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 | ADMINISTRATIVE DIRECTIVE |
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TRANSMITTAL: 97 ADM-16

TO: Commissioners of
 Social Services

DIVISION: Department of
 Labor Welfare-
 To-Work Unit

DATE: August 6, 1997

SUBJECT: Food Stamp ABAWD Eligibility Requirements

SUGGESTED
 DISTRIBUTION:

Income Maintenance Directors
 Food Stamp Coordinators
 Employment Coordinators
 CAP Coordinators

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ATTACHMENTS:

None

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
-	-	18 NYCRR Part 387.13	PRWORA of 1996 P.L.104-193	Food Stamp Source Book (FSSB)IX-C	97 LCM 20 GIS 97TA/DOL001 GIS 96 TA/DC045

I. Purpose

The purpose of this directive is to provide social services districts with policy necessary to effectively implement the food stamp eligibility requirement for Able-bodied Adults Without Dependents (ABAWDs) which was enacted as a part of federal welfare reform.

II. Background

Federal food stamp legislation contained in Title VIII of the Personal Responsibility Act of 1996 requires states to limit the eligibility of certain individuals for food stamp benefits.

Beginning on November 22, 1996, Able-Bodied Adults Without Dependents (ABAWDs) as described in Section IV of this directive will only be eligible for three months of food stamps within a 36 month period if they are not working or participating in an approved work program.

III. Program Implications

Social Services districts must implement a procedure based upon the requirements of this directive for determining the eligibility of able-bodied adults without dependents for food stamp benefits.

IV. Required Action

A. Identifying ABAWDs

ABAWDs are individuals who are subject to food stamp work registration requirements and meet certain additional criteria. The definition of who is a work registrant has not been changed, and can be found in the Food Stamp Source Book, Section IX-C, (1.1-1.5). This definition was recently included in GIS 97TA-DOL001.

ABAWDs are work registrants who are NOT:

1. Under 18 or over 50 years of age;
 - a. The month in which an individual turns 18 is an exempt month for ABAWD requirements.

- b. When a household recertifies and a household member will turn 18 before the next recert date, the household must be informed of the ABAWD requirements for the 18-year-old. The local district must develop a method to track the continued FS eligibility of the ABAWD through the certification period. An overpayment claim must be established for any month during which the ABAWD was ineligible for failure to meet the ABAWD requirements and received benefits. Local districts should consider shorter certification periods to avoid overpayments.
 - c. Similarly, an ABAWD who has become ineligible for failure to meet the ABAWD requirements but turns 50 during a certification period is no longer subject to ABAWD requirements from the date of his/her 50th birthday and becomes eligible upon application if otherwise eligible.
2. Medically certified as physically or mentally unfit for employment. An individual receiving food stamp benefits is exempt from ABAWD requirements from the date he/she becomes unfit. Any month in which it is determined that an ABAWD becomes unfit is an exempt month from ABAWD requirements.
 3. A parent or other member of a household with responsibility for a dependent child under the age of 18.
 - a. Only one adult household member can be exempt from ABAWD requirements based on being responsible for a dependent child under the age of 18.
 - b. If one parent or caretaker in a household is exempt from work registration (WE), based on being a caretaker of a child under the age of 6, a second parent or caretaker cannot claim exemption from ABAWD requirements based on a responsibility for a dependent child under the age of 18.
 - c. If one parent or caretaker in a household with dependent children is exempt from work registration (WE) based on some reason other than being the caretaker of a child under the age of 6, e.g., receiving UIB, the second parent or caretaker may or may not be exempted from ABAWD requirements based on responsibility for a dependent child under the age of 18. This is a local district decision, based upon case circumstances.
 4. A pregnant woman;

A woman is exempt from ABAWD requirements throughout the entire pregnancy. The first exempt month is the month in which the household provides the required medical documentation.

