

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, CA 95814



October 12, 2004

ALL-COUNTY INFORMATION NOTICE I-71-04

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY FOOD STAMP COORDINATORS
ALL COUNTY FOOD STAMP EMPLOYMENT AND TRAINING COORDINATORS

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order or Settlement Agreement
- Clarification Requested by One or More Counties
- Initiated by CDSS

SUBJECT: WORK REQUIREMENTS AND DISQUALIFICATIONS FOR
NON-ASSISTANCE FOOD STAMP RECIPIENTS

This All County Information Notice (ACIN) provides answers to questions raised by counties regarding work requirements for Non-Assistance Food Stamp (NAFS) recipients. Topics include work requirement exemptions, Food Stamp Employment and Training (FSET) participation, food stamp disqualifications, and the Able-Bodied Adult Without Dependents (ABAWD) work requirement.

Work Registration and ABAWD Exemptions

Question 1:

A food stamp household consists of a single, 29-year old woman. The client is not employed, but cares for her Supplemental Security Income (SSI) mother. The SSI mother lives with the client, but is not part of the client's food stamp household. Can the client be exempt from work registration and the ABAWD work requirement based on care for an incapacitated person?

Answer:

Yes. An individual who cares for an incapacitated person is exempt from food stamp work requirements, regardless of whether the incapacitated person is part of the food stamp household or eligible for food stamps. However, time spent caring for the incapacitated person must prevent the caretaker from working 30 or more hours per week.

The Food and Nutrition Service (FNS) has provided clarification regarding if a caretaker is exempt from work registration when caring for an incapacitated child who is or who is not a member of the food stamp household. The Federal Regulations [7CFR 273.7(b)(1)(iv)] and the Manual of Policies and Procedures (MPP) [63-407.21(d)] indicate that an exemption to

the employment and training work requirement exists for “a parent or other household member responsible for the care of a dependent child under six or an incapacitated person,” even if the dependent child under six or incapacitated person is not in the caregiver’s household or does not live with the caregiver. The rule does not make any differential between children who are incapacitated or incapacitated adults. The term incapacitated person is used, and should be construed to cover both adults and child that are incapacitated. However, the exemption would not apply if the dependent child or incapacitated person is residing with another household and that household is providing the care.

Question 2:

MPP Section 63-407.21(d) exempts from work registration a parent or other household member who is responsible for the care of a dependent child under age six or an incapacitated person. A two parent household consists of a mother who is working 64 hours a month to care for her incapacitated SSI mother who lives in the same home and a father who is a mandatory FSET participant. The parents have a five-year-old SSI child in the home. Can the mother be exempt from work registration based on care for an incapacitated person and the father be exempt based on care for a child under age six?

Answer:

Yes. Both parents can be exempt per MPP Section 63-407.21 (d). Though both of these exemptions are located in the same section of food stamp regulations, they are nevertheless to be treated as separate and distinct exemptions. Care for the incapacitated mother must prevent the caretaker from working at least 30 hours or more per week (see ACIN I-76-00, question number 18).

Question 3:

A household consists of a father attending college full-time, a mother who is unemployed, and two children under six for whom the mother provides the majority of care. Can the father be considered an eligible student, based on exerting parental control of a household member under age six per MPP Section 63-406.213? If so, can he also qualify for the work registration exemption based on half-time school attendance at MPP Section 63-407.21 (h)?

Answer:

No. The father is not an eligible student based on assertion of parental authority. This criteria is only met if the student provides the majority of child care for children in the household under age six. In this situation, the mother provides the majority of care. The father cannot claim the work registration exemption based on half-time school attendance unless he meets one of the other student eligibility criteria at MPP Section 63-406.21. This policy supercedes that contained in ACIN I-43-03 dated July 28, 2003 (see question number one under Work Registration Exemption).

FSET Participation

Question 4:

An individual is issued two FSET transportation reimbursement checks in May and June of 2003 for participating in FSET, and incurring transportation costs. The individual subsequently leaves the food stamp program without having cashed the checks. In September, the county discovers that the checks have not been cashed and the whereabouts of the individual is unknown. How long should the County Welfare Department (CWD) wait before canceling the checks? Is it possible to apply the amount of these checks against any outstanding over issuance?

