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OFFICE OF TEMPORARY AND DISABILITY
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Administrative Directive

Section 1

Transmittal:	08-ADM-04
To:	Local District Commissioners
Issuing Division/Office :	Center for Employment and Economic Supports
Date:	July 3, 2008 <i>revised</i>
Subject:	Treatment of Income From Adoption Subsidy Payments and Foster Care Payments in Determining Food Stamp Program Eligibility and Benefit Amount
Suggested Distribution:	Temporary Assistance Directors Food Stamp Directors Staff Development Coordinators
Contact Person(s):	Food Stamp Policy Bureau – 800-343-8859, extension 3-1469
Attachments:	LDSS-4314, “Food Stamp Benefits Household Composition Desk Guide”
Attachment Available On – Line:	Yes

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
02 ADM-07 92 ADM-42		387.1(w)(2)(i)(b) 387.10(b)(3)(ii) 352.22(g) 352.22(p) 352.30(a) 369.2(f)(1)(ii)	273.9(b)(2)(ii) 273.9©(15)	FSSB Section 5 FSSB Section 12	ABEL Transmittal 08-1

Section 2

I. Summary

- Local districts must determine Food Stamp Program household composition and program eligibility for households receiving an adoption subsidy or applying with foster children.
- As outlined in 02 ADM-07, “Food Stamp Program Reauthorization Changes”, the Food Stamp reauthorization Act of 2002 permitted numerous changes to food stamp program eligibility requirements. Among the changes was permission to completely exclude, as income, adoption subsidy payments and foster care payments received for children included in the food stamp household.
- Recent USDA clarification stated that the amount of adoption subsidy payments that is in excess of allowable, verified, reimbursable expenses may not be excluded as income and must be considered to be unearned income to the FS household.
- Recent USDA clarification also states that foster care payments in excess of allowable, verified, reimbursable expenses may not be excluded as income if the foster child for whom the payments are being received is a member of the food stamp household. Such payments must be treated as unearned income to the FS household. If the child is not included in the FS household, then the total amount of the foster care payments must be excluded as income to the FS household.

II. Purpose

This Administrative Directive (ADM) amends Food Stamp policy as outlined in 02 ADM-07, “Food Stamp Program Reauthorization Changes” in the treatment of income from adoption subsidy payments and foster care payments in determining food stamp program eligibility and benefit amount. Adoption subsidy payments and foster care payments are no longer excluded as income when determining food stamp program eligibility and benefit determination for individuals included in the food stamp case as set forth in this Administrative Directive.

III. Background

New York State implemented many optional provisions of the Food Stamp Reauthorization Act of 2002 in order to improve program access, simplify program administration and promote program integrity.

The Food Stamp Reauthorization Act permitted the exclusion of certain sources of income that were excluded for Family Assistance or federal Medicaid. New York State considered its adoption subsidy payments and foster care payments to be reimbursements for expenses incurred by the food stamp household, and therefore the entire amount of such payments could be excluded as income sources for purposes of determining FS eligibility and benefit amounts for individuals included in the food stamp household.

Recent USDA clarification states that the entire amount of New York State's adoption subsidy and foster care payments may not automatically be excluded as income when determining food stamp eligibility and benefit amounts.

IV. Program Implications

Districts must cease the automatic exclusion of the entire amount of adoption subsidy payments and foster care payments for children who are included in the FS household.

V. Required Action

A. Districts must continue to determine Food Stamp Program household composition for households receiving an adoption subsidy payment. Children who are adopted **must be included** in the Food Stamp household of their parent(s).

1. Adoption subsidy payments **in excess of allowable, verified, reimbursable expenses** may not be excluded as income and are considered to be unearned income to the FS household. Income from adoption subsidy payments must be budgeted in determining the household's FS eligibility and benefit amount. Upstate unearned income source code 01 and NYC code 13 should be used in ABEL when calculating FS budgets.

B. Districts must also continue to determine Food Stamp Program household composition for households applying with foster children.

1. Children who are in foster care are **not** required to be included in the FS household of their foster parent(s). It is the decision of the household whether to include the child(ren) or not. Inclusion or exclusion of the foster care child in the FS household is not contingent on whether or not food for the foster care child is purchased and prepared with the rest of the food stamp household.

i. If a child **is** included in the FS household, then the foster care payments for that child, **in excess of allowable, verified, reimbursable expenses**, must be included as income when determining the eligibility and benefit for that household. Such payments are considered to be unearned income to the FS household.

ii. If a child is **not** included in the FS household, then the total amount of the foster care payments must be excluded as income to the FS household.

C. Households that receive either foster care payments or adoption subsidy payments and which currently have the income from adoption subsidy payments and foster care payments excluded from their food stamp case budgets must be re-budgeted and have their eligibility re-assessed.