Proper coding of food stamp applicants and recipients as work registration required, (WR), or work registration exempt, (WE), takes on new significance since it relates to ABAWD designation. Districts are instructed to check WR/WE coding at recertification to ensure that all household members have been properly coded. The district must change the code and determine ABAWD status when an individual is incorrectly coded as WE but should have been WR. The district must inform the household representative of the individual's ABAWD requirements and track the individual's future eligibility when the individual is also an ABAWD. The individual does not immediately lose eligibility due to the agency's error. This remains true even when the individual should have been a WR and an ABAWD for more than 3 months.

B. Program Implementation

For individuals who were in receipt of FS as of 11/22/96, the district must evaluate compliance with the ABAWD work requirement no later than the first recertification after 11/22/96. These cases are referred to as undercare cases in this section.

1. At Recertification: During the recertification interview process, the eligibility worker must determine whether the household contains an ABAWD individual and, if so, whether the individual met the ABAWD eligibility requirement during the certification period. The worker must review each calendar-benefit month starting with December, 1996 to determine whether the individual was employed or in an appropriate work activity. For example, a worker doing a recertification during May for a case whose certification ends May 31, must review all months back to December 1996. The individual remains eligible for food stamps as long as the individual met the ABAWD requirement. The individual is ineligible and should not be recertified if the individual did not meet the requirements for three or more months between December and May, and is not now meeting the requirements. In instances in which an individual did not meet the requirement for two months, the individual has one remaining month of eligibility.

Food stamps received in excess of the three month eligibility maximum, when not meeting the ABAWD requirement are not considered an overpayment for individuals who were undercare on or before November 22, 1996, for whom ABAWD eligibility is first being reviewed at the first recertification after November 22, 1996.

An individual who does not meet the ABAWD work requirements for three counted months of FS receipt but who is able to provide proof before the end of the current certification period that he/she has obtained employment which will provide at least 20 hours per week, averaged monthly, or enrolled in an approved work activity which will provide at least 20 hours per week, for the next benefit month, remains eligible. This individual remains eligible until it is determined that the employment or work activity will not meet the minimum hours per week requirements. Work experience programs are not subject to the 20 hour rule as long as the individual is working off the grant.

The worker must take action to deny the ABAWD individual on the recertification application if based on the available evidence, it appears that the ABAWD has not met the ABAWD work requirement, and does not have any prospect of meeting the requirements prospectively for the next benefit month. The social services district must issue an action taken notice indicating the reason for the denial of the individual and the actions the individual must take in order to regain eligibility.

2. Reviewing Cases Before the End of Certification: Districts may choose to enforce the ABAWDs requirement for undercare cases sooner than the first recertification after November 22, 1996. This may be done by conducting either an early recertification or a call-in/desk review of the case. All rules for recertification, including the use of an "action taken" notice, apply when an early recertification process is used. The household is not eligible for aid-continuing when the case is closed or the individual is removed following an early recertification. The case or individual must receive timely and adequate notice of adverse action, and aid-continuing is available when a fair hearing is requested following a call-in/desk review.

3. Individuals who begin participation in the third or fourth month of receipt of food stamps: An individual who has not met the ABAWD work requirements for three counted months of FS receipt, but who is able to provide proof before the effective date of the notice that he/she has obtained employment which will provide at least 20 hours per week, averaged monthly, enrolled in a district approved work program which will provide 20 hours or more of participation per week or enrolled in WORKFARE, without regard to the number of hours as long as the individual is working off the grant in the next benefit month, should continue to receive FS until it is determined that the employment, work activity or workfare will not meet the eligibility requirement. In instances in which the district has already issued an adverse disqualification notice, the notice must be rescinded based on verification of the prospective compliance for the next benefit month.

4. Adverse Action Notice: The following language will be incorporated into the Client Notice System (CNS) as soon as possible. It is also recommended for manual notices.

"This is because (NAME) is an able-bodied adult who is not the primary caretaker of a child under 18 years of age and may receive food stamps for no longer than three months in a 36 month period unless he/she:

a. works at least 20 hours per week averaged monthly earning at least the minimum wage;

or

b. participates in, for at least 20 hours per week, and complies with the requirements of:

- a work program assigned by the social services district, including Food Stamp Employment and Training programs. Job Search and Job Search Training are not approvable activities for this purpose; or

- programs operated under the Job Training Partnership Act (JTPA), or section 236 of the Federal Trade Act of 1974 administered by the Department of Labor;

or

participates in, and complies with a Workfare assignment made by the social services district. A participant enrolled in Workfare programs is not subject to the 20 hour rule as long as the participant is working off his/her PA and/or FS grant.