Answer:

There are no known federal or state policies regarding how long a county should hold onto unused checks issued to FSET participants. Counties should use their best judgment. However, state and federal funds for FSET participant reimbursement can only be used for that purpose and so; the amount of the checks should not be applied against any food stamp overissuance.

Question 5:

In June, an individual begins participating in FSET workfare and he receives \$100 in food stamps. His workfare participation requirement for June is 14 hours which is determined by dividing the household's food stamp allotment by the state minimum wage. In the middle of June, the county discovers that the individual received an underissuance and his food stamp allotment should have been \$140 with a 20-hour workfare participation requirement. Should the individual be required to participate in workfare for an additional six hours given the increase in his food stamp allotment? If so, would the county increase the July workfare requirement by six hours?

Answer:

No. The assigned hours of workfare participation for June need not be adjusted based on the discovery that an individual has received a food stamp underissuance, and subsequently has not worked enough hours. For treatment of cases where a workfare participant receives an overissuance, see MPP Section 63-407.89.

For the month of July, the county should rectify the error, and increase the workfare requirement, and the food stamp allotment to the appropriate amounts.

Food Stamp Disqualifications

Question 6A:

Should an individual receive a food stamp disqualification for failing to register for work prior to being approved for food stamps?

Answer:

No. A one, three, or six month disqualification should not be imposed. However, the individual's food stamp application shall be denied as long as the person fails to register for work.

Question 6B:

What action should the county take when an individual is assigned to an FSET component at application, but fails without good cause to comply, prior to being approved for food stamps?

Answer:

In accordance with policy received from FNS, if an individual's FSET noncompliance is without good cause and is discovered prior to approval of his/her application, the individual is ineligible for benefits and his portion of the application should be denied. A minimum one, three, or six month food stamp disqualification should not be imposed. Rather, the individual remains ineligible only as long as he fails to meet eligibility requirements, including participating in the FSET program when assigned by the county.

Question 6C:

What disqualification requirements apply when an applicant's noncompliance with FSET is not discovered until after the application has been approved?

Answer:

When the CWD learns of the noncompliance after the application is approved, a one, three, or six month disqualification should be prospectively imposed in accordance with MPP Section 63-407.53. Persons receiving expedited service pending final approval of their application shall be considered food stamp recipients for purposes of FSET disqualification requirements.

Question 7:

In September of 2003, an individual receives a third instance Welfare-to-Work (WTW) sanction which lasts a minimum of six months. Food stamps were discontinued with the previous two WTW sanctions, but a third instance food stamp disqualification is not imposed

as the individual is exempt from work registration based on care for a child under age six. In December of 2003, the child turns six and the work registration exemption ends. Does the individual remain eligible for food stamps while under the WTW sanction?

Answer:

Yes. The individual would remain eligible for food stamps when the work registration exemption ends. Consistent with MPP Section 63-407.53, an instance of noncompliance with food stamp work requirements is not counted due to the individual's exemption status, and a food stamp disqualification cannot subsequently be imposed when the exemption stops. This answer supercedes that in ACIN I-76-00, question number 27.

Question 8A:

A household consists of a mother and an eight-year-old child, both of whom receive California Work Opportunity and Responsibility to Kids (CalWORKs) and food stamps. The mother fails a second time to comply with WTW requirements and effective March 1, 2003 she receives a minimum three month CalWORKs WTW sanction per MPP Section 42-721.432. She also receives a food stamp disqualification in accordance with MPP Section 63-407.54. The food stamp disqualification is three months in length as food stamps were discontinued with the first WTW sanction. During April of 2003, the child leaves the home to live with another relative. When the child moves out, the mother applies for General Relief (GR) and food stamps.

If the mother is approved for and begins complying with all General Assistance (GA)/GR work requirements, can she re-establish eligibility for food stamps immediately based on participation in a substitute program at MPP Section 63-407.23? Or, must she wait until the minimum food stamp disqualification is completed?

Answer:

No. The mother cannot re-establish eligibility for food stamps until the minimum food stamp disqualification period ends, or she qualifies for a food stamp work registration exemption, whichever is earlier. Participation in a substitute program such as a GR work program is not a food stamp work exemption (MPP Section 63-407.21).

