

NEW YORK STATE

DEPARTMENT OF SOCIAL SERVICES

40 NORTH PEARL STREET, ALBANY, NEW YORK 12243



ARTHUR Y. WEBB  
Acting 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.: 82 ADM-75  
[Income Maintenance]

TO: Commissioners of Social Services

SUBJECT: Elimination of Proration in P.A. Cases  
Affected by the Swift v. Toia Case.

DATE: November 24, 1982

SUGGESTED DISTRIBUTION: All Public Assistance Staff  
All Medical Assistance Staff

CONTACT PERSON: Any questions concerning this release should be directed to Hallie Schroeder, Bureau of Income Support Programs, by calling (800) 342-3715, extension 4-9343 or 4-9107. Any MA questions should be directed to your MA County Representative at extension 3-7581. In New York City you may reach your County Representative at 488-7032.

I. PURPOSE

The purpose of this directive is to advise local districts of changes in Department regulations which eliminate proration in budgeting P.A. households residing with non-applying persons who are self-maintaining and non-legally responsible (i.e. Swift v. Toia persons).

II. BACKGROUND

The Swift v. Toia court decision resulted in extraordinarily complex budgeting procedures. All indications are that the procedures resulting from the Swift v. Toia decision will not rest unchallenged, but will be modified by subsequent court decisions (such as Jackson v. Blum, on which an ADM will shortly be released). To avert this, and to simplify the public assistance budgeting required in Swift v. Toia situations, the Department is amending its regulations to eliminate prorated budgeting in these cases.

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous Reference
79 ADM-26	79 ADM-26	352.30(a)	131-a	134	45 CFR 233
80 ADM-89	80 ADM-89	352.31(a)(3)			45 CFR 234
81 ADM-61		369.2(b)			45 CFR 235
		388.11(c)			Source Book Section XII-D

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III. PROGRAM IMPLICATIONS

The elimination of proration in Swift v. Toia situations will simplify P.A. budgeting. In addition, the simplified budgeting is expected to help lower the Q.C. error rate for public assistance cases.

IV. REQUIRED ACTION

Local social services districts must not use proration as a budgeting methodology for allocating income and needs among individual household members in cases containing non-legally responsible non-applying individuals (Swift v. Toia individuals). Therefore, Swift v. Toia individuals must not be included in the needs calculation for the P.A. Unit. The following procedures must be used in budgeting cases containing a Swift v. Toia individual. (Note: SSI recipients must not be considered Swift v. Toia individuals.)

- A. Budgeting Rent - Rent must be budgeted as paid by the public assistance applicant/recipient, up to the appropriate county rent maximum for the PA household. If the Swift v. Toia individual pays a portion of the rent, that amount must be subtracted from the actual rent/shelter cost, and the remainder must be considered the rent paid by the P.A. applicant/recipient.

Example: Mrs. Smith and her 2 children receive ADC. Mrs. Smith has no outside income. Mrs. Smith's brother lives with the family and is self-supporting. He pays half of the \$250 per month rent. The rent maximum for 3 people is \$150. The P.A. budget is prepared as follows:

\$250.00	Total rent
<u>-125.00</u>	Rent paid by brother
\$125.00	Rent expense of P.A. Family
\$200.00	Pre-add allowance (3 persons)
30.00	Home Energy Payment
<u>+ 125.00</u>	Rent Allowance
\$355.00	Total Needs
<u>-0-</u>	Income
\$355.00	P.A. Grant

- B. Budgeting Income - If the Swift v. Toia individual provides a cash payment solely to meet the needs of the members of the P.A. household, that amount must be counted as income to the P.A. household. All other income and resources of the Swift v. Toia individual are invisible for P.A. budgeting purposes.

Example: Mrs. Brown and her 2 children receive ADC and live with Mrs. Brown's aunt. The ADC family's rent expense is \$150 per month, which is the county maximum for a family of 3. The aunt is self-supporting. The aunt gives Mrs. Brown \$25 a month to purchase food for the Brown children. Mrs. Brown has no other income. The P.A. budget is calculated as follows:

\$200.00	Pre-add allowance (3 persons)
30.00	Home Energy Payment
+ 150.00	Rent Allowance
<u>\$380.00</u>	Total Needs
- 25.00	Cash income from aunt
<u>\$355.00</u>	P.A. Grant

C. Boarder/Lodgers - If the applicant/recipient states that the non-applying individual rents a room in the household as a lodger or boarder/lodger, such individual's payments to the household are treated as income to the public assistance household and are budgeted in accordance with boarder/lodger budgeting procedures contained in Section 352.31(a) (3) of Department regulations.

D. Informing Applicants/Recipients of Budgeting - Whenever an applicant/recipient states that the Swift v. Toia individual makes a payment to meet the needs of the public assistance household, the income maintenance worker must fully inform the applicant/recipient or the person applying in his behalf of the full implications of receiving such income from the Swift v. Toia individual. The worker should explain that the recipient may have options of treating their income which may be more beneficial to them. The recipient should also be advised that they have the right to adjust their living arrangement to maximize available benefits. The worker must document in the case folder that such implications were fully explained to the applicant/recipient. In addition, if the recipient states at a later time that the Swift v. Toia individual's payments to the household have changed or will change, the public assistance case must be rebudgeted accordingly.

E. WMS Implications

If the applicant/recipient states that the non-applying individual is a lodger or boarder/lodger, that individual is coded "7" (Roomer/Boarder/Lodger) in the Individual Application Status on page 2 of the Eligibility Workbook. All other Swift v. Toia individuals should be coded "8" (Non-legally responsible individual not applying). Codes "2" and "6" should no longer be used.


The amount paid by a lodger or boarder/lodger should continue to be input on ABEL as Other Income Codes "14" or "15." To input a payment by a Swift v. Toia individual to meet the needs of the PA household, code "18" (Income from friends or non-legally responsible relatives) should be used. Code "23" will no longer be a valid entry on ABEL.

F. Medical Assistance Implications

In determining eligibility for MA-HR related individuals, local social services districts shall follow the procedures contained in this Administrative Directive. In determining eligibility for MA-Only, local social services districts shall continue to follow the procedures contained in 82 ADM-6.

V. EFFECTIVE DATE

This release shall be effective December 1, 1982. Undercare cases must be reviewed at recertification or next contact, whichever is earlier. Districts must maintain a list of affected cases in the event that additional retro-active relief, which is currently under discussion, is required.

  
Sydelle Stone Shapiro  
Deputy Commissioner  
Division of Income Maintenance