-801.222 and .422).
3. No. There are no current state regulations that would prevent counties from pursuing collections of an established IHE claim when more than three years has lapsed. (Refer to ACIN I-03-02, Question 1b).

Transitional Food Stamp (TFS) AND REAPPLYING FOR CalWORKS (CW)

CASE SCENARIO:

04/30 - HH is receiving TFS and reapplies for CW

05/15 - Applicant attends the CW intake interview

05/22 - CW approved the application with a beginning date of 04/30/07
(04/30 was the application date).

05/31 - HH requests CW discontinuance

06/30 - TFS is set to discontinue,
CW discontinues due to 10-day notice requirement;
Anticipated TFS begins of 07/01/07.

QUESTION:

Should the household be eligible for TFS benefits beginning 07/1/07?

ANSWER:

No. According to ACL 03-66, in order for TFS to be received, CW and regular food stamps must be received in the month a regular food stamp household loses CW. (See also ACIN I-72-04 questions #6 and #20). There is no TFS eligibility 07/01/07 because regular food stamp benefits were not received in June. (ACIN I-58-03 and MPP section 63-504.13)

TFS AND RECERTIFICATION

SCENARIO 1:

The client did not show up for the recertification appointment on 03/10/07. CalWORKs (CW) and food stamps were discontinued March 31, 2007. The client requested a hearing, received a fair hearing date the first week in May, and was granted Aid Paid Pending (APP) for CW only since the certification period ended for FS effective 03/31. APP was not applicable for FS; however, TFS was issued effective 04/01.

Benefits received:

March - CW and FS issued (last month of regular FS benefits)

April - APP for CW and TFS benefits for FS issued.

(TFS terminated 04/30 due to receipt of APP for CW)

May - APP for CW and no FS benefits (client did not submit regular FS application). CW Appeal was subsequently lost and APP terminated 05/31.

QUESTION 1:

Since APP for CW was paid effective 04/01, should TFS be terminated effective 04/30?

ANSWER:

Yes. TFS should be discontinued effective 04/30 since APP was granted for CW. Once CW is approved, including APP, TFS must stop. (See MPP section 63-504.13) The household must reapply for regular FS benefits.

QUESTION 2:

Since the customer lost the appeal and CW benefits terminated 05/31, should TFS be issued again?

ANSWER:

No. According to ACL 03-66, in order for TFS to be received (MPP section 63-504.13), CW and regular food stamps must be received in the month a regular food stamp household loses CW (See also ACIN I-72-04 question #6 and #20).

SCENARIO 2:

Same as above, however benefits were received as follows:

March - CW and FS issued (last month of regular benefits)

April - APP for CW and TFS benefits issued. (County was unable to terminate TFS in April, due to lack of 10 day notice).

May - APP for CW. TFS benefits issued. (TFS benefits will terminate 05/31 due to household getting CW benefits).

On May 15th the household loses its CW appeal and CW APP benefits are terminated 05/31.

QUESTION 3:

Since APP for CW is stopping 05/31, is the household eligible for a new five-month TFS period effective June 1st?

ANSWER:

No. According to ACL 03-66, in order for TFS to be received for additional five months (MPP section 63-504.13), CW and regular food stamps must be received in the month a regular food stamp household loses CW. (See also ACIN I-72-04 questions #6 and #20), A CW benefit includes receipt of APP.

QUESTION 4:

Should the TFS benefits be reinstated to finish out the remaining 3 months? What if the household submits a new regular application prior to 05/31?

ANSWER:

No. TFS should not be reinstated because the household was not receiving regular food stamp benefits when CW/APP discontinued.

TRANSITIONAL FOOD STAMPS (TFS) AND CLIENT QC NONCOMPLIANCE REVERSAL/BREAK IN TFS BENEFITS

QUESTION:

When a TFS household has been terminated for non-cooperation with a QC reviewer and then complies with the reviewer, should the TFS benefits be resumed when applicable or must the household reapply for regular Food Stamps?

ANSWER:

According to MPP section 63-505.13, if a food stamp household does not cooperate with a QC reviewer, then the household is terminated from regular food stamps or TFS. If there is a break in receipt of TFS benefits, the household must reapply for regular food stamp benefits (MPP section 63-504.13, ACIN I-21-04). For example, if the TFS household is reported to be noncompliant on June 2nd (notice to discontinue on June 3rd is sent) and then is reported to have complied by July 5th, there is a break in TFS benefits and the household must reapply for regular food stamp benefits. However, if they comply by June 10th there would be no break in TFS benefits and TFS must continue.

TFS AND FAMILY REUNIFICATION (FR)

QUESTION #1:

Is a household receiving FR services (AB429) eligible for Transitional Food Stamp (TFS) benefits?

ANSWER:

Yes. The Food and Nutrition Service confirmed that the Food Stamp Act Section 11(s), means TFS benefits are to be provided to households that cease to receive TANF **cash** (grant) assistance. FR households are not considered to be receiving a cash grant; therefore, FR families are eligible for TFS benefits. TFS must be issued in the month CW benefits are reduced to zero when FR services begin.

Note: This is a correction to policy question #13 in ACIN I-75-05 issued December 7, 2005 which read “family reunification services are funded with TANF funds (the same as CalWORKs)”, are not eligible for TFS. (MPP section 63-504.131) When FR was initially developed, (ACL 02-36), FR parents were considered to be Public Assistance/Food Stamps (PAFS) cases and categorically eligible (CE); therefore, not eligible for TFS. However, with the above clarification, TFS is based on the CW cash grant ending and not on whether the case is a PAFS case.

QUESTION #2:

If FR CW cases are not considered to be receiving a cash grant for TFS purposes, how is TFS computed for CW Zero Basic Grant (ZBG) cases?

ANSWER:

ZBG CalWORKs cases are technically considered to be receiving a CalWORKs cash grant even though benefits have been reduced to “zero,” and are not eligible for TFS benefits. Some examples are:

- 1) If the case is a “zero basic grant” case due to administrative cost, (e.g. no grant is issued due to the payment being below \$10) technically the case is still receiving cash aid, but just not eligible to receive it at present. This case would not be eligible for TFS.
- 2) If the CW grant is adjusted to zero due to an overpayment adjustment, the household is still considered to be receiving cash aid; therefore, the case is TFS ineligible.

3) Unlike FR cases, children in ZBG cases remain in the AU for CW purposes.

TFS, DIVERSION AND IMMEDIATE NEED

1. Question:

If a family receives a lump sum diversion payment, are they eligible for TFS?

Answer:

No, the family is not eligible for TFS since diversion is not intended to be an ongoing benefit. Also, the applicant was given a choice of diversion or ongoing benefits.

- a) In accordance with MPP section 81-215.33, effective July 1, 1998, and W&I Code Section 11266.5(b), the applicant is given the opportunity to decline regular ongoing CalWORKs (CW) payments, and to accept diversion instead.
- b) The family is eligible for the diversion payment due to declining ongoing CW benefits participation in lieu of diversion. (MPP section 81-215.33, W&I code Section 11266.5(b), MPP section 63-504.13)

2. Question:

If a family receives a CW Immediate Need payment and the CW payment is subsequently denied, is the family eligible for TFS?

Answer:

No. If an Immediate Need payment is issued and the CW payment is subsequently denied, then the family would not be eligible for TFS. Any CW grant issued would be considered an overpayment because there was no CW eligibility. The HH must be receiving CW and regular food stamps to be eligible for TFS. (MPP section 63-504.131)