

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES
OFFICE OF ADMINISTRATIVE HEARINGS

TO: All Administrative Law Judges
and Professional Staff

DATE: January 26, 1995

FROM: Russell J. Hanks

SUBJECT: Ewing v. Bane
Food Stamp Hearings

As part of the stipulation and settlement in Ewing v. Bane (USDC/WDNY), the Department agreed to provide instructions to its hearing officer staff concerning the provisions of 7 CFR 273.15(m)(2)(iii) and (v). The Department also agreed to remind the hearing officer staff of the food stamp regulations addressing college student ineligibility, particularly regarding the listed exceptions. The following instructions satisfy the Department's responsibilities under the stipulation.

INSTRUCTIONS

The powers and duties of the ALJ in food stamp fair hearings are addressed in 7 CFR 273.15(m)(2), which provides, in relevant part:

Powers and duties. The hearing official shall: ...

(iii) Request, receive and make part of the record all evidence determined necessary to decide the issues being raised; ...

(v) Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the State agency; ...

These provisions are interpreted to require the use of an independent medical assessment or professional evaluation only in the rare circumstance where:

- 1) the issue cannot be disposed of on other grounds, and
- 2) the parties have had full opportunity to present their own relevant evidence, through the appropriate use of adjournments, remands and reopened hearings, and
- 3) the parties have had full opportunity to review and contest the relevant evidence presented by the opposing side, through the appropriate use of adjournments, remands and reopened hearings, and
- 4) in weighing the evidence, the ALJ concludes that the relevant evidence presented by the opposing parties is equally convincing and a determination cannot be made without additional independent evidence.

In the event all of the above conditions are met, the ALJ must consult with her/his supervisor.

College student food stamp ineligibility is addressed in 7 CFR 273.5 and 18 NYCRR 387.1 (w)(4)(i) and 387.1 (ii). In relevant part, 7 CFR 273.5 provides:

(a) **Applicability.** Any person who is (1) between the ages of 18 and 60; (2) physically and mentally fit; and (3) enrolled at least half-time in an institution of higher education shall be ineligible to participate in the Food Stamp Program unless that person complies with the eligibility requirements of paragraph (b) of this section. ...

(b) **Eligibility requirements.** (1) In order to be eligible to participate in the Food Stamp Program, any student shall meet at least one of the following criteria:

(i) Be employed for a minimum of 20 hours per week and be paid for such employment or, if self-employed, be employed for a minimum of 20 hours per week and receive weekly earnings at least equal to the Federal minimum wage multiplied by 20 hours;

(ii) Participate in a federally financed work study program during the regular school year;

(iii) Be responsible for the care of a dependent household member under the age of six.

(iv) Be responsible for the care of a dependent household member who has reached the age of six but is under the age of twelve where the State agency has determined that adequate child care is not available.

(v) Receiving benefits from the Aid to Families with Dependent Children Program.

(vi) Be assigned to or placed in an institution of higher learning through a program under the Job Training Partnership Act.

The college student food stamp ineligibility provisions are self-explanatory. If you have any questions, please refer them to your supervisor.