When the food stamp disqualification ends June 30, the mother can re-establish food stamp eligibility if she complies with all food stamp work registration requirements (MPP Section 63-407.4). This includes participation in FSET if assigned by the county. If the mother complies with work registration requirements, she remains eligible for food stamps, regardless of whether she cures the WTW sanction.

Question 8B:

What CalWORKs sanction and food stamp disqualification requirements apply if the eight-year-old child subsequently returns to the home?

Answer:

If the child subsequently moves back into the home, the mother remains ineligible for CalWORKs until she complies with WTW requirements in accordance with MPP Section 42-721.43. The length of the food stamp disqualification is not impacted by the child's return to the household. This answer supercedes policy contained in ACIN I-76-00, question number 35.

Question 9:

Regulations at MPP Section 63-407.611 specify that if an individual becomes exempt in accordance with MPP Section 63-407.21 or Section 63-410.3 while under a food stamp disqualification, the individual may reapply and be approved for food stamps if otherwise eligible. Does this mean that an FSET disqualification shall end if an individual qualifies for an ABAWD exemption that is not a work registration exemption (e.g., pregnancy, reaching age 50, living in a household with a child under age 18 or the 15 percent exemption)?

Answer:

No. An FSET disqualification will only end prior to the one, three or six month duration if an individual qualifies for one of the work registration exemptions cited in MPP Section 63-407.21. Work registration exemptions are also ABAWD exemptions per MPP Section 63-410.31. The additional ABAWD exemptions at MPP Section 63-410.32 are irrelevant for purposes of ending an FSET disqualification.

Question 10:

An FSET participant stopped performing workfare without good cause on May 14, 2003. The county does not discover the noncompliance until mid-July of 2003. Following issuance of a timely notice, a one month sanction is imposed beginning August 1, 2003. Should an over issuance claim be established for a disqualification for food stamps received during June and July?

Answer:

No. In accordance with policy instructions received from FNS on May 12, 2004, an overissuance is not established for food stamps received between the date the individual failed to comply with workfare and the date of disqualification. An overissuance claim, based upon FSET noncompliance, would be established only for those months a participant inappropriately receives benefits during a one, three, or six months disqualification period. In

this scenario, any benefits received during the month of August would be considered an overissuance unless the individual becomes exempt from work registration during August and ends the sanction early.

NOTE: This response does not address the issue of what overissuance requirements apply for ABAWDs who have incorrectly received food stamps beyond their three free ABAWD months.

ABAWD Work Requirement

Question 11:

In February, an individual loses food stamp eligibility for failing to satisfy the ABAWD work requirement. He obtains a job in May and works more than 80 hours during a 30-day period, but does not apply for food stamps. Through no fault of his own, he loses the job in July. In September, he reapplies for food stamps. Is he eligible for benefits even though he met the requirement for regaining eligibility several months before applying for benefits? Since he lost the job through no fault of his own, can he receive the three consecutive month grace period identified in Section 63-407.52, even though he was not receiving food stamps when he lost the job?

Answer:

Yes. The individual is eligible for food stamps as he met ABAWD requirements for regaining eligibility at MPP Section 63-410.5. Regulations do not require an individual to immediately apply for food stamps after regaining eligibility. However, if the ABAWD waits several months before reapplying, benefits will be issued from the date of application, not back to the date eligibility was regained. The individual is also entitled to the three consecutive months in MPP Section 63-410.52 as he is otherwise eligible for benefits.

Question 12:

Are persons deferred from FSET participation in accordance with MPP Section 63-407.811 subject to the ABAWD work requirement while they are deferred? Do months for which such persons fail to satisfy the ABAWD work requirement while deferred count against the three out of 36-month limit?

Answer:

Yes. Persons deferred from FSET participation are still subject to the ABAWD work requirement. Months for which an ABAWD fails to meet the work requirement count against the three month limit unless the ABAWD qualifies for an exemption, lives in a county where the work requirement is waived, or receives the 15 percent exemption.

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If you have any questions regarding this letter, please contact Robert Nevins, Food Stamp Analyst, Food Stamp Branch by telephone at (916) 654-1408 or via e-mail at robert.nevins@dss.ca.gov.

Sincerely,

Original Document Signed By:

RIGHTON YEE, Chief
Food Stamp Branch