Because (NAME) did not meet these requirements, he/she is not eligible to receive food stamps. (NAME) may be eligible for food stamps again if he/she works for 80 hours for at least minimum wage in any 30 day period, participates for 80 hours in any 30 day period in a work program approved by the social services district, or if (NAME) becomes exempt from the ABAWD requirement as determined by the social services district.

This decision is based on Department Regulation 387.13(n).

Social services districts which choose to use alternative language for manual notices should submit a sample notice to the Department of Labor Welfare to Work Unit at the address indicated below:

State of New York
Department of Labor
Welfare-To-Work Unit
W.A. Harriman State Office Building Campus
Building 12, Room 223B
Albany, New York 12240

5. WMS Closing Codes: For ineligibility due to ABAWD Work Requirements, the following codes should be used.

FS Family -
Code the ineligible individual:
Individual Reason- F94
Individual Status- 10 - Inactive sanction

FS Single- Close

HR Family or Individual
Code FS Individual reason - F94
Leave Individual Status - 07 Active

6. District Responsibility for Assignments

Neither federal law nor state regulations require local districts to assign ABAWDs to work programs to maintain eligibility for food stamps. Nevertheless, since the purpose of the requirements is to ensure that able-bodied participants are engaged in work, it makes sense to work with participants who are interested in maintaining their eligibility for the program.

7. Re-establishing Eligibility

In order to re-establish eligibility, a disqualified individual has to work or participate in a work program for at least 80 hours in a thirty day period, not necessarily a calendar month. The individual who is part of an ongoing FS household is eligible to receive food stamps in the following month as long as he/she continues to work the required number of hours. For example, an individual who has lost his/her food stamps in March and gets a job on April 7, 1997, has to work a total of 80 hours within the next 30 days in order to regain eligibility in the next benefit month.

Once an individual's case is closed he or she has to file a new application to begin receiving food stamps again. By law, a food stamps application must be accepted whenever it is submitted. The normal eligibility rules apply and food stamps should be issued from whatever date the individual becomes eligible again, meaning whenever he/she has met the work requirements and is otherwise eligible for food stamps.

A new application is not required when a member of a food stamp household is removed from the case for failing to meet the ABAWD requirements and is to be added back. The household has to request that the member be returned to the case and he/she has to meet all other eligibility requirements. In this instance the new household member should be added to the household effective in the month following the month the change was reported.

An individual purchasing and preparing alone whose food stamp case is closed due to ABAWD work requirements and who starts work or a work program can reapply for food stamps as soon as he/she has worked or participated 80 hours in a 30 day period. The application is considered a new one (as the individual is not being added to an active case) and should be prorated. Example: An individual starts a 20-hour per week job on March 15. He/she works 80 hours by April 14, purchases and prepares alone, and applies for food stamps on that day. The food stamps should be prorated from April 14.

8. Additional Three Months Grace Period

An additional three months of eligibility, without working or participating in a work program, can be given only one time in a 36 month period. The only time that an ABAWD designated individual is entitled to this additional three months of food stamps when he/she is not working or is not participating in a work program is when the individual reestablished eligibility under the above circumstances and subsequently lost his/her job or enrollment with good cause. As long as the individual had already used up his/her initial three months of grace period, he/she is entitled to an additional three months period in the 36 month period to receive food stamps. This period must be used consecutively even if not needed to maintain eligibility. For example, an individual who becomes eligible for the grace period but returns to work prior to the end of three months is not able to use the unused portion of the three month period at a later time.