1. Income from adoption subsidy payments must be included in the food stamp case of households receiving such payments and a new eligibility made and new benefit determination calculated no later than the household's next recertification.

2. For food stamp households that currently include foster children and exclude their foster care payments, districts must advise the household that they either may exclude the children and their foster care income, or continue to include the child but that their case must then be adjusted to include the income from the foster care payments. This adjustment must be done no later than the next recertification. Again, the option to include or exclude the child is a decision the household must make. Obviously, such a decision most likely will depend on the impact of inclusion or exclusion of the foster child on the household's eligibility and benefit amount. Local districts should assist households receiving foster care payments in making this decision by showing them how the decision to include or exclude the foster child in the FS household will affect the household's eligibility and the amount of the benefit the household will receive.
3. For households that currently exclude, as boarders, foster children residing with them from the FS household, this change in policy is not likely to have any effect. However, districts should advise them no later than next recertification that they may continue to exclude the foster children as boarders and have the foster care payments entirely excluded as income, or may include the foster children as household members and have the foster care payments included as income.

D. Reimbursable Expenses And Verification of Expenses

1. **Reimbursements for normal household living expenses such as rent or mortgage, utilities, personal clothing, or food eaten at home are a gain or benefit to the household and, therefore, may not be excluded as income.** Reimbursement for *any other expense* may be excluded as income as set forth below:
 - a) Reimbursements for past or future expenses, to the extent that they do not exceed actual expenses incurred, may be excluded as income. For adoption subsidy payments and for foster care payments (where the child is included in the FS household), only that portion of the subsidy payment that exceeds the sum of all the excluded reimbursements is counted as income.
 - b) To be excluded as a reimbursement, a payment must be provided for a specific identified expense, other than normal living expenses, and used for the purpose intended. When a reimbursement, including a flat allowance (such as an adoption subsidy or foster care payment), covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses. The amount by which a reimbursement exceeds the actual incurred expense shall be counted as income.

(Example: A FS household that is receiving an adoption subsidy payment of \$500 per month. If the household has verified reimbursable expenses – e.g., school activities and music lessons -- that average \$75 per month, then \$425 of that adoption subsidy payment would be considered to be income when assessing eligibility and when calculating a food stamp benefit.)

VI. Temporary Assistance (TA) Implications

There has been no change in TA policy regarding the treatment of adoption subsidy or foster care income when a child on whose behalf such income is received resides with the TA household.

Adoption subsidy

The treatment of adoption subsidy income for TA eligibility purposes is detailed in 92 ADM-42. The social services district must include the child on whose behalf an adoption subsidy is being received in the TA filing unit and the full amount of the adoption subsidy income in the budget only when it is financially beneficial to the family for the child to be included. Since it is normally financially beneficial to exclude the child on whose behalf an adoption subsidy is being received from the TA filing unit and therefore exclude the full amount of the adoption subsidy income from the budget, children in receipt of an adoption subsidy are normally not members of the TA filing unit.

Foster Care

A child on whose behalf a relative or caretaker is receiving foster care is not considered under 18 NYCRR 369.2(f) (1) (ii) to be residing in the home of the relative or caretaker. This means that a child on whose behalf foster care is being received when physically present in the home of the relative/caretaker is not considered for filing unit or other budgetary purposes. Foster care income is exempt for TA budgetary calculations under 18 NYCRR 352.22(g).

VII. Systems Implications

The WMS ABEL system will be updated to support the entry of Upstate unearned Income source code **01, Adoption Subsidy**, **09 Foster Care**, and **NYC code 13**, for FS cases. The income source code **99, other** can be used as an interim code.

VIII. Additional Information

Attached is the revised **LDSS-4314, "Food Stamps Benefits Household Composition Desk Guide."**

- **The revised 6/08 version of the LDSS-4314 is expected to be delivered to the Upstate (Albany) and the HRA (New York City) warehouses sometime in August 2008**
- **Your district will not automatically receive copies of the revised forms.**
- In order to ensure that usage of these revised forms begins within a reasonable amount of time, you may continue to use the previous 1/03 supplies until your stocks are depleted, or until November 1, 2008 whichever occurs first. Reorders of these forms will be filled with 6/08 versions.

- **Written requests for the LDSS-4314 (Rev. 6/08) should be submitted on Form OTDA-876 (Rev. 6/08): “Request for Forms or Publications”, and should be sent to:**

Office of Temporary and Disability Assistance
Document Services
P.O. Box 1990
Albany, New York 12201

Questions concerning ordering forms should be directed to Document Services at 1-800-343-8859, ext. 2-0159.

