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BARBARA B. BLUM
 Commissioner

[An Administrative Directive is a written communication to local Social Services Districts providing directions to be followed in the administration of public assistance and care programs.]

ADMINISTRATIVE DIRECTIVE

TRANSMITTAL NO.: 81 ADM-65
 [Income Maintenance]

TO: Commissioners of Social Services

SUBJECT: U.S. District Court Settlement: Montes v. Blum,
 Treatment of Shelter Allowance in Rental Disputes in ADC Cases
 DATE: December 31, 1981

SUGGESTED DISTRIBUTION: All Public Assistance Staff

CONTACT PERSON: Any questions concerning this release should be directed to Patricia Chmielewski, Bureau of Income Support Programs, by calling (800)342-3715, extension 4-9359.

I. PURPOSE

The purpose of this release is to advise local social services districts that, as a result of litigation in the case of Montes v. Blum, the shelter allowance can no longer be removed from an ADC grant when the recipient has withheld the rent payment because of a dispute with the landlord or the rental agent.

II. BACKGROUND

Department policy, as outlined in 80 ADM-98, requires that whenever a local social services district learns, by a landlord request for restricted payment or by an eviction or dispossession notice, that a recipient has failed to fully apply the shelter allowance to his rent, the district must consider such a failure as an indication of the inability to handle cash and must investigate the advisability of restricting the shelter payment. The investigation must then consist of giving the client the opportunity to rebut a presumption of mismanagement before action is taken. Where recipients have presented evidence

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous Reference
80 ADM-98 78 ADM-20 77 ADM-13	80 ADM-98 Parts Superseded	352 358 381	SSL 131-a SSL 143-b SSL 159 PL 95-171 PL 97-35	106	45 CFR 205 45 CFR 234 Source Book Section - XVII-B-1,3

to rebut the presumption of inability to handle cash because the family had withheld the rent payment from the landlord due to a dispute, local social services districts have been required to remove the shelter allowance from the grant.

As a result of further proceedings in the case of Montes v. Blum, local social services districts can no longer remove the shelter allowance from the grant in those instances where recipients refuse to pay their landlord because of a dispute.

III. PROGRAM IMPLICATIONS

Local social services districts must not withhold the shelter allowance from the ADC grant in those cases where the recipient withholds the rent payment because of a dispute with the landlord. This directive applies prospectively to HR cases.

IV. REQUIRED ACTION

A. Active Cases

1. Local social services districts must review all active cases at the time of the next recertification interview to determine if the shelter allowance was withheld for any period beginning May 1, 1981 on the basis that the recipient refused to pay the landlord as the result of a dispute.
2. The recipient must provide the facts underlying the dispute and the local social services district must document the reasons in the case record.
3. Local social services districts must send a notice to those clients whose shelter allowance is restored to their grants and/or who receive retroactive benefits. This notice should advise such clients that should the dispute ultimately be resolved against them, it is their responsibility to pay the withheld rent to the landlord if payment is required.
4. Local social services districts must treat any reduction of the recipient's ADC grant which was the result of the withholding of the shelter allowance as an underpayment and must make an appropriate refund. In those instances where back rent is owed and the dispute has not yet been resolved, the recipient must be permitted to retain the refund until the dispute is resolved. In all other instances, i.e., back rent is not owed or the recipient has moved, the retroactive payment must not be considered as income or as a resource in the month paid nor in the the next month, but must be considered a resource following such period of time.

B. Denied or Terminated Cases

For any person who was an applicant or recipient beginning May 1, 1981, and whose case is now closed, the local social services district must mail a notice, using the exact language as is included in the attached sample (Attachment 1) to all such closed ADC cases within 60 days of the receipt of this Directive and provide, upon request, a corrective grant equal to the amount of assistance the person's household would have received if a shelter allowance had at all times been included in determining their needs and amount of assistance.

C. Notice of Possible Retroactive Benefits

Local social services districts must mail a notice, using the exact language as is included in the attached sample (Attachment 2) to all ADC recipients within 30 days of the receipt of this Directive. This notice must be reproduced locally, without change.

In addition, copies of the notice must be posted in public locations in each local social services district office.

D. Notice Requirement for Granting or Denial of Retroactive Benefits

If the local social services district determines that the person applying for retroactive benefits is either owed or not owed retroactive benefits for the period beginning May 1, 1981, the person must be informed of this fact in writing. The notice to the person must include the following information:

- A statement that the request for retroactive benefits has been denied or granted;
- If granted, the amount granted and how it was determined;
- If denied, the reasons for the denial;
- An explanation of the person's right to a fair hearing if he/she disagrees with the local social services district's decision regarding denial or the amount granted; and
- All other information required to be included with the agency's Notice of Intent.

E. Future Determinations of Mismanagement in ADC

Local social services districts must continue to make determinations of mismanagement following the procedures specified in 80 ADM-98. Recipients who present evidence that they had withheld the rent because of a dispute with the landlord must be allowed to retain the shelter allowance in their grant. Recipients must provide the facts underlying the dispute and the local district must document the reasons in the case record. Nothing in this ADM prohibits a local agency from using vendor restricted payments if the dispute

is not legitimate.

F. Food Stamps


For the food stamp program, the refunds paid as a result of the withholding of the shelter allowance shall be treated as non-recurring lump sum payments. These payments count as resources in the month received.

The restoration of the shelter allowance in the recurring public assistance grant shall increase the unearned income proportionately.

Any increase in the unearned income will usually result in a decrease in the food stamp benefit. Local districts must issue an adverse action notice within ten days of the date the change was reported. The decrease or termination of benefits must be made effective no later than the allotment for the month following the month in which the notice of adverse action period has expired.

V. EFFECTIVE DATE

This directive is effective January 1, 1982, retroactive to May 1, 1981.


Sydelle Stone Shapiro
Deputy Commissioner
Division of Income Maintenance

Attachments

Attachment #1

NOTICE

As a result of a settlement in the case of Montes v. Blum, the Social Services Department will no longer reduce ADC recipients' grants by removing the "shelter allowance" when recipients withheld rent because of a dispute with their landlord.

This change is retroactive to May 1, 1981. We will restore lost benefits to those who request them and qualify.

THEREFORE

. . . IF YOU ARE NO LONGER A RECIPIENT OF ADC, but you received reduced or no ADC benefits for any period beginning May 1, 1981, because the "shelter allowance" was removed from your benefits because you had withheld rent, you may be entitled to a corrective payment for the benefits you would have received if the shelter allowance had not been removed from your grants. If you believe that you are entitled to corrective payments:

-- contact your social services office, now, in person or in writing, to find out if you qualify.

NOTICE

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This change is retroactive to May 1, 1981. We will restore lost benefits to those who request them and qualify.

THEREFORE

. . . IF YOU ARE A RECIPIENT OF ADC and you received reduced or no benefits for any period beginning May 1, 1981, because you had withheld rent, you may be entitled to a corrective payment for the benefits withheld and to have the "shelter allowance" restored to your grants if it has not already been restored. If you believe you are entitled to assistance which was not provided and/or to have the shelter allowance restored to your grants you should:

- ask your caseworker to review your file at your next recertification interview, OR
- contact your social services office now, in person or in writing, to request a review.

. . . IF YOU ARE NO LONGER A RECIPIENT OF ADC, but you received reduced or no ADC benefits for any period beginning May 1, 1981, because the "shelter allowance" was removed from your benefits because you had withheld rent, you may be entitled to a corrective payment for the benefits you would have received if the shelter allowance had not been removed from your grants. If you believe that you are entitled to corrective payments:

- contact your social services office, now, in person or in writing, to find out if you qualify.