9. Becoming Exempt

An individual who becomes exempt from either work registration requirements, or ABAWD requirements including by reason of moving into a geographic area subject to the ABAWD waiver, no longer has to fulfill work requirements to maintain Food Stamp eligibility from the month they become exempt. For example, an ABAWD who becomes unfit for employment on April 20, is considered exempt for the entire month of April and is not subject to the ABAWD eligibility work requirements for April. April does not count as one of the three months that an ABAWD is eligible for food stamp benefits. However, an individual who is ineligible for April benefits, as a result of not meeting ABAWD requirements, becomes unfit for April 20th, becomes eligible upon application no sooner than April 21st as long as he/she is otherwise eligible and purchases and prepares alone. Exemption from the ABAWD requirement may not exempt individuals from work registration requirements including FSET. However, exemption from work registration always exempts individuals from ABAWD requirements.

10. Training Related Expenses (Supportive Services)

All participants in Food Stamps Employment and Training (FSET) activities are entitled to up to \$25 monthly to cover expenses. This includes a recipient of Expedited Food Stamps who has been assigned to an applicant job search. Work registrants enrolled in any FSET activity are entitled to training related expenses as described above. This also enables him/her to meet the Food Stamp ABAWD eligibility work requirement. There is no other obligation to authorize supportive services to ABAWD's to help them maintain their food stamp eligibility.

11. Conciliation

There are no requirements for conciliation when discontinuing individuals for failure to meet ABAWD requirements. The work requirement is simply an eligibility requirement and only normal notices apply. A Work Registrant who has been assigned to an FSET activity and who fails to comply with the assignment is entitled to conciliation. A Work Registrant who fails to comply with a Work Registration requirement which is not part of an FSET assignment can be sanctioned without the need for conciliation (see Food Stamp Source Book Section IX-E for work registration requirements).

12. Counting Sanctions

Any break in assistance is not counted toward an individual's initial three month limit of non-working status. This includes sanction periods. Breaks in assistance do not count toward the additional three month grace period after re-establishing eligibility.

Recipients' working status only affects their eligibility as described in Section IV B.8. while they are receiving food stamps.

The 36 month period are calendar months and are not based on receipt of assistance and continue to be counted without interruption.

13. Tracking ABAWD Eligibility

The three month eligibility count begins with the first full month of receiving FS benefits after November 22, 1996 during which the individual was an ABAWD and did not fulfill the work requirement. For individuals who were recipients on November 22, 1996, this means the first month that may count toward the limit is December, 1996. For applications after November 22, 1996, the prorated month does not count toward the ABAWD requirement unless the filing date is the first of the month.

As noted in Section IV B.1. the local district may wait until the next recertification to determine whether the individual is in compliance with the work requirement when the individual was an FS recipient on 11/22/96.

It must be determined at recertification and application, when a member of the case is an ABAWD, whether the ABAWD is meeting the work requirement. The case should be processed and tracked for continued compliance as long as the ABAWD is in compliance with the work requirement and is otherwise eligible. The tracking method may vary depending on the type of activity in which the individual is involved and will be discussed later in Section IV B.14. and 17.

In instances in which the ABAWD is not in compliance with the work requirement, it must be determined whether he/she if he has received FS in any month, since and including December, 1996 (again, ignore any initial, pro-rated months). If yes, then the number of months he/she received FS as an ABAWD without meeting this requirement must be determined. The individual must be disqualified if Food Stamps were received for three months or more while not meeting the work requirement. The individual may be authorized for an additional month or two, depending on the number of months he/she received Food Stamps while not meeting the work requirement, to ensure that the the entire period does not exceed three months.

14. Tracking Employed Individuals

In instances in which the individual is employed at least 20 hours per week, averaged monthly, at minimum wage the individual must be instructed to include the number of hours worked each month in the quarter on the quarterly report.

Most ABAWDs who are employed will be required to file quarterly reports and will be on the Quarterly Reporting (QR) system. Recipients who are required to complete QR's may choose to report changes any time. However, they cannot be required to report changes at any time other than recertification.

The QR form currently does not collect information on the number of hours the recipient has worked but standard wage stubs contain this information. In instances in which the recipient's wage stubs do not show hours, the local district shall instruct the ABAWD to write the number of hours worked each month on the QR. The worker has to contact the household when the household does not add this information to the QR. There is more on this in the "What is Considered a Complete QR" section. Revisions to the QR are being considered.