- A master camera ready copy of the form may also be ordered through Outlook. To order a master camera ready copy you must obtain an OTDA-876 electronically by going to the OTDA Intranet Website at <http://otda.state.nyenet/> then to the Centers and Bureaus page, then to Operations and Program Supports page, then to OPS E-Forms page and then to Management Services (this page contains the electronic OTDA-876).
- For those who do not have Outlook but who have Internet access for sending and receiving email, the Internet email address is: gg7359@dfa.state.ny.us. For a complete list of available forms, please refer to OTDA Intranet site: http://otda.state.nyenet/ldss_eforms/default.htm .

IX. Effective Date

This change is effective immediately for new cases and no later than next recertification for already active food stamp cases.

Issued By

Name: Russell Sykes
Title: Deputy Commissioner
Division/Office: Center for Employment and Economic Supports

FOOD STAMP BENEFITS HOUSEHOLD COMPOSITION DESK GUIDE

All persons, even if they are members of different families, who customarily purchase and prepare meals together are to be considered members of the same Food Stamp Benefits household.

RELATIONSHIPS:	SITUATION RESULT
Spouses Living Together	Must always be considered as a single household.
Parents and their Children, 21 Years of Age or Younger, Living Together (Includes Stepchildren) regardless of whether the children have a spouse or children of their own.	Must be considered as a single household.
Children Under 18 (Except Foster Children) Under the Parental Control of an Adult Household Member Who Is Not the Children's Parent or Stepparent.	Must be considered as a single household. <i>(Reminder:</i> A child under 18 living with their spouse or child is not considered under parental control.)

NOTE: There is no age requirement for an individual not under parental control to receive food stamp benefits.

CIRCUMSTANCES CAUSING INELIGIBILITY:	SITUATION RESULT
Resident of Institution	Ineligible unless a resident of a: <ul style="list-style-type: none"> • Drug/alcohol Treatment facility • Subsidized housing for the elderly • Shelter for the homeless • Certain group living arrangement • Shelter for battered women and children
Ineligible Student	Non-household member. (Income and resources are excluded. The household can claim their prorated share of expenses.)
Work Rules Sanctioned or Intentional Program Violation Disqualified	Excluded household member. (Income and resources are counted in their entirety. The household can claim full expenses.)
An individual who fails to provide or apply for a Social Security Number (SSN), or any individual who if unable to provide a SSN, fails to apply for a SSN	Excluded household member. (Income is prorated; resources are counted in their entirety. Expenses paid by or billed to the excluded person are prorated.) Applying for or providing the SSN immediately brings the excluded individual into compliance.
A household that fails to or refuses to cooperate in the SSN validation process.	The food stamp case is closed.

FOOD STAMP BENEFITS HOUSEHOLD COMPOSITION DESK GUIDE

Persons residing together who do not meet any of the previous definitions may be separate households if they purchase and prepare food separately from the other persons.

SPECIAL LIVING ARRANGEMENT:**SITUATION RESULT**

Boarder (Room and Meals)	Not a part of the household, but may be considered to be a member of a household at the household's request. May never be a separate household. The following can never be considered boarders: <ul style="list-style-type: none"> • Parents and children, age 21 and younger who live together. • A spouse of a member of the household. • Children under 18 years of age who are under the parental control of an adult member of the household including a sibling.
Roomer (Room, No Meals)	Not considered part of household, but may apply as a separate household.
Shared Living (Pays a Share of Shelter Expenses)	Not considered part of household, but may apply as a separate household.
Elderly Individuals and their Spouses	Separate household status may be granted to those elderly individuals and their spouse who cannot purchase and prepare their own meals because they suffer from certain disabilities , even if they are living and eating with others, if they meet certain conditions.*
Foster Children	It is the household's decision to include or exclude foster children as household members. If included, those foster care payments that cannot be excluded as verified reimbursements are counted as income. If excluded, the foster care payments are not counted as income.

***ALL OF THE FOLLOWING CONDITIONS MUST BE MET:**

- The individual must be 60 years of age or older; **and**
- The individual must suffer from a disability considered permanent under the Social Security Act or from a non-disease related, severe, permanent disability and be unable to purchase and prepare meals; **and**
- The gross income of the others with whom the individual resides (excluding the income of the individual and the spouse) cannot exceed 165% of the poverty level.

STUDENTS:

In order to participate in the Food Stamp Program, a student who is at least 18 years old but less than 50 years old and is not disabled must meet one of the following criteria:

- Be receiving Family Assistance or Federally funded Safety Net Assistance Benefits.
- Provide more than half the physical care for a child under 6 or an incapacitated person.
- Be enrolled full time and be a single parent responsible for the care of a child under 12.
- Provide more than half the care of a child under 12 and not have adequate child care to work and go to school.
- Be participating during the school year in a State or Federally financed work study program funded under Title IV-C.
- Be employed for a minimum of 20 hours per week and be paid. If self employed, must be working a minimum of 20 hours and earn an amount equal to the Federal minimum wage x 20 hours.
- Was placed in school through JTPA, FSE&T, JOBS or DOL.