

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



December 21, 1995

ALL-COUNTY LETTER NO. 95-81

TO: ALL COUNTY WELFARE DIRECTORS
ALL SIU CHIEF INVESTIGATORS
ALL APPEALS REPRESENTATIVES

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: IMPOSING INTENTIONAL PROGRAM VIOLATIONS (IPV) IN THE FOOD STAMP PROGRAM

On October 4, 1995, the U.S. Court of Appeals for the Ninth Circuit decided the case of Garcia and Zellar v. Concannon et al. This decision directly impacts how California imposes sanctions based upon Food Stamp IPV determinations. It requires that the California Department of Social Services (CDSS) immediately amend its procedures and pass emergency regulations to coincide with the decision.

The Federal Food Stamp Act, 20 U.S.C. Section 2015 provides that any person found guilty of violating the anti-fraud provisions of the act shall immediately become ineligible for further participation in the program for a fixed disqualification period. However, federal regulations, as well as California's state regulations, do not require the imposition of the period of disqualification "immediately" upon the determination of an IPV. If the person is not currently participating in the program or is otherwise ineligible, the disqualification is deferred until the person is determined to be eligible for benefits. The above cited court case held that 7 CFR Section 273.16(a)(1), (e)(8)(iii), (f)(2)(iii) and (h)(2)(ii) are out of compliance with the Food Stamp Act. Consequently, CDSS regulation section 200-300.36 is also out of compliance.

Effective December 5, 1995, counties are to immediately comply with this decision. Any current determination of an IPV for an eligible recipient shall be imposed as required within current state regulations. However, if the person is not currently eligible for food stamp benefits, the period of disqualification is to start as if they were in fact eligible. If the whereabouts of the person is unknown, the notice should be sent to their last known address.

Counties should not impose any period of disqualification if the person becomes eligible and the period of disqualification has expired according to the terms of the lawsuit. However, if the period of disqualification has not yet expired, the remaining months of the sanction can be imposed. CDSS Fraud Bureau will update the nationwide disqualification system to identify the disqualification periods which have expired and reflect that they are no longer

pending. CDSS will notify counties at a later date of how to proceed with cases where the county has imposed a disqualification period that has expired, after receiving notification of the revisions to the regulations of the U.S. Department of Agriculture.

Imposing periods of disqualification in the Food Stamp Program start at different times depending on how the IPV was determined. If the IPV was determined by an Administrative Disqualification Hearing (ADH) or because the household member signed a disqualification waiver, the period starts within the first month following the date the household member receives the DFA 377.7A notice. However, if the IPV was determined by court order or by a Disqualification Consent Agreement (DCA), the disqualification starts 45 days from when the disqualification was ordered or from the date the DCA was signed. This means that if the District Attorney's Office does not notify the welfare department of the IPV determination in a timely manner, the county may not be able to impose the entire period of disqualification. If the county cannot impose the entire period of disqualification and the person was eligible to benefits during that time, the county can compute an overissuance and grant adjust to recover those benefits provided during the sanction period.

The Garcia court decision will also impact ADH and Fair Hearings. Effective immediately, decisions issued by Administrative Law Judges will reflect that the imposing of an IPV shall be immediate.

Attached is a reproducible Food Stamp Notice of Disqualification (DFA 377.7A) form which has been revised, based upon this decision to delete the language that notifies the household member that if they are not currently eligible, the penalty will start when they reapply or otherwise become eligible. The form has also been revised to incorporate the changes brought about based on a change to the Mickey Leland Childhood Hunger Act. Language has been added to incorporate the additional penalties imposed for being found guilty of trading food stamps for firearms, ammunition, explosives, or a controlled substance.

If you have questions concerning the content of this All County Letter, contact David Hessler of the Fraud Bureau at (916) 445-0031. If you have questions in regard to the form, contact Melissa Buchanan of the Food Stamp Program Bureau at (916) 654-8467.



BRUCE WAGSTAFF
Deputy Director
Welfare Programs Division

Attachment