In instances in which the household states on the quarterly report or at recertification that the ABAWD worked an average of 20 hours per week, averaged monthly, each month of the report quarter; and it is verified by the pay documentation for the last four weeks of the last month of the report quarter and this information is consistent with other case information, his/her compliance with the ABAWD requirement for the entire quarter is assumed. The month(s) would be counted against the ABAWD's eligibility when the household reports any month of work for the ABAWD individual as being below the 20 hour per week, averaged monthly, requirement.

15. Discrepancies on the Quarterly Report Between Stated Hours and Verified Hours

In instances in which the household indicates on the QR or during an agency contact that all three months exceed the ABAWD required hours but it is not reflected in the last verified month of the report quarter (i.e., by the documented wages of the last month of the quarter) then the last month is counted against the individual. However, the first two months cannot automatically be counted as not meeting the ABAWD work requirement unless the district, through investigation, can prove the individual did not meet the required hours as stated in the quarterly report.

16. What is Considered a Complete QR

Note that while the QR may be used as a means of reporting work information for ABAWDs, the ABAWD requirements and QR requirements are completely separate. The QR may be complete according to the existing criteria but be lacking information to confirm continuing eligibility for the ABAWD. In that case, the ABAWD should be required to provide the additional information in order to remain eligible. Whether or not the information is provided, the worker must process the QR and authorize FS for the remainder of the household. In instances in which the ABAWD's information is provided and he/she remains eligible, the worker should authorize the case with the ABAWA included. In instances in which the information is not provided or is provided but the ABAWD did not meet the requirements, the local district must delete the ABAWD from the case when he/she has received Food Stamps for three months without meeting the work requirements.

It is important to note that not all FS recipients who submit QRs are ABAWDs. A person who is exempt from Work Registration requirements (WE) is not subject to ABAWD requirements. To ensure that recipients are coded correctly, workers must review employability status at recertification, when reviewing QRs, and when recipients report a change that may affect their status.

Exceptions to Quarterly Reporting requirements are as follows:

- a. households in which someone receives SSI
- b. seasonal/migrant worker households
- c. households in which the only earned income is from annualized self-employment
- d. persons who reside in group living arrangements

In any of the above listed households in which there is an employed ABAWD, the local district must use whatever means are available to track his/her compliance with the ABAWD requirements (e.g. shortened certification periods, AFA codes or other locally developed tracking mechanisms). ABAWDs who are required to submit QR's must be informed to report changes in income within 10 days or be subject to an overpayment claim or a possible Intentional Program Violation (IPV).

17. Tracking Individuals in Work Programs

In instances in which the individual is participating in another type of qualifying activity, arrangements must be made with the provider agency, etc. to provide attendance information on a monthly basis.

Enrollments in Workfare or other FSET activities may be reported through use of the Employment Subsystem. This will necessitate coordination with the local district employment unit. However, the subsystem does not accommodate actual tracking of the 3 month and 36 month periods.

Any calendar month in which an ABAWD does not participate in a qualifying work program for 20 hours or more per week (with the exception of qualifying Workfare) counts toward the three month limit. For example, a recipient who participates 20 hours for three weeks and does not participate the fourth week, does not meet the ABAWD work requirement for that month.

When local districts become aware that an ABAWD has received food stamps for three months in which he/she has not complied with the work requirement, action must be taken to delete him/her or close the case, whichever is appropriate. Timely notice must be given. Disqualification procedures are covered more fully in previous sections.

Tracking becomes problematic for ABAWDs who are not meeting the work requirement and have less than three months of eligibility remaining. It is recommended that the certification period for these cases be shortened to coincide with the last month of their three month limit. Once individuals retain or regain eligibility by participating in an appropriate activity, a normal authorization period may be established because it is the recipient's responsibility to notify the agency of any change in his status.

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V. Systems Implications

An automated tracking system is being developed. Information will be provided to social services districts when it becomes available.

VI. Effective Date

This administrative directive is effective September 1, 1997.

Karen B. Papandrea
Director
Welfare-